

17.1. TABLE 17-1—DIAGNOSTIC TESTS REQUIRED AFTER VARIOUS REPAIRS—Continued

| Description of event | Optical alignment | Optical alignment indicator assessment (Note 1) | Zero calibration check | Clear path (off-stack) zero assessment (Note 3) | Upscale calibration check | Calibration error check | Fault status indicator check | Averaging period calculation and recording | 7-Day zero and up-scale drift check (Note 2) | Recertify per PS-1 | New MCOC per ASTM D 6216-98, 07 | Comments |
|--|-------------------|---|------------------------|---|---------------------------|-------------------------|------------------------------|--|--|--------------------|---------------------------------|---|
| (2) Replace or