

fundamental, the restriction results in clients of grantees being treated differently and less advantageously than all other private litigants, which LSC believes is unwarranted and fundamentally at odds with the Corporation's Equal Justice mission.

This action makes permanent the Interim Final Rule's lifting of the regulatory prohibition on claiming, or collecting and retaining attorneys' fees available under Federal or State law permitting or requiring the awarding of such fees. Accordingly as of March 15, 2010, recipients were and remain permitted make claims for attorneys' fees in any case in which they are otherwise legally permitted to make such a claim. Recipients are also permitted to collect and retain attorneys' fees whenever such fees are awarded to them.

With the repeal of the restriction, recipients are permitted to claim and collect and retain attorneys' fees with respect to any work they have performed for which fees are available to them, without regard to when the legal work for which fees are claimed or awarded was performed. LSC considered whether recipients should be limited seek or obtain attorneys fees related to "new" work; that is, work done only as of the date of the statutory change or the effective date of the Interim Final Rule. LSC rejected that position because the attorneys' fees prohibition applies to the particular activity of seeking and receiving attorneys' fees, but is irrelevant to the permissibility of the underlying legal work. Limiting the ability of recipients to seek and receive attorneys' fees on only future case work would create a distinction between some work and other work performed by a recipient, all of which was permissible when performed. LSC continues to find such a distinction to be artificial and not necessary to effectuate Congress' intention.

LSC also believes that not limiting the work for which recipients may now seek or obtain attorneys' fees will best afford recipients the benefits of the lifting of the restriction. There may well be a number of ongoing cases where the newly available option of the potentiality of attorneys' fees will still be effective to level the playing field and afford recipients additional leverage with respect to opposing counsel in those cases. Likewise, being able to obtain attorneys' fees in cases in which prior work has been performed would likely help relieve more financial

generating cases at the expense of the needs of other clients.

pressure on recipients than a "new work only" implementation choice would because it would increase sources and amount of work for which fees might potentially be awarded.

#### Amendment of Part 1609 and Part 1610

As noted above, Part 1642 contains two provisions not directly related to the restriction on claiming and collecting attorneys' fees. These provisions address the accounting for and use of attorneys' fees and the acceptance of reimbursement from a client. 45 CFR 1642.5 and 1642.6. These provisions used to be incorporated into LSC's regulation on fee-generating cases at 45 CFR Part 1609, but were separated out and included in the new Part 1642 regulation when it was adopted. Amending these provisions was not necessary to effectuate the lifting of the attorneys' fees restriction and they provide useful guidance to recipients. In fact, with recipients likely collecting and retaining fees more often than they have since 1996, the provision on accounting for and use of attorneys' fees will be of greater importance than it has been. Retaining these provisions would continue to provide clear guidance to the benefit of both recipients and LSC. Accordingly, LSC is adopting as permanent the changes which moved these provisions back into Part 1609 as §§ 1609.4 and 1609.5, with only technical amendment to the regulatory text to remove references to Part 1642 and which redesignated § 1609.4 as § 1609.6.<sup>3</sup>

LSC is also adopting as permanent technical conforming amendments to delete references to Part 1642 and the attorneys' fees statutory prohibition that are now obsolete. Having obsolete and meaningless regulatory provisions is not good regulatory practice and can at the very least lead to unnecessary confusion. Accordingly, LSC adopts permanently the deletion of paragraph (c) of § 1609.3, General requirements, to eliminate that paragraph's reference to the attorneys' fees restriction in Part 1642. Similarly, LSC adopts permanently a technical conforming amendment to its regulation at Part 1610. Part 1610 sets forth in regulation the application of the appropriations law restrictions to a recipient's non-LSC funds. Section 1610.2 sets forth the list of the restrictions as contained in section 504 of the FY 1996 appropriations act, and the implementing LSC regulations which

<sup>3</sup> For additional information about the provision on the accounting for attorneys' fees, see the preamble to the 1997 Attorneys' Fees Final Rule: 62 FR 25862 (May 12, 1997) at 25864.

are applicable to a recipient's non-LSC funds. Subsection (b)(9) was the provision that references the attorneys' fees restriction (504(a)(13) and Part 1642) and which became obsolete.

#### List of Subjects in 45 CFR Parts 1609, 1610, and 1642

Grant programs—Law, Legal services.

