

**General Provisions**

**U.S. Department of Agriculture (USDA)  
Cooperative Agreement (CA)**

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## 1. Definitions

The following terms shall have the meaning set forth below:

- a. **Agency** - The Food Safety and Inspection Service (FSIS).
- b. **CFR** – Code of Federal Regulations.
- c. **Cooperative Agreement Specialist (CAS)** - Any person authorized to enter in to, administer, and terminate awards.
- d. **Cost Sharing** - Participation by the Cooperator in the cost of meeting their responsibilities under this Cooperative Agreement.
- e. **Cooperative Agreement (CA)** – a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6305. A cooperative agreement may be used when both parties agree to carry out agricultural marketing programs of mutual interest, programs to protect the Nation's animal and plant resources, or educational programs or special studies to improve the safety of the Nation's food supply.
- f. **Cooperator** - The recipient of a CA.
- g. **Project Officer (PO)** - The Agency employee, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of this CA's objectives and monitoring and evaluating the Cooperator's performance.
- h. **Principal Investigator (PI)** - The Cooperator's employee who is responsible for conducting the effort of the Cooperator in the accomplishment of this CA's objectives.
- i. **OMB** - Office of Management and Budget.

## 2. 2 CFR 200 Provisions (as applicable)

[2 CFR Part 25](#) Universal Identifier and System for Award Management

[2 CFR Part 170](#) Reporting Subaward and Executive Compensation Information

[2 CFR Part 175](#) Award Term for Trafficking in Persons. Trafficking Victims Protection Act (TVPA) of 2000, as amended, 22 U.S.C. § 7104(g).

[2 CFR Part 180](#) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)

[2 CFR Part 182](#) and [2 CFR Part 421](#) Requirements for Drug-Free Workplace (Financial Assistance); Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) 41 U.S.C. § 8103

[2 CFR Part 415](#) General Program Administrative Regulations; and §415.2 Acknowledgment of USDA Support on Publications and Audiovisuals.

[2 CFR Part 416](#) General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments

[2 CFR Part 417](#) Nonprocurement Debarment and Suspension

[2 CFR Part 418](#) New Restrictions on Lobbying. (31 U.S.C.A. § 1352)

### **3. Key Personnel**

Written approval of the CAS is required to change the PI or to continue the research, education, or information work, without the participation of the PI, for a period in excess of three continuous months. A substantial reduction of the effort devoted to the work by the PI of 25 percent or more requires written approval of the CAS.

The PI shall obtain prior written approval of the CAS before changing the objectives of this CA, as stated in the CA, or the phenomenon or phenomena under study.

### **4. Subawards and Subcontracting**

No contract, subcontract, grant, or other arrangement shall be made with any other party for performing all or any portion of this project, except for articles, supplies, equipment, and services which are both necessary for and merely incidental to the work required under the CA without prior written approval of the CAS.

## **5. Travel**

- a. Travel may only be performed to provide direct benefit to the research, information, or education project being supported by this CA.
- b. Travel costs are limited to the extent provided by formal Cooperative travel policy. If the Cooperator has no formal travel policy, Agency travel regulations and the applicable cost principles shall be applied in determining the amount of travel chargeable to this CA.
- c. Surface travel or less than first-class air accommodations shall be used where and when available for travel charged to this CA.
- d. United States flag air carriers must be used for foreign travel.
- e. Prior CAS written approval is required for travel outside the United States, its possessions, its territories, and Canada.
- f. Prior CAS written approval is required for personnel relocation.

## **6. Questionnaires and Survey Plans**

The provisions of the Paperwork Reduction Act, 5 CFR Part 1320 apply if this CA involves the collection of information from the public.

## **7. Advertising**

Manufacturers, distributors, or other persons whose product has been approved by USDA for industry or other public use in connection with this CA are prohibited from use of Agency documents, or reference thereto, in their advertising literature or in any other way that suggests endorsement of the product by the USDA.

## **8. Allowable Costs**

- a. Payment up to the amount specified in this CA shall be made only for allowable, allocable, reasonable, and necessary cost in accordance with the Uniformed Guidance at 2 CFR 200, Subpart E, as USDA implemented under 2 CFR 400 in effect on the date of the award.
- b. Prior written CAS approval is required for:
  1. Special-purpose, equipment costing \$5,000 or more per item; purchase of general-purpose equipment, e.g., office machines and furnishings, air conditioning, reproduction or printing apparatus, motor vehicles, or automatic data processing equipment, in accordance with the Uniform Guidance at 2 CFR 200, Subpart E, §200.439 as USDA implemented under 2 CFR 400;
  2. Printing and binding as set forth in the Government Printing and Binding Regulations; and,
  3. Production, purchase, presentation, or distribution of audiovisual materials.

