

## 15. PUBLIC POLICY REQUIREMENTS

**A. Overview** All DOC financial assistance awards will be conducted by the recipient in accordance with applicable statutes and regulations. DOC has the responsibility to enforce recipient compliance with public policy requirements as a condition of receiving Federal assistance funds. The requirements set out in this chapter are those based on social, economic, or other objectives or considerations that may be attached to the expenditure of Federal funds by recipients and subrecipients.

**B. General Requirements** The following is a list of requirements that generally apply to all DOC awards:

1. Provide DOC, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. See 15 CFR §14.53(e) or 15 CFR §24.42(e), as applicable.
2. Maintain written standards of conduct to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. See 15 CFR. §§ 14.42 or 24.36(b)(3), as applicable and Chapter 16, Section D., of this Manual.
3. Initiate and complete the work within the applicable time frame as set out in the award documentation.
4. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F).

**C. Nondiscrimination Requirements.** There are several Federal statutes, regulations, Executive Orders, and policies relating to nondiscrimination. No person in the United States shall, on the ground of race, color, national origin, handicap, religion, age, or sex, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity receiving Federal financial assistance. These requirements include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 CFR Part 8, prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) and implementing regulations at 15 CFR Part 8a, prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794) and DOC implementing regulations published at 15 CFR Part 8b, prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*) and DOC implementing regulations published at 15 CFR Part 20, prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
5. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
6. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
7. Parts II “Nondiscrimination in Employment by Government Contractors and Subcontractors” and III “Nondiscrimination Provisions in Federally Assisted Construction Contracts” of Executive Order 11246, September 24, 1965, “Equal Employment Opportunity” as amended by Executive Orders 11375, October 13, 1967, “Amending Executive Order Number 11246, relating to Equal Employment Opportunity” and 12086, October 5, 1978, “Consolidation of Contract Compliance Functions for Equal Employment Opportunity” requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246, published at 41 CFR § 60-1.4(b).
8. Executive Order 13166, August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons.
9. In recognition of the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, expressly exempts religious organizations from the prohibition against discrimination on the basis of religion. See 42 U.S.C. § 2000e-1(a).
10. Any other Federal non-discrimination requirements.

**D. Environmental Requirements.** Environmental impacts must be considered by

Federal decision makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. The failure to do so shall be grounds for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*). Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with the National Environmental Policy Act when the award activities remain subject to federal authority and control. Applicants for assistance may be required to prepare environmental impact information as part of a proposal.
2. Executive Order 11988, May 24, 1977, “Floodplain Management”, and, Executive Order 11990, May 24, 1977, “Protection of Wetlands”. Recipients must identify proposed actions in Federally-defined floodplains and wetlands to enable the agency to make a determination as to whether there is an alternative to minimize any potential harm.
3. Clean Air Act, Clean Water Act, and Executive Order 11738, September 10, 1973, “Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans”. Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§1251 *et seq.*), and Executive Order 11738. Recipients shall not use a facility placed by EPA on the Excluded Parties List System (EPLS) (<http://www.epls.gov>) in performing any award that is nonexempt under Subpart J of 2 CFR Part 1532.
4. The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 *et seq.*). Flood insurance, when available, is required for Federally-assisted construction or acquisition in flood-prone areas.
5. The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*). Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance

awards and conduct the required reviews under the Endangered Species Act, as applicable.

6. The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 *et seq.*). Funded projects must be consistent with a coastal state's approved management program for the coastal zone.
7. The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*). Restrictions are placed on Federal funding for actions within a Coastal Barrier System.
8. The Wild and Scenic Rivers Act, as amended (16 U.S.C. §§ 1271 *et seq.*). This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.
9. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j). This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole-source aquifer so as to threaten public health.
10. The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 *et seq.*). This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes. The Act also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
11. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended (42 U.S.C. §§ 9601 *et seq.*). These requirements address responsibilities of hazardous substance releases, threatened releases, and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.
12. Executive Order 12898, February 11, 1994, Federal Actions to address Environmental Justice in Minority Populations and Low Income Populations". This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

#### **E. Other Socioeconomic Requirements**

1. Comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 *et seq.*); and implementing regulations issued at 15 CFR Part 11, which provide for fair and equitable treatment of displaced persons or of persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

2. Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended and the Advisory Council on Historic Preservation Guidelines (16 U.S.C. §§ 470 *et seq.*); the Executive Order and Historic Preservation Act of 1974, (16 U.S.C. §§ 469a-1 *et seq.*); Executive Order 11593, May 13, 1971, “Protection and Enhancement of the Cultural Environment”; Executive Order 13006, May 21, 1996, “Locating Federal Facilities on Historic Properties in our Nation’s Central Cities”; and Executive Order 13007, May 24, 1996, “Indian Sacred Sites.”
3. Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 *et seq.*), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
4. Comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.
5. Comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7); the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 - 3708), regarding labor standards for Federally-assisted construction sub-agreements (wage guarantees).
6. Perform the required organization-wide or program-specific audits in accordance with the Single Audit Act of 1984 (Public Law 98-502, as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156), and OMB Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”
7. Comply with the provisions of Subpart C of 2 CFR Part 1326, “Governmentwide Debarment and Suspension (Nonprocurement),” which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.
8. Comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Sec.5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DOC implementing regulations published at 15 CFR Part 29, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” which require that the recipient take steps to provide a drug-free workplace.
9. Comply with the provisions of Section 319 of Public Law 101-121 as codified at 31 U.S.C. §1352, and DOC implementing regulations published at 15 CFR Part 28, “New Restrictions on Lobbying.” These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. The provisions of 15 CFR Part 28 apply to DOC grants and cooperative

agreement awards exceeding \$100,000. The recipient must submit a completed “Disclosure of Lobbying Activities” (Form SF-LLL) regarding the use of non-Federal funds for lobbying.

