

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, DC 20250

DEPARTMENTAL REGULATION	NUMBER: DR 3160-001
SUBJECT: Licensed Information Technology (IT) Software	DATE: May 16, 2019
OPI: Office of the Chief Information Officer – Client Experience Center	EXPIRATION DATE: May 16, 2024

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1. PURPOSE

- a. This Departmental Regulation (DR) establishes the policy for maintaining established licensed software within the United States Department of Agriculture (USDA).
- b. This policy also clarifies the ramifications of duplication and distribution of unauthorized software and seeks to prevent such action. Unauthorized copying of software by individuals can harm the entire USDA by subjecting the Department to legal liabilities and making it more difficult to negotiate agreements that make software available at reasonable cost.

2. BACKGROUND

The Federal Government spends a significant amount annually on software acquisitions to conduct business or enable mission functions. It is incumbent on USDA to ensure practices as a purchaser and user of licensed software are carried out effectively, efficiently, and in compliance with all applicable legislation and copyrights, such as the *Federal Information Technology Acquisition Reform Act* (FITARA), [Public Law \(P.L.\) 113-291 Section 831-837](#); the *Federal Information Security Modernization Act of 2014* (FISMA), [44 United States Code \(U.S.C.\) § 3551](#); and Office of Management and Budget (OMB), Memorandum [M-16-12](#), *Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing*.

3. SCOPE

This DR applies to all USDA Mission Area Assistant Chief Information Officers (CIO), employees, appointees, contractors, volunteers, and others working for or on behalf of USDA who manage USDA-supplied computer hardware and software in the performance of their duties.

4. SPECIAL INSTRUCTIONS/CANCELLATIONS

All Mission Areas, agencies, and staff offices will align their licensed software IT policy and procedures with this policy within 6 months of the publication date.

- a. This DR supersedes DR 3160-001, *Computer Software Piracy*, dated March 29, 2007.
- b. This DR is effective immediately and will remain in effect until superseded or until expiration.
- c. If a specific provision of this DR is superseded by another regulation or otherwise invalidated by external laws, directives, or standards, the remaining provisions will not be invalidated.
- d. The term “agency” or phrase “agency and staff office,” unless otherwise noted in this directive, will be considered to encompass the Mission Areas, agencies, and staff offices of USDA.

5. POLICY

- a. The USDA acquires software licenses and must only use the software and documentation in accordance with applicable license agreements. USDA does not own such software or its related documentation. Except as specifically authorized by a software licensor in an agreement, USDA Mission Areas, agencies, and staff offices,

employees, appointees, contractors, volunteers, and others working for, or on behalf of, USDA who are authorized to use USDA-supplied licensed software in performing their functions are prohibited from reproducing licensed software or related documentation.

- b. Mission Areas, agencies, and staff offices are responsible for the distribution and maintenance of the software license agreement reflecting their purchased, installed software licenses which should be available for easy reference to determine if copies can be made for backup or archival purposes, and assure compliance with all provisions of the software agreement.
- c. USDA Mission Areas, agencies, and staff offices, employees, appointees, contractors, volunteers, and others who are working for, or on behalf of, USDA and are authorized to purchase software outside of the standard acquisition procedures for USDA, are responsible for licensing, compliance, maintenance, service, and the annual “true-up” for the software. The annual “true-up” is a reconciliation process of licenses purchased by USDA versus those that are installed on USDA computer systems.
- d. The downloading and/or installation and activation of any software not properly licensed to USDA without the written approval of the USDA CIO or Mission Area Assistant CIOs is prohibited. This also refers to “free” software.
- e. Use of software not properly licensed to USDA without the written approval of the USDA CIO or Mission Area Assistant CIOs is prohibited.
- f. Employees, appointees, contractors, volunteers, and others working for, or on behalf of, USDA who are authorized to use USDA-supplied licensed software in performing their functions working for, or on behalf of, USDA who duplicate copyrighted material without authorization may be subject to disciplinary action and/or civil liability.
- g. The Department or employing Mission Areas, agencies, or staff offices will not defend or indemnify employees, appointees, contractors, volunteers, or others working for, or on behalf of, USDA involved in copyright violation lawsuits if the violation resulted from willful negligence or culpability.
- h. Mission Area Assistant CIOs and Agency and Staff Office Heads, as part of their annual third quarter FISMA computer security program review, will submit copies of related policies, procedures, and Information Technology Asset Management (ITAM) results pursuant to this DR to the USDA CIO.
- i. Nothing in this DR will be construed to require the disclosure of law enforcement investigative sources or methods, or to prohibit or otherwise impair a lawful investigative or protective activity undertaken by, or on behalf of, USDA.

6. PROCEDURES

Procedures in support of this DR will be delineated in the companion Departmental Manual (DM) 3160-001, *Licensed Information Technology (IT) Software Procedures*, which includes related Departmental process and procedure requirements.