## **9. Disbursing Funds**

Federal employees are prohibited from receiving funds of or disbursing funds of the Cooperator.

## **10. Standards of Work**

- a. The Cooperator agrees that the performance of work or services pursuant to this CA shall conform to high professional standards.
- b. The Cooperator certifies that it is in a position to undertake, perform, and complete this CA and will diligently perform and carry out its responsibilities.

## **11. Budget Modification**

Report any modifications of the budget and program activities as outlined in the original application. See 2 CFR 200.308. Written prior approval is necessary for:

- a. Extension of budget and or project period;
- b. Change in scope of work or objectives of the project (even if the budget does not change);
- c. Change in the Project Director (PD) or Principal Investigator (PI) or other key personnel specified in the grant application;
- d. Absence for more than 3 months or 25% reduction in time devoted to the project by the PD, or PI;
- e. Foreign travel;
- f. Transfer of training funds, and
- g. Any of the above actions initiated by sub-awardees.

## **12. Reports of Work**

The Cooperator is responsible for monitoring and reporting upon performance to the PO with copies to the CAS as follows:

- a. *Program Progress Reports (PPR)*. Unless otherwise specified in this CA, the PPR, in electronic form, are due semi-annually 30 days after the 2<sup>nd</sup> and 4<sup>th</sup> quarter after the anniversary date of the award. Subsequent reports are due quarterly thereafter during any extension thereof. Such reports are to include:
  1. A summary of progress, including a comparison of actual accomplishments with goal(s) established for the time period being covered and the reasons for slippage if the objectives are not met;
  2. An outline of any problems encountered or the occurrence of unusual or favorable developments during the period; and
  3. A summary of work to be accomplished during the ensuing period.

b. *Final Report.* Unless otherwise specified in this CA, the final PPR shall be due 90 calendar days following the expiration date of this CA. This report is to include appropriate identifying data and the following information:

1. A description of all work results, conclusions, and, if any, recommendation;
2. Titles of theses or dissertations resulting, if any;
3. Names of scientific or other collaborators connected with the project, including students (show title or status, e.g., associate professor, graduate student);
4. Other deliverables as given in this CA;
5. Copies of copyrighted or copyrightable materials including computer software;
6. A description of inventions resulting from the work and a statement of status concerning any protections sought;
7. A copy of any publications resulting from this CA; and,
8. Signature of PI and date.

c. *Significant Developments.* Events may occur between scheduled PPR dates which significantly impact the overall effort. Therefore, the Cooperator shall promptly notify the PO when the following conditions or situations surface:

1. Unanticipated delays or adverse conditions, which threaten to materially impair its ability to meet the prime objective(s) of this CA. This disclosure is to include a statement of any action taken or contemplated and any assistance needed to resolve the problem(s); or
2. Favorable developments which are expected to enable it to meet established schedules or goals sooner or at less cost than anticipated or may produce more beneficial results than originally planned.

### **13. Examination of Records by the Comptroller General or the Inspector General**

The Cooperator agrees that the Comptroller General of the United States or the USDA's Inspector General or any of their duly authorized representatives shall, until

- a. Expiration of three years after final payment under the CA, have access to and the right to examine any directly pertinent books, documents, papers, and records of the recipient involving transactions under this CA.
- b. This requirement shall be passed through to lower tier subcontractors or subawards exceeding \$10,000 in value.
- c. This requirement is not applicable to foreign Cooperators.

### **14. Title to Equipment**

As authorized by 7 USC 3318 and the Property Standards of 2 CFR Part 200, as applicable, title to expendable and nonexpendable equipment, supplies, and other tangible personal

property purchased under this CA shall vest in the Cooperator from date of acquisition unless otherwise stated in this CA.

### **15. Equipment Management Requirements**

The Cooperator's procedures for managing equipment purchased with Agency funds are to meet the following requirement: Property records are to be accurate and up-to-date; property is to be properly maintained in good working order; and, property is to be insured.

### **16. Officials Not to Benefit**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this CA, or to any benefit that may arise; therefore, but this provision shall not be construed to extend this CA if made with a corporation for its general benefit.

### **17. Acknowledgement of Support and Disclaimer**

a. The following acknowledgement of Agency support must appear in the publication of any copyrighted or un-copyrighted material, which is based upon or developed under this CA.

*"This material is based upon work supported by the USDA, FSIS, No. (FSIS-C- 05-2018)." [Enter Agreement Number]*

b. All materials, except scientific articles, or papers published in scientific journals, must also contain the following statement.

