

(f) No more than 10 percent of Core Programs may be preempted in each calendar quarter to qualify as Core Programming.

\* \* \* \* \*

**§ 73.673 [Amended]**

■ 4. Section 73.673 is amended by removing and reserving paragraph (b).

■ 5. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

(e) \* \* \*

(11) \* \* \*

(iii) *Children's television*

*programming reports.* For commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673, as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

\* \* \* \* \*

**PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 6. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 7. Section 76.225 is amended by revising paragraph (b) and Note 1 and by adding paragraphs (c) and (d) to read as follows:

**§ 76.225 Commercial limits in children's programs.**

\* \* \* \* \*

(b) The display of Internet Web site addresses during program material is permitted only if the Web site:

(1) Offers a substantial amount of bona fide program-related or other noncommercial content;

(2) Is not primarily intended for commercial purposes, including either e-commerce or advertising;

(3) The Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and

(4) The page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).

(c) The display of Web site addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

(d) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

**Note 1 to § 76.225:** Commercial matter means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

\* \* \* \* \*

[FR Doc. 04-28173 Filed 12-30-04; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**48 CFR Chapter 3**

**Acquisition Regulation**

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Health and Human Services is amending its acquisition regulation (HHSAR) for the purpose of making administrative and editorial changes to reflect organizational title changes resulting from Office of the Secretary (OS) and Operating Division (OpDiv) reorganizations; updating and removing outdated references; providing procedural guidance for reporting violations of the Procurement Integrity Act; assigning unique document numbers for contracts and task orders, in accordance with an Office of Management and Budget Memorandum dated August 6, 2003; adding a new training requirement for HHS project officers; adding the terms "veteran-owned" and "service-disabled veteran-owned" to describe small business categories consistent with the Federal Acquisition Regulation (FAR); permitting a total of basic and option periods of up to ten years for all service contracts not subject to the Service Contract Act or other statutory requirements; adding the Choice of Law (Overseas) clause in solicitations and contracts when contract performance will be outside the United States, its possessions, and Puerto Rico, except as otherwise provided in a government-to-government agreement; removing the reference to the Department's General Administration Manual with respect to major system acquisitions; deleting unconstitutional and unenforceable portions of the Confidentiality of Information clause resulting from the outcome of *Board of Trustees of Leland Stanford Junior Univ. v. Sullivan*, and providing current references with respect to assurances and regulations governing the protection of human subjects. HHS is issuing a direct final rule for this action because HHS expects there will be no significant adverse comments on the rule.

**DATES:** This direct final rule will become effective March 4, 2005, unless significant adverse comments are received by February 2, 2005. If adverse comment is received, HHS will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments by either of the following methods: E-Mail: *Tracey.Mock@hhs.gov* or by mail to: Tracey Mock, DHHS, OS, ASAM, Office of Acquisition Management and Policy, 200 Independence Ave., SW., Room 324E, Washington, DC 20201. Please state "48 CFR 3" on the subject line.

**FOR FURTHER INFORMATION CONTACT:**

Tracey Mock, Office of Acquisition Management and Policy, telephone (202) 205-4430, e-mail: [Tracey.Mock@hhs.gov](mailto:Tracey.Mock@hhs.gov).

**SUPPLEMENTARY INFORMATION:****A. Background**

The Department emphasizes that it is not making significant amendments to the existing HHSAR. The amendments being made to the HHSAR concern internal procedural matters which are administrative in nature, and will not have a major effect on the general public or on contractors or offerors supporting the Department. The majority of the amendments concern HHS organizational title changes resulting from reorganizations, such as the Health Care Financing Administration (HCFA) being renamed the Centers for Medicare & Medicaid Services by the Secretary of Health and Human Services in June 2001.

**B. Regulatory Flexibility Act**

The Department of Health and Human Service certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements. Therefore, no regulatory flexibility statement has been prepared. Since this rule conveys existing acquisition policies or procedures and does not promulgate any new policies or procedures which would impact the public, it has been determined that this rule will not have a significant economic effect on a substantial number of small entities, and, thus, a regulatory flexibility analysis was not performed.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the HHSAR do not impose any record keeping or information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Existing approvals cited in 48 CFR 301.106 remain in effect. The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486 (c).

**List of Subjects in 48 CFR, Parts 302, 303, 304, 306, 307, 317, 324, 333, and 352**

Government procurement.