■ Accordingly, for reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC hereby adopts the interim rule published February 11, 2010 (75 FR 6816) as final without change.

**Mattie Cohan,**

*Senior Assistant General Counsel.*

[FR Doc. 2010-9397 Filed 4-23-10; 8:45 am]

**BILLING CODE 7050-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 48 CFR Chapter 3

#### Health and Human Services Acquisition Regulation; Corrections

**AGENCY:** Department of Health and Human Services.

**ACTION:** Correcting amendments.

**SUMMARY:** This action corrects minor errors, inconsistencies and omissions in the final rule, which revised the Health and Human Services Acquisition Regulation (HHSAR) to implement statutes and government-wide mandates enacted or issued since December 2006.

**DATES:** These corrections are effective on April 26, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Howe, Procurement Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, 202-690-5552 (voice); [cheryl.howe@hhs.gov](mailto:cheryl.howe@hhs.gov) (e-mail); 202-690-8772 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

HHS published a revision of the entire HHSAR (48 CFR parts 301 through 370) in the **Federal Register** on November 27, 2009 to reflect changes since the last revision was published in the **Federal Register** in December 2006. No adverse comments were received.

The revisions included, but were not limited to, the following:

A. Revising Subpart 301.6 regarding training and certification of acquisition officials to implement federal acquisition certification programs.

B. Adding a new Subpart 304.13 to implement Homeland Security Presidential Directive—12.

C. Adding a new Subpart 315.70 regarding acquisition of electronic information technology (EIT) products and services to implement the requirements of Section 508 of the Rehabilitation Act of 1973 [29 U.S.C. 794(d)], as amended by the Workforce Improvement Act of 1998.

D. Adding a new Subpart 317.1 to implement FAR coverage on multi-year contracting and amending Subpart 332.7 to address awards made during a continuing resolution.

E. Adding a new Subpart 334.2 to implement FAR coverage on earned value management (EVM).

The final rule, which became effective on January 26, 2010, contained some minor errors, inconsistencies and omissions which this document corrects. Those technical corrections are set forth below. The corrections to the affected sections are merely procedural in nature and propose no substantive changes on which public comment could be solicited. HHS therefore finds that prior notice and opportunity for comment on these corrections are unnecessary pursuant to 5 U.S.C. 553(b)(3)(A) and that good cause exists for these corrections to be exempt from the 30-day delayed effective date requirement of 5 U.S.C. 553(d).

## II. Summary of Changes

The following summarizes the corrections set forth in this notice.

A. HHS has changed multiple organizational titles to reflect recent reorganizations within the Office of the Secretary.

B. HHS has resolved minor inconsistencies regarding Project Officer and Contracting Officer's Technical Representative (COTR) training and clarified the training requirements for technical evaluation panels.

C. HHS has clarified requirements related to (1) use of multi-year contracting, (2) use of options under multi-year contracts, and (3) preparation of a "determination and findings" for an assisted contract.

### List of Subjects in 48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 315, 316, 317, 319, 324, 332, 352, and 370

Government procurement.

■ Accordingly, 48 CFR parts 301, 302, 303, 304, 305, 306, 307, 315, 316, 317, 319, 324, 332, 352, and 370 are corrected by making the following amendments:

■ 1. The authority citation for 48 CFR parts 301, 302, 303, 304, 305, 306, 307,

315, 316, 317, 319, 324, 332, 352, and 370 continues to read as follows:

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

### PART 301—HHS ACQUISITION REGULATION SYSTEM

■ 2. Section 301.101(a) is revised to read as follows:

#### 301.101 Purpose.

(a) The Department of Health and Human Services (HHS) Acquisition Regulation (HHSAR) establishes uniform HHS acquisition policies and procedures that conform to the Federal Acquisition Regulations (FAR) System.

\* \* \* \* \*

■ 3. Section 301.270(b)(3) is revised to read as follows:

#### 301.270 Executive Committee for Acquisition.

\* \* \* \* \*

(b) \* \* \*

(3) Assistant Secretary for Preparedness and Response/Office of Acquisitions Management, Contracts and Grants (ASPR/OAMCG)

\* \* \* \* \*

■ 4. Section 301.603–73(e) is revised to read as follows:

#### 301.603–73 Additional HHS training requirements.

\* \* \* \* \*

(e) *Section 508 training.* When the HHS Office on Disability (OD) so requires, all GS–1102s, GS–1105s and GS–1106s who award or administer acquisitions that involve electronic information technology (EIT) products or services (subject to Section 508 of the Rehabilitation Act of 1973 and pertinent HHSAR provisions), must complete all applicable OD sponsored training. For information on frequency, timing, and duration of the training requirement, personnel shall consult with the HHS OD.