*"Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view(s) of the USDA."*

### **18. Patents and Copyrights**

a. Patents and Inventions. The clause found at 37 CFR Part 401.14 is incorporated into this CA by reference and is applicable to all organizations regardless of size.

Terms are defined as follows:

1. Contract means this CA; and
2. Federal Agency, Agency, or funding Federal Agency means the USDA, FSIS.

b. Communications.

The central point of contact within the USDA for communications relating to the administration of this clause is: Deputy Asst. General Counsel for Patents Research and Operations Division Office of General Counsel USDA Room 2328, South Building Washington, D.C. 20250-1400. Disclosure statements are made through the CAS.

c. Copyrights. The provisions of 7 CFR 3015.1 75(b) are incorporated by reference. This clause shall be incorporated in all other subcontracts or sub-awards, regardless of tier, for experimental, developmental, or other research work:

*All rights, title, and interests in an invention made solely by an employee of FSIS shall be owned by FSIS. Any invention made under this CA jointly by at least one employee of FSIS and at least one employee of the Cooperator shall be jointly owned. Any invention made under this CA solely by an individual employed by the Cooperator shall be owned by the Cooperator provided FSIS is granted a royalty free, nonexclusive, world-wide, irrevocable license to practice the invention for U.S. Government purposes.*

## **19. Liability - Other**

The following shall apply under this CA as applicable to the Cooperator;

### **a. Organizations Not Immune from Tort Liability**

The cooperator will provide its personnel with such liability insurance as worker's compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile injury, (bodily injury and property damage) insurance, and/or such other insurances as deemed necessary by the Cooperator. The Cooperator is responsible for determining the types and amounts of insurance coverage needed to provide adequate protection for its employees, taking into account the nature and scope of the services to be performed under this CA or sub-CA or contract under this CA.

Whether or not the Cooperator provides liability coverage to its employees, it agrees to indemnify and hold harmless FSIS to the limit permitted by law or regulation, its employees and/or agents against all losses or expenses by reason of any liability imposed by law upon the Cooperator's employees or agents or acts of commission or omission resulting in personal injury, death, or damage to property in the performance of their duties under this CA.

### **b. State Agencies Immune From Tort Liability**

Agency certifies upon signature of this CA, that it enjoys partial or total immunity from Tort Liability as a State agency and that liability insurance coverage will be obtained and maintained only to the extent deemed necessary by the Cooperator. FSIS assumes no liability to third parties, nor will it reimburse the Cooperator for liability to third parties, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this CA or any sub-agreement or contract under this CA. Whether or not the Cooperator provides liability insurance to its employees, it agrees to indemnify and hold harmless the United States and its employees and agents against all losses or expenses by reason of any liability imposed upon the Cooperator's employees or agents for acts of commission or omission resulting in personal injury, death, or damage to property in the performance of their duties under this CA.

c. The Cooperator shall immediately notify the CAS and promptly furnish copies of all pertinent papers received by the Cooperator if any suit or liability action is filed or if any claim is made against it. The Cooperator shall, if required by the Federal Government, authorize Government representatives to settle or defend the claim and to represent the Cooperator in or take charge of any litigation. The Cooperator may, at its own expense, be associated with the Government representatives in any such claim or litigation.

## **20. Debt Collection**

Any monies that are payable or may become payable from the United States under this CA to any person or legal entity not an agency or subdivision or a State or local government may be subject to administrative offset for the collection of delinquent debt to the person or legal entity owner to the United States under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 USC 3701, 3711, 3716-3719); and 7 CFR Part 3.

Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial crediting reporting agencies.



## **21. Termination by Mutual Agreement**

a. Circumstances may arise in which either the Agency or the Cooperator wishes to terminate performance under this CA in whole or in part. If both parties agree that continuation of this CA would not produce results commensurate with further expenditure of funds or for any other valid reason, this CA may be terminated by mutual consent.

b. If the Cooperator wishes to terminate, its representative should advise the CAS in writing, with a copy to the PO. If the Agency wishes to terminate the project, the CAS will so advise the recipient with copies to the PI and the PO.

c. Within 30 days after a request from either party for termination by mutual agreement, the other party will provide an appropriate written response. The two parties shall agree upon the termination conditions, including effective date and, in the event of partial termination, the portion to be terminated. The Cooperator shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible. The Agency shall allow full credit to the Cooperator for the Federal share of non-cancellable obligations properly incurred by the Cooperator prior to termination. The Cooperator shall submit a final report. In the event of disagreement between the parties, the CAS shall make a final determination, subject to the procedures described in clause 22 below.