**Ed Sontag,**

*Assistant Secretary for Administration and Management.*

■ Accordingly, 48 CFR chapter 3, parts 302, 303, 304, 306, 307, 317, 324, 333, 334, and 352 are amended as follows:  
 ■ 1. The authority citation for 48 CFR chapter 3, parts 302, 303, 304, 306, 307, 317, 324, 333, 334, and 352 continues to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 486(c).

**CHAPTER 3—[AMENDED]**

- 2. 48 CFR chapter 3 is amended by—
- a. Removing “Assistant Secretary for Management and Budget” and adding “Assistant Secretary for Administration and Management” in its place each time it appears;
- b. Removing “Administration for Children and Families” each time it appears;
- c. Removing “Health Care Financing Administration” and adding “Centers for Medicare & Medicaid Services” in its place each time it appears;
- d. Removing “Deputy Assistant Secretary for Grants and Acquisition Management” and adding “Director, Office of Acquisition Management and Policy” in its place each time it appears;
- e. Removing “ACF” each time it appears;
- f. Removing “HCFA” and adding “CMS” in its place each time it appears;
- g. Removing “ASMB” and adding “ASAM” in its place each time it appears.
- h. Removing “DASGAM” and adding “Director, OAMP” in its place each time it appears.
- i. Removing “OAM” and adding “Division of Acquisition Policy (DAP)” in its place each time it appears.

**PART 302—DEFINITIONS OF WORDS AND TERMS****302.101 [Amended]**

■ 3. Amend section 302.101 in the definition of *Head of the Contracting Agency (HCA)* by removing “FDA—Director, Policy, Evaluation and Support Staff, Office of Facilities, Acquisition and Central Services” and adding “FDA—Director, Office of Acquisitions & Grant Services” in its place.

**PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

■ 4. Add section 303.104-7 to read as follows:

**303.104-7 Violations or possible violations of the Procurement Integrity Act.**

(a)(1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the impending award or selection of a contractor must be submitted through appropriate channels, along with supporting documentation, to the Head of Contracting Activity (HCA) for review and approval of the determination awarding a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a contractor must be referred through channels, along with all related information available, to the HCA (if the HCA is an SES) or to another SES official designated by the OpDiv. That individual will—

(i) Refer the matter immediately to the Office of Acquisition Management and Policy (OAMP), Assistant Secretary for Administration and Management, Office of the Secretary for review, which may consult with the Office of General Counsel (OGC) and the Office of Inspector General (OIG), as appropriate; and

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-7(c) and (d). The HCA shall obtain the approval or concurrence of the OAMP before proceeding with the action.

(b) The individual in paragraph (a)(2) of this section acts as the agency head designee with respect to actions taken under the FAR clause 52.203-10, Price or Fee Adjustment for Illegal or Improper Authority.

**PART 304—ADMINISTRATIVE MATTERS**

■ 5. Revise paragraph (b) of Section 304.7001 to read as follows:

**304.7001 Numbering acquisitions.**

(a) \* \* \*  
 (b) Numbering system for contracts. All contracts which require numbering (paragraphs (a)(1) through (3) of this section) shall be assigned a number consisting of the following:

(1) The three digit identification code of the Department (HHS);

(2) A one digit alphabetic identification code of the servicing agency:

O Office of the Secretary  
 P Program Support Center  
 M Centers for Medicare & Medicaid Services  
 F Food and Drug Administration

- D Centers for Disease Control and Prevention
  - I Indian Health Service
  - S Substance Abuse and Mental Health Administration
  - N National Institutes of Health
  - H Health Resources and Services Administration
  - A Agency for Health Care Research & Quality
    - (3) The three digit numeric identification code assigned by the Office of Acquisition Management and Policy (OAMP) to the contracting office within the servicing agency;
    - (4) A four digit fiscal year designation (e.g. 2005, 2006);
    - (5) A five digit alphanumeric tracking number the content of which is determined by the contracting office within the servicing agency; and
    - (6) A one digit code describing the type of contract action:
  - C New Definitive Contract
  - P Purchase Using Simplified Acquisition
  - I Indefinite Delivery Contract (IDIQ)
  - O Basic Ordering Agreement (BOA)
  - B Blanket Purchase Agreement (BPA)
  - F Facilities Contract
  - U Contracts placed with or through other Government departments, GSA contracts, or against mandatory source contracts such as the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR)
  - L Lease Agreement
  - W Government-wide Acquisition Contract (GWAC)
  - E Letter Contract
  - G Federal Supply Schedule
  - M Micropurchase
- For example, the first contract for NIH, National Cancer Institute, for fiscal year 2005 may be numbered HHSN261200500001C.
- (c) Order numbers will be assigned to contracts with orders. The order number shall be a seventeen digit number consisting of the following:
- (1) The three digit identification code of the Department (HHS);
  - (2) A one digit numeric identification code of the servicing agency:
- O Office of the Secretary
  - P Program Support Center
  - M Centers for Medicare & Medicaid Services
  - F Food and Drug Administration
  - D Centers for Disease Control and Prevention
  - I Indian Health Service
  - S Substance Abuse and Mental Health Administration
  - N National Institutes of Health
  - H Health Resources and Services Administration

- A Agency for Health Care Research and Quality;
  - (3) The three digit numeric identification code assigned by the Office of Acquisition Management and Policy (OAMP) to the contracting office within the servicing agency;
  - (4) A ten digit alphanumeric tracking number the content of which is determined by the contracting office within the servicing agency.

**PART 306—COMPETITION REQUIREMENTS**

**306.501 [Amended]**

- 6.–8. Amend section 306.501 by:
  - a. Removing “FDA—Director, Office of Facilities, Acquisition, and Central Services” and adding “FDA—Chief, Office of Shared Services” in its place;
  - b. By removing “HCFA—Director, Office of Internal Customer Support” and adding “CMS—Chief Operating Officer—in its place;
  - c. By removing “NIH—(R&D) Director, Office of Extramural Research (Other than R&D)—Director, Office of Intramural Research” and adding “NIH—Senior Advisor for Policy, Office of Extramural Research (R&D) and Senior Advisor to the Deputy Director for Intramural Research (Other than R&D)” in its place.

**PART 307—ACQUISITION PLANNING**

- 9. Redesignate paragraph (a)(3) as (a)(4) and add new paragraph (a)(3) to section 307.170–2 to read as follows:

**307.170–2 Training course prerequisites.**

- (a) \* \* \*
- (3) Project Officers on HHS projects for which HHS or OMB requires an Exhibit 300 [under OMB Circular A–11, part 7] must successfully complete either HHS’ “Early Warning Project Management System Workshop” or an equivalent Earned Value Management course (see paragraph 307.170(c)).

\* \* \* \* \*

**307.7105 [Amended]**

- 10.–11. In section 307.7105, revise the last sentence of paragraph (a)(6) to read as follows:

**307.7105 Format and content.**

- \* \* \* \* \*
- (a) \* \* \*
- (6) \* \* \* Efforts to identify set-aside possibilities, e.g., 8(a), HUBZone, veteran-owned, service-disabled veteran-owned, and small business, and efforts to identify sources such as small disadvantaged and women-owned small businesses must be documented.

\* \* \* \* \*

**PART 317—SPECIAL CONTRACTING METHODS**

- 12. Add new section 317.204 to read as follows:

**317.204 Contracts.**

(e) The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts, such as the Service Contract Act, may place additional restrictions on the length of contracts.

**PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

- 13. Redesignate section 324.100 as 324.000 and revise to read as follows:

**324.000 Scope of subpart.**

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular A–130, Revised, November 30, 2000, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended).

**PART 333—PROTESTS, DISPUTES, AND APPEALS**

- 14.–15. Add new section 333.215–70 to read as follows:

**333.215–70 Additional contract clause.**

Use the clause at 352.333–7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside the United States, its possessions, and Puerto Rico, except as otherwise provided for in a government-to-government agreement.

**PART 334—MAJOR SYSTEM ACQUISITION**

- 16. Amend section 334.003 by removing “The Department’s implementation of OMB Circular No. A–109 may be found in chapter 1–150 of the General Administration Manual” and adding “The Department’s implementation of major system acquisitions should be conducted in accordance with OMB Circular A–109, Major System Acquisitions” in its place.

## PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### Subpart 352.2—Texts of Provisions and Clauses

#### 352.224–70 [Amended]

■ 17. In section 352.224–70, remove paragraphs (b) and (f) and redesignate paragraph (c) as (b), paragraph (d) as (c), paragraph (e) as (d), paragraph (g) as (e), paragraph (h) as (f), and paragraph (i) as (g).

#### 352.270–8 [Amended]

■ 18.–20. Amend section 352.270–8 in paragraph (a) by removing “Office for Protection from Research Risks (OPRR), National Institutes of Health,” and adding “Office for Human Research Protections (OHRP)” in its place; amend the last sentence of paragraph (d) in section 352.270–8 by removing “National Institutes of Health” and replacing with “OpDiv”; and remove the last sentence of paragraph (e) in section 352.270–8 and add “The contracting officer will direct the offeror/contractor to the OHRP IRB Registration and Assurance Filing website, found at <http://www.hhs.gov/ohrp/> or to the physical address if the offeror/contractor cannot access the Internet. HHS regulations for the protection of human subjects may be found at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_01/45cfr46\\_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/45cfr46_01.html)” in its place.

#### 352.270–9 [Amended]

■ 21.–22. Amend section 352.270–9 by removing the heading in paragraph (a) reading “Notice to Offerors of Requirement for Adequate Assurance of Protection of Vertebrate Animal Subjects (Sep. 1985)” and adding “Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals (Revised 1986, Reprinted 2000)” in its place; and amend section 352.270–9 by removing in the undesignated paragraph under the heading “Office for Protection from Research Risks (OPRR),” and adding “Office of Laboratory Animal Welfare (OLAW)” in its place.

■ 23. Add new section 352.333–7001, to read as follows:

#### 352.333–7001 Choice of Law (Overseas).

As prescribed in 333.215–70, use the following clause:

##### Choice of Law (Overseas)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract,

the contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

[FR Doc. 04–27697 Filed 12–30–04; 8:45 am]

BILLING CODE 4151–17–P

## DEPARTMENT OF AGRICULTURE

### Office of Procurement and Property Management

**48 CFR Parts 401, 403, 404, 405, 406, 407, 408, 410, 411, 413, 414, 415, 416, 419, 422, 423, 424, 425, 426, 428, 432, 433, 434, 436, 439, 445, 450, 452, and 453**

RIN 0599–AA11

#### Agriculture Acquisition Regulation: Miscellaneous Amendments (AGAR Case 2004–01)

**AGENCY:** Office of Procurement and Property Management, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Agriculture (USDA) is publishing technical amendments to the Agriculture Acquisition Regulation (AGAR) as a final rule. We use the direct final rule process to make non-controversial changes to the AGAR. We are amending the AGAR to update organizational references to USDA components; to update citations to statutes and to Executive Orders; to update or clarify internal procedures; and to reflect changes in the Federal Acquisition Regulation through Federal Acquisition Circular 2001–24.

**DATES:** This rule will be effective on April 4, 2005, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before February 2, 2005. If adverse comments are received, USDA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Please submit any adverse comments, or a notice of intent to submit adverse comments, identified by AGAR Case 2004–01 or Regulatory Information Number (RIN) 0599–AA11, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [joe.daragan@usda.gov](mailto:joe.daragan@usda.gov). Include AGAR Case 2004–01 or RIN 0599–AA11 in the subject line of the message.

- Fax: (202) 720–8972.

- Mail: U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue, SW., Washington, DC 20250–9303.

- Hand Delivery/Courier: U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, Reporter’s Building, 300 7th Street, SW., Room 310A, Washington, DC 20024.

All submissions received must include the agency name and AGAR Case number or RIN for this rulemaking. All comments received will be posted without change to <http://www.usda.gov/procurement/policy/agar.html>, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Joseph J. Daragan, (202) 720–5729.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Requirements
  - A. Executive Order Nos. 12866 and 12988
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
  - D. Small Business Regulatory Enforcement Fairness Act
  - E. Unfunded Mandates Reform Act
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

#### I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR is being revised to reflect changes in the FAR made by Federal Acquisition Circulars (FACs) 97–02 through 2001–24 and to implement changes in USDA delegated authorities and internal procedures since October 2001. In this rulemaking document, USDA is making corrections to the AGAR as a direct final rule, since the corrections are non-controversial and unlikely to generate adverse comment. The corrections are clerical or procedural in nature and do not affect the public.

Rules that an agency believes are noncontroversial and unlikely to result in adverse comments may be published in the **Federal Register** as direct final rules. The Office of Procurement and Property Management published a policy statement in the **Federal Register** (63 FR 9158, February 24, 1998) notifying the public of its intent to use direct final rulemaking in appropriate circumstances.