7. ROLES AND RESPONSIBILITIES

a. The USDA CIO will:

- (1) Maintain oversight and final approval authority of all monitoring and review activities;
- (2) Support the Department's IT strategic planning/performance measurement process by developing and codifying in a software license policy performance measures related to the effectiveness of controls to prevent the use and removal of unlicensed software;
- (3) Annually review policies, procedures, and ITAM results provided by Mission Areas, agencies, and staff offices;
- (4) Enforce the use of shared internal and interdepartmental procedures, practices, products, and services to maintain USDA software license policy;
- (5) Expand computer security training to include information on USDA software license policies guidance for employees, appointees, contractors, volunteers, and others working for, or on behalf of, USDA; and
- (6) Review and approve all software IT expenditures, as required, to include the USDA CIO's FITARA mandated review and approval responsibility for all IT expenditures.

b. The Client Experience Center (CEC) Associate Chief Information Officer (ACIO) will:

- (1) Review and provide a decision on any submitted and completed waivers to the primary requesting office for any requirement that is not in compliance with this policy; and
- (2) Implement and execute the necessary internal controls to proactively and regularly monitor, measure, audit, report, and enforce compliance with the provisions of the directive.

c. Mission Area Assistant CIOs, and Agency and Staff Office Heads and IT Directors will:

- (1) Establish and coordinate controls to ensure that their organization complies with Section 5 of this DR;
 - (2) Ensure that software users are aware of limitations on use and reproduction described in the license agreement related to specific software and to use licensed software strictly in accordance with such limitations;
 - (3) Review FISMA requirements as part of their annual third quarter computer security program, and submit copies of policies, procedures, and ITAM results to the USDA CIO pursuant to this DR;
 - (4) Issue the following ITAM procedures and practices to:
 - (a) Establish and enforce Mission Area, agency, and staff offices' software license standards;
 - (b) Establish centralized software acquisition whenever possible, ensuring that all software is purchased with IT funds;
 - (c) Establish a software controller point-of-contact function;
 - (d) Establish and maintain accurate supported software inventories;
 - (e) Establish and enforce software disposal procedures whenever possible; and
 - (f) Perform spot audits of installed software base.
- d. USDA end users of software will comply with software product license agreements of computer software including for but not limited to use, reproduction, and distribution.

8. PENALTIES AND DISCIPLINARY ACTIONS FOR NON-COMPLIANCE

The reporting USDA Mission Area, agency, or staff office shall make clear its policy and penalties for installing and using free and/or unauthorized software and management oversight failures.

[DR 4070-735-001](#), *Employee Responsibilities and Conduct*, Section 16, sets forth USDA developed policies, procedures, and standards on employee responsibilities and conduct regarding the use of computers and telecommunications equipment. In addition, DR 4070-735-001, Section 21, *Disciplinary or Adverse Action*, states:

- a. A violation of any of the responsibilities and conduct standards contained in this DR may be cause for disciplinary or adverse action; and

- b. Disciplinary or adverse action will be affected in accordance with applicable law and regulations.

Such disciplinary or adverse action will be consistent with applicable law and regulations such as the Office of Personnel Management (OPM) regulations, OMB regulations, and [Standards of Ethical Conduct for Federal Employees of the Executive Branch](#).

9. POLICY EXCEPTIONS

- a. All USDA Mission Areas, agencies, and staff offices are required to conform to this policy; however, if a specific policy requirement cannot be met as explicitly stated, Mission Areas, agencies, and staff offices may submit a waiver request. The waiver request must explain the reason for the request, identify compensating controls/actions that meet the intent of the policy, and identify how the compensating controls/actions provide a similar or greater level of defense or compliance than the policy requirement. Mission Areas, agencies, and staff offices will address all policy waiver request memoranda to the Office of the Chief Information Officer (OCIO)-CEC-Category Management Office (CMO), at ITCategoryManagement@ocio.usda.gov for review and decision.
- b. Unless otherwise specified, Mission Areas, agencies, and staff offices must submit policy waiver requests for approval or renewal annually. Approved waivers must be tracked as a Plan of Actions and Milestones (POA&M) item in the Department's FISMA data management and reporting tool.

10. INQUIRIES

Questions and comments concerning the requirements of this regulation should be directed to OCIO-CEC-CMO, at ITCategoryManagement@ocio.usda.gov.

-END-

APPENDIX A

ACRONYMS AND ABBREVIATIONS

ACIO	Associate Chief Information Officer
CEC	Client Experience Center
CFR	Code of Federal Regulations
CIO	Chief Information Officer
CMO	Category Management Office
DM	Departmental Manual
DR	Departmental Regulation
FISMA	Federal Information Security Modernization Act
FITARA	Federal Information Technology Acquisition Reform Act
IT	Information Technology
ITAM	Information Technology Asset Management
OCIO	Office of the Chief Information Officer
OMB	Office of Management and Budget
OPM	Office of Personnel Management
P.L.	Public Law
POA&M	Plan of Actions and Milestones
U.S.C.	United States Code
USDA	United States Department of Agriculture

APPENDIX B

AUTHORITIES AND REFERENCES

[Executive Order 13103](#), *Computer Software Piracy*, September 30, 1998

Federal Information Security Modernization Act of 2014, FISMA, [44 United States Code \(U.S.C.\) Section 3551](#), et seq., December 18, 2014 (2017)

Federal Information Technology Acquisition Reform Act (FITARA), [Public Law 113-291, Title VIII, Subtitle D, § 831-837](#), December 19, 2014

Office of Management and Budget (OMB), Circular [A-130](#), Appendix III, *Responsibilities for Protecting Federal Information Resources*, July 28, 2016

OMB, Memorandum [M-16-12](#), *Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing*, June 2, 2016

Standards of Ethical Conduct for Federal Employees of the Executive Branch, [5 Code of Federal Regulations Part \(CFR\) 2635](#) (2018)

USDA, DM 3160-001, *Licensed Information Technology (IT) Software*, forthcoming

USDA, [DR 4070-735-001](#), *Employee Responsibilities and Conduct*, October 4, 2007