## **22. Suspension or Termination for Cause**

a. When it has been determined by the Agency that the Cooperator has materially failed to comply with the terms and conditions of this CA, the Agency unilaterally may suspend this CA in whole or in part; or terminate this CA in whole or in part for cause.

The Agency prefers that deficiencies be corrected whenever practicable; therefore, action to suspend or terminate a CA normally will be taken only after the Cooperator has been informed in writing of the nature of the problem, with notification that failure to correct the deficiency may result in suspension or termination of this CA.

b. However, this policy does not preclude immediate suspension or termination when such action is reasonable under the circumstances and necessary to protect the interests of the Federal Government and the public. The Cooperator will be requested to respond in writing within 30 days of such notification, describing the action taken or the plan designed to correct the deficiency. Copies of this correspondence will be furnished to the PI and to the PO. If a satisfactory response is not received within 30 days of receipt of such a communication, the CAS may issue a notice suspending authority to further obligate funds in whole or in part. The notice of suspension will be sent by certified mail (return receipt requested) to the Cooperator, with copies to the PI and to the PO. The notice will set forth activities covered by the suspension, the effective date of suspension, and the corrective action required to be taken by the recipient to lift the suspension.

c. In the event that the cited deficiency is not corrected to the satisfaction of the Agency, the CAS may issue a notice of termination in the same manner as outlined above. The notice of termination will establish the reasons for the action and the effective date.

d. If this CA is suspended pursuant to this clause, no obligations incurred by the Cooperator during the period of suspension will be allowable until such time that the suspension is lifted.

If this CA is terminated pursuant to this clause, the Cooperator shall not incur new obligations

after the effective date of the termination notice and shall cancel as many outstanding obligations as possible. The settlement of termination costs will be determined in accordance with the applicable Federal Cost Principles.

e. Within 90 days of the effective date of termination, the Cooperator shall furnish an itemized accounting of all funds expended for allowable costs prior to the effective date of termination, including the unexpended balance of funds and a final report. The Cooperator may request a review of the termination decision in accordance with procedures described in clause 22 below.

f. If the Agency terminates this CA prior to the end of the period of performance due to the Cooperator's material failure to comply with the Federal award terms and conditions, the Agency will report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS)

### **23. Termination Review Procedures**

a. Any request for review of a notice of termination or settlement of a dispute should be addressed to the Division Director, ASD, Office of Management, FSIS. It must be postmarked no later than 30 days after date of receipt of such notice. The request for review must contain a full statement of the Cooperator's position, all pertinent facts relating to the case, and reasons in support of such position.

b. The Division Director, ASD, Office of Management, FSIS, will acknowledge receipt of the request for review and will appoint a Review Committee consisting of a minimum of three persons, none of whom may either be from the Agency program that is responsible for monitoring the project or from the office that is responsible for monitoring the administrative aspects of this CA. The Review Committee will request the CAS to provide copies of all pertinent background materials and documents. It may, at its discretion, invite representatives of the Cooperator and the Agency program to discuss pertinent issues and to submit any additional information that it deems necessary. The Chairperson of the Review Committee will ensure that all review activities or proceedings are documented.

c. Based upon its review, the Committee will prepare and forward its recommendations to the Division Director, ASD, Office of Management, FSIS, who will advise the parties concerned of the final administrative decision.

### **24. Protection of Human Subjects**

The Cooperator agrees to comply with the Department of Health and Human Services, DHHS regulations on the protection of human subjects as set forth in 45 CFR Part 46 and USDA requirements as set forth in 7 CFR Part 1 c implementation of the Federal Policy for the Protection of Human Subjects.

### **25. Animal Care**

The Cooperator agrees to comply with the Animal Welfare Act (P.L. 89-544, 1966, as amended, P.L. 94-279, and P.L. 99-198, 7 USC 2131 et seq.) and the regulations promulgated there under by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of vertebrate animals held or used for research. The Cooperator agrees to adhere to the principles enunciated in the Guide for the Care and Use of Laboratory Animals described in NIH Publication No. 86-23 (Revised, 1996), and to the USDA regulations and standards issued under the public laws stated above. In case of conflict, the higher standard shall be used.

## 26. Safety and Health

If FSIS personnel occupy and use facilities owned or controlled by the Cooperator pursuant to this CA then the Cooperator agrees to abide by all laws, policies, regulations, and directives governing occupational safety and health that applies to FSIS employees including, but not limited to:

- a. Occupational Safety and Health Administration Standards and Regulations,
- b. National Fire Protection Association Codes, and Environmental Protection Agency Regulations and Manuals.