\* \* \* \* \*

■ 5. In section 301.604–70, the first sentence is revised to read as follows:

#### 301.604–70 General.

In accordance with the Federal Acquisition Certification for Contracting Officers' Technical Representatives (FAC–COTR) program, HHS has established a training program for certification and designation of personnel as COTRs—see HHS' Federal Acquisition Certification for Contracting Officers' Technical Representatives Program Handbook (COTR Handbook), dated January 2009, for information on the methods for earning FAC–COTR certification. \* \* \*

■ 6. Section 301.604–72 is revised to read as follows:

#### 301.604–72 Requirements for certification maintenance.

Maintaining HHS FAC–COTR certification requires at least 40 relevant CLPs every 2 years. See Appendix A of OFPP's FAC–COTR memorandum, dated November 26, 2007, and HHS' COTR Handbook for information on CLPs.

■ 7. Section 301.604–74 is revised to read as follows:

#### 301.604–74 Additional COTR training requirements.

(a) See HHS' COTR Handbook for information on additional COTR training requirements.

(b) *Training policy exceptions.*

(1) *EVM training.* In the event that there is an urgent requirement for a COTR to administer a contract to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 9 months from the date of assignment to the contract. If the individual does not complete the training requirement within 9 months, the HCA's approval for the individual's assignment to the contract will automatically terminate on that date. In addition, during any extension period, the COTR must work under the direction of a COTR, or Program/Project Manager who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to a COTR to complete the PBA, Federal appropriations law, and green purchasing training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA's approval will automatically terminate on that date.

■ 8. In section 301.606–71, the last sentence is revised to read as follows:

#### 301.606–71 Project Officer training.

\* \* \* See HHS' COTR Handbook for additional information on the basic training requirement for Project Officers and guidance on the training requirement for technical proposal evaluators in 315.305(a)(3)(ii).

#### 301.606–73 and 301.606–74 [Redesignated as 301.606–74 and 301.606–75]

■ 9. Sections 301.606–73 and 301.606–74 are redesignated as sections 301.606–74 and 301.606–75, respectively.

■ 10. Add new section 301.606–73 to read as follows:

**301.606–73 Requirements for continuous learning maintenance.**

Designated Project Officers require at least 40 relevant CLPs every 2 years. See HHS’ COTR Handbook for information on CLPs.

■ 11. Revise redesignated section 301.606–75 to read as follows:

**301.606–75 Additional Project Officer training requirements.**

(a) See HHS’ COTR Handbook for information on additional training requirements.

(b) *Training policy exceptions.*  
(1) *EVM training.* In the event that there is an urgent requirement to assign a Project Officer to a contract project to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 3 months from the date of submission of the AP or other acquisition request documentation to the contracting office. If the individual does not complete the training requirement within the extension period, the HCA’s approval for the individual’s assignment to the project will automatically terminate on that date. In addition, during any extension period, the Project Officer must work under the direction of a Project Officer, COTR, or Program/Project Manager who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to a Project Officer to complete the PBA, Federal appropriations law, and green purchasing training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA’s approval will automatically terminate on that date.

**301.607–77 [Removed]**

■ 12. Remove section 301.607–77.

**301.607–78 and 301.607–79 [Redesignated as 301.607–77 and 301.607–78]**

■ 13. Sections 301.607–78 and 301.607–79 are redesignated as sections 301.607–77 and 301.607–78, respectively.

**PART 302—DEFINITIONS OF WORDS AND TERMS**

■ 14. In section 302.101, paragraph (d)(1), and the first sentences of paragraphs (e) and (f), are revised to read as follows:

**302.101 Definitions.**

\* \* \* \* \*

(d) \* \* \*

(1) The HHS HCAs are as follows:

- AHRQ: Director, Division of Contracts Management.
- ASPR: Director, Office of Acquisitions Management, Contracts and Grants.
- CDC: Director, Procurement and Grants Office.
- CMS: Director, Office of Acquisition and Grants Management.
- FDA: Director, Office of Acquisitions and Grant Services.
- HRSA: Director, Office of Acquisition Management and Policy.
- IHS: Director, Division of Acquisition Policy.
- NIH: Director, Office of Acquisition and Logistics Management.
- PSC: Director, Strategic Acquisition Service.
- SAMHSA: Director, Division of Contracts Management.

\* \* \* \* \*

(e) *Program Manager* is a federal employee whom an OPDIV official or designee one level above the head of the sponsoring program office has designated in writing to act as a Program Manager for a group of related major or non-major IT or construction capital investments—see HHS’ P/PM Handbook. \* \* \*

(f) *Project Manager* is a federal employee whom a head of the sponsoring program office (Program Manager) or designee has designated in writing to act as a Project Manager for a major or non-major IT or construction capital investment—see HHS’ P/PM Handbook. \* \* \*

\* \* \* \* \*

**302.7000 [Amended]**

■ 15. In section 302.7000(b), the table is amended by removing the acronym “BARDA” and its associated term “Biomedical Advanced Research and Development Authority” and adding in their place after “ASFR” the acronym “ASPR/OAMCG” and its associated term “Assistant Secretary for Preparedness and Response, Office of Acquisitions Management, Contracts and Grants”.

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

■ 16. Section 303.1003(b)(1) is revised to read as follows:

**303.1003 Requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) Notify the OIG at <http://www.oig.hhs.gov/fraud/hotline/>;

\* \* \* \* \*

**PART 304—ADMINISTRATIVE MATTERS**

**304.7001 [Amended]**

■ 17. Sections 304.7001(b)(2) and (c)(2) are amended by removing the acronym “BARDA” and adding in its place the acronym “ASPR/OAMCG”.

**PART 305—PUBLICIZING CONTRACT ACTIONS**

■ 18. Section 305.303 is revised to read as follows:

**305.303 Announcement of contract awards.**

(a) *Public Announcement.* The Contracting Officer shall report awards over \$3.5 million, not otherwise exempt under FAR 5.303, to the Office of the Assistant Secretary for Legislation (OASL) (Congressional Liaison). The Contracting Officer shall e-mail a copy of the contract or award document face page to [grantfax@hhs.gov](mailto:grantfax@hhs.gov) prior to the day of award or in sufficient time to allow OASL to make an announcement by 5 p.m. Washington, DC time on the day of award.

**PART 306—COMPETITION REQUIREMENTS**

**306.501 [Amended]**

■ 19. Section 306.501 is amended by removing “BARDA: Chief of Mission Support and Acquisition Policy” and adding in its place “ASPR/OAMCG: Chief of Acquisition Policy”.

**PART 307—ACQUISITION PLANNING**

■ 20. In section 307.7101(c), the last sentence is revised to read as follows:

**307.7101 Policy.**

\* \* \* \* \*

(c) \* \* \* Alternatively, OPDIVs may prescribe use of an AP for acquisitions excepted under 307.7101(a)(1) through (a)(8).

■ 21. Section 307.7102(b) is revised to read as follows:

**307.7102 Content.**

\* \* \* \* \*

(b) HCA or designee shall notify ASFR/OGAPA/DA of the need to revise the AP; and

\* \* \* \* \*

**PART 315—CONTRACTING BY NEGOTIATION**

■ 22. In section 315.305, the first sentence in paragraph (a)(3)(ii)(A)(3) is removed and three sentences are added in its place; and the second sentence in paragraph (a)(3)(v) is revised to read as follows:

**315.305 Proposal evaluation.**

- (a) \* \* \*  
 (3) \* \* \*  
 (ii) \* \* \*  
 (A) \* \* \*

(3) At least 50 percent of the HHS personnel on a technical evaluation panel shall have successfully completed HHS University's "Basic Contracting Officer's Technical Representative" course or an equivalent course within 4 years before assuming their designated role. This training requirement applies to evaluators performing the initial technical evaluation and any subsequent technical evaluations, but does not apply to peer review panel members. The Contracting Officer may waive this training requirement in exigent circumstances if documented in writing and approved by the Head of Contracting Activity.

\* \* \* \* \*

(v) \* \* \* The evaluators may then discuss in detail the individual strengths and weaknesses described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). \* \* \*

\* \* \* \* \*

**PART 316—TYPES OF CONTRACTS****316.505 [Amended]**

■ 23. Section 316.505(b)(5) is amended by removing "BARDA: Chief of Mission Support and Acquisition Policy" and adding in its place "ASPR/OAMCG: Chief of Acquisition Policy".

**PART 317—SPECIAL CONTRACTING METHODS**

■ 24. In section 317.105–1, the first sentence of paragraph (a) introductory text, and paragraphs (a)(1) and (b), are revised; and a new paragraph (c) is added to read as follows:

**317.105–1 Uses.**

(a) Each HCA determination to use multi-year contracting, as defined in FAR 17.103, is limited to individual acquisitions where the full estimated cancellation ceiling does not exceed 20 percent of the total contract value over the multi-year term or \$11.5 million, whichever is less. \* \* \*

(1) The amount of, and basis for, the estimated cancellation ceiling.

\* \* \* \* \*

(b) (1) SPE approval is required for any—

(i) Individual determination to use multi-year contracting with a cancellation ceiling in excess of the limits in 317.105–1(a); or

(ii) Class determination (see FAR Subpart 1.7).

(2) A determination involving a cancellation ceiling in excess of the limits in 317.105–1(a) shall present a compelling justification for the estimated cancellation ceiling. When the estimated cancellation ceiling exceeds \$11.5 million, the determination shall be accompanied by a draft congressional notification letter pursuant to FAR 17.108 and 317.108.

(c) The funding required for performance of each year of a multi-year contract under FAR Subpart 17.1 and this subpart must be provided in full at the start of that program year.

■ 25. Section 317.107 is revised to read as follows:

**317.107 Options.**

When used as part of a multi-year contract, options shall not be used to extend the performance of the original requirement for non-severable services beyond 5 years. Options may serve as a means to acquire related services (severable or non-severable) and, upon being exercised, shall be funded from the then-current fiscal year's appropriation.

■ 26. In section 317.503, paragraphs (a)(6) and (a)(7) are revised and a new paragraph (a)(8) is added to read as follows:

**317.503 Determination and findings requirements.**

(a) \* \* \*

(6) The recommended multi-agency or intra-agency contracting approach;

(7) The conclusion that the contract to be awarded by the selected servicing organization is the most advantageous alternative to the Government, notwithstanding fees and the increased risk associated with assisted contracting; and

(8) The steps that will be taken to ensure that contract funding will comply with the *bona fide* needs rule and the Anti-Deficiency Act.

**PART 319—SMALL BUSINESS PROGRAMS****319.201 [Amended]**

■ 27. Section 319.201(e)(1) is amended by removing the acronym "BARDA" and adding in its place "ASPR/OAMCG".

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

■ 28. Section 324.102(f) is revised to read as follows:

**324.102 General.**

\* \* \* \* \*

(f) Whenever a Contracting Officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the Contracting Officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records.

**PART 332—CONTRACT FINANCING**

■ 29. In section 332.703–70(b), the first sentence is revised to read as follows:

**332.703–70 Funding contracts during a continuing resolution.**

\* \* \* \* \*

(b) \* \* \* Because the terms of CRs may vary, for each CR, specific operating guidance will be issued by the Office of the Assistant Secretary for Financial Resources (ASFR). \* \* \*

\* \* \* \* \*

**PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****352.219–70 [Amended]**

■ 30. In the provision heading in section 352.219–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.219–71 [Amended]**

■ 31. In the clause heading in section 352.219–71, remove "(October 2009)" and add in its place "(January 2010)".

**352.222–70 [Amended]**

■ 32. In the clause heading in section 352.222–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.231–70 [Amended]**

■ 33. In the clause heading in section 352.231–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.233–70 [Amended]**

■ 34. In the clause heading in section 352.233–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–70 [Amended]**

■ 35. In the clause heading in section 352.239–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–71 [Amended]**

■ 36. In the clause heading in section 352.239–71, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–72 [Amended]**

■ 37. In the clause heading in section 352.239–72, remove "(October 2009)" and add in its place "(January 2010)".

**352.239-73 [Amended]**

■ 38. In the provision heading in section 352.239-73(a) and the clause heading in 352.239-73(b), remove “(October 2009)” and add in its place “(January 2010)”.

**352.270-7 [Amended]**

■ 39. In the clause heading in section 352.270-7, remove “(October 2009)” and add in its place “(January 2010)”.

**352.270-8 [Amended]**

■ 40. In the clause heading in section 352.270-8, remove “(October 2009)” and add in its place “(January 2010)”.

**352.270-9 [Amended]**

■ 41. In the provision heading in section 352.270-9, remove “(October 2009)” and add in its place “(January 2010)”.

**PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION**

■ 42. Section 370.400 is revised to read as follows:

**370.400 Scope of subpart.**

This subpart applies to all R & D, research training, biological testing, housing and maintenance, and other activities involving live vertebrate animals conducted under contract (see Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), Rev. 1986, Repr. 1996).

■ 43. Paragraph 370.403(a) is revised to read as follows:

**370.403 Notice to offerors.**

(a) The Contracting Officer shall insert the provision in 352.270-5(a), Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals, in solicitations that involve live vertebrate animals.

\* \* \* \* \*

■ 44. Section 370.404 is revised to read as follows:

**370.404 Contract clause.**

The Contracting Officer shall insert the clause in 352.270-5(b), Care of Live Vertebrate Animals, in solicitations, contracts, and orders that involve live vertebrate animals.

Dated: April 15, 2010.

**Ellen G. Murray,**

*Assistant Secretary for Financial Resources.*

[FR Doc. 2010-9382 Filed 4-23-10; 8:45 am]

**BILLING CODE 4151-17-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 622**

[Docket No. 090225243-0170-03]

RIN 0648-AX67

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 31**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 31 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule will implement restrictions applicable to the bottom longline component of the reef fish fishery in the exclusive economic zone (EEZ) of the eastern Gulf of Mexico (Gulf). The restrictions include a bottom longline endorsement requirement, a seasonal closed area, and a limitation on the number of hooks that can be possessed and fished. The intent of this rule is to balance the continued operation of the bottom longline component of the reef fish fishery in the eastern Gulf while maintaining adequate protective measures for sea turtles.

**DATES:** This rule is effective May 26, 2010.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) and record of decision may be obtained from Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701-5505.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by e-mail to [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov), or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Meyer, telephone: 727-824-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act). The taking of sea turtles is prohibited, with certain exceptions, identified at 50 CFR part 223 under the authority of the Endangered Species Act (ESA) and its implementing regulations.

On December 31, 2009, NMFS published a notice of availability of Amendment 31 and requested public comment (74 FR 69322). On January 15, 2010, NMFS published a proposed rule for Amendment 31 and requested public comment (75 FR 2469). NMFS approved Amendment 31 on March 29, 2010. This final rule establishes adequate protective measures for loggerhead sea turtles while maintaining a viable bottom longline fleet. These measures include a bottom longline endorsement, a seasonal closed area in the eastern Gulf, and a limitation on the number of hooks that can be possessed and fished. The rationale for the measures contained in Amendment 31 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

**Comments and Responses**

The following is a summary of the comments NMFS received on the proposed rule and Amendment 31, and NMFS' respective responses. During the respective comment periods for Amendment 31 and the proposed rule, NMFS received 976 submissions. The submissions included two scripted form letters with 457 and 393 copies. NMFS also received 126 unique mailed letters. In addition, a non-governmental organization submitted a petition with 2,297 signatures. Many of the faxes and electronic comments were duplicate submissions by the same person.

*Comment 1:* NMFS needs to take action to stop additional sea turtle mortality and reverse the decline in the sea turtle population.

*Response:* NMFS has concluded that the actions contained in this final rule are sufficient to address sea turtle interactions in the Gulf reef fish fishery. NMFS reinitiated a formal section 7 consultation investigating continued authorization of the reef fish fishery. An emergency rule, effective May 18, 2009, prohibited bottom longline gear for the reef fish fishery in waters less than 50 fathoms (91 m) to address the issue in the short-term and closed the portion of the Gulf EEZ east of 85° 30' W. longitude to bottom longlining for reef fish after the deepwater grouper quota was met on June 27, 2009. According to the NMFS 2009 report on sea turtle take estimates for the commercial reef fish fishery of the eastern Gulf, all but one observed sea turtle take occurred in water depths less than 50 fathoms (91