10. Comply with the provisions of the Fly America Act found at 49 U.S.C. § 40118. The implementing Federal Travel Regulations are published at 41 CFR §§ 301-10.131 through 301-10.143. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel use U.S. flag air carriers, to the extent that service by such carriers is available. In general, foreign air carriers may be used only when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission. A checklist is included in the Exhibits Section of this Manual to assist in determining justification for a waiver of the restrictions of the Fly America Act.

11. To the greatest extent practicable, recipients are encouraged to purchase American-made equipment and products with funding provided under DOC financial assistance awards.

12. Comply with Executive Order 13043, April 16, 1997, “Increasing Seat Belt Use in the United States”, under which recipients shall seek to encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

13. Pursuant to Executive Order 13202, February 17, 2001, “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” as amended by Executive Order 13208, April 6, 2001, “Amendment to Executive Order 13202 Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects” unless the project is exempted under section 5(c) of the order bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not: a) require or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhering to agreements with one or more labor organizations, on the same or other related construction project(s).

14. Minority Serving Institutions (MSIs) Initiative. Pursuant to Executive Order 13256, February 12, 2002, “President’s Board of Advisors on Historically Black Colleges and Universities”, Executive Order 13230, October 12, 2001, “President’s Advisory Commission on Educational Excellence for Hispanic Americans”, and Executive Order 13270, July 3, 2002, “Tribal Colleges and Universities”, DOC is strongly committed to broadening the participation of MSIs in its financial assistance award programs. The DOC’s goals include achieving full participation of MSIs in order to

advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education's website at <http://www.ed.gov/about/offices/list/OCR/edlite-minorityinst.html>.

15. Homeland Security Presidential Directive – 12. If the performance of a grant award requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, personal identity verification procedures must be implemented. Any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures, which implement Homeland Security Presidential Directive -12, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

16. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

a. This clause applies to the extent that a financial assistance award involves access to export-controlled information or technology.

b. In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls relating to physical, verbal, visual and electronic access to export-controlled information and technology.

c. Definitions

(1) Deemed Export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii).

(2) Export-controlled information and technology. Export-controlled information and technology subject to the EAR (15 CFR §§ 730-774), implemented by the DOC Bureau of Industry and Security, or the International Traffic In Arms Regulations (ITAR) (22 CFR §§ 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services,

software or technical data as defined in the EAR and ITAR.

d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

e. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.

f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

17. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 CFR part 175. This Act authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or sub-recipient engages in certain activities related to trafficking in persons.

18. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). This Act requires that the Federal government establish a single searchable awards website by January 1, 2008 to enable the public to see where Federal funds for grant and contract awards are being spent. Sub-award and subcontract data will be required on the website by January 1, 2009. Funding data retroactive to October 1, 2006 must be reported by all Federal agencies and their recipient and sub-recipient organizations. Data elements will include:

- a. Name of entity receiving award;
- b. Award amount;
- c. Transaction type, funding agency, or Catalog of Federal Domestic Assistance Number, and descriptive award title;
- d. Location of: entity, primary location of performance (City/State/Congressional District/Country); and
- e. Unique identifier of entity.

The data will be required within 30 days of an award. The DOC will be implementing this Act, which will require recipients and sub-recipients to report the required data.

19. Comply with all applicable requirements of all other Federal laws, Executive Orders, regulations, and policies governing the program under which funding is provided.

[**Note:** An annual appropriation act can include general provisions stating national policy requirements that apply to the use of financial assistance funds appropriated by the act. Because these requirements can be of limited duration and because they can vary from year to year and from one agency's appropriations act to another agency's, the Grants Officer must know the agency or agencies and fiscal year(s) of the appropriation being obligated and may need to consult the FALD or the Budget Office if the requirements applicable to those appropriations are unknown.]

**F. Requirements for Research Awards.** In addition to the items listed in Section B through E, above, the following is a list of requirements that generally apply to DOC research awards:

1. Comply with 15 CFR Part 27 regarding the protection of human subjects involved in research, development, and related activities.

[**Note:** DOC may adopt further regulatory requirements related to research involving human subjects. Specifically, DOC is considering adopting parts of the common rule that establish additional protections for special classes of human subjects, such as prisoners, children, pregnant women, fetuses, and fetal tissue. DOC may adopt additional regulatory requirements consistent with other laws that do not currently apply to DOC that relate to transplantation of fetal tissue, xenotransplantation, cloning, research involving recombinant DNA molecules and embryo research.]

2. Comply with the Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended (7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensuring that preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance.

3. **Publications and Acknowledgment of Sponsorship.** Publication of the results of the research project in the appropriate professional journals is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally funded research. The recipient is required to submit a copy to the funding agency and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material (including Internet sites and video) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [recipient name] under award [number] from [name of operating unit], U.S. Department of Commerce.

4. Requirements for Construction Awards. Please refer to Chapter 17 of the Manual for detailed requirements of Construction awards.