## 27. Scientific Integrity and Research Misconduct

The recipient agrees to comply with USDA's Department-wide [scientific integrity policy](#) implemented in [Departmental Regulation 1074-001](#) when conducting, supervising, and communicating science and when using or applying the results of science. The recipient is expected to uphold the principles of scientific integrity when engaging in scientific activities identified in this Departmental Regulation. Scientific integrity is the condition resulting from adherence to professional values and practices when conducting, reporting, and applying the results of scientific activities that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, inappropriate influence, political interference, censorship, and inadequate procedural and information security. Additional information can be found here:

<https://www.usda.gov/our-agency/staff-offices/office-chief-scientist-ocs/scientific-integrity-and-research-misconduct>

### *Research Misconduct*

(a) The recipient bears the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation and adjudication of research misconduct alleged to have occurred in association with their own institution as described at 2 CFR 422.

(b) The recipient shall: (1) Maintain procedures for responding to allegations or instances of research misconduct that have the following components:

(i) Appropriate separations of responsibility for inquiry, investigation, and adjudication; (ii) Objectivity; (iii) Due process; (iv) Whistle blower protection; (v) Confidentiality; (vi) Timely resolution;

(2) Promptly conduct an inquiry into any allegation of research misconduct;

(3) Conduct an investigation if an inquiry determines that the allegation or apparent instance of research misconduct has substance;

(4) Provide appropriate separation of responsibilities between those responsible for inquiry and investigation, and those responsible for adjudication;

(5) Advise FSIS of outcome at end of inquiries and investigations into allegations or instances of research misconduct; and

(6) Upon request, provide FSIS hard copy (or website address) of their policies and procedures related to research misconduct.

(c) Research misconduct or allegations of research misconduct shall be reported to the USDA Research Integrity Officer (RIO) and/or to the USDA, Office of Inspector General (OIG) Hotline.

(1) The USDA RIO can be reached at: USDA Research Integrity Officer, 214–W Whitten Building, Washington, DC 20250, Telephone: 202–720–5923, Email: [researchintegrity@usda.gov](mailto:researchintegrity@usda.gov).

(2) The USDA OIG Hotline can be reached at: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026–3399, Telephone: 1–800–424–9121, Email: [usda\\_hotline@oig.usda.gov](mailto:usda_hotline@oig.usda.gov).

## **28. Public Access**

The recipient agrees to comply with USDA’s Department-wide [public access policy](#) implemented in [Departmental Regulation 1020-006](#) which establishes the USDA policy for public access to scholarly publications and digital scientific research data assets. The USDA will make all peer-reviewed, scholarly publications and digital scientific research data assets arising from unclassified scientific research supported wholly or in part by the USDA accessible to the public, to the extent practicable.

## **29. Geospatial Data**

The recipient agrees to comply with USDA’s Department-wide enterprise geospatial data management policy implemented in [Departmental Regulation 3465-001](#) which establishes the USDA policy for defining the strategic direction necessary to optimize the management of the USDA geospatial data and geospatial infrastructure, including all geospatial data created for, by, and enhanced by USDA.

## **30. Buy American Preferences for Infrastructure Projects**

*Buy America Preference.* Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

(1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and

(3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

*Incorporation into an infrastructure project.* The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to

the infrastructure project.

*Categorization of articles, materials, and supplies.* An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) 15 Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

*Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

*Determining the cost of components for manufactured products.* In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

*Construction material standards.* The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

(1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the

completion of the draw, occurred in the United States.

(6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

### *Waivers*

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [\[link to awarding agency web site with information on currently applicable general applicability waivers\]](#).

### *Definitions*

**“Buy America Preference”** means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

**“Construction materials”** means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

- (1) The listed items are:
  - (i) Non-ferrous metals;

- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass); (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber; (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**“Infrastructure”** means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

**“Infrastructure project”** means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

**“Iron or steel products”** means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. 36 Federal agencies may choose to provide definitions on a public-facing website and reference that website in the terms and conditions, rather than including all definitions in the terms and conditions itself. If an agency chooses to do provide definitions on a public-facing website, it is not considered a deviation from the terms and conditions provided and does not need to be reviewed by OMB.

**“Manufactured products”** means:

(1) Articles, materials, or supplies that have been:

- (i) Processed into a specific form and shape; or
- (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

**“Predominantly of iron or steel or a combination of both”** means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

**“Section 70917(c) materials”** means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

### **31. Order of Precedence**

In the event of any inconsistency between or among the various provisions of this CA, the following order of precedence applies:

- a. Project Description
- b. 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- c. Articles
- d. General Provisions
- e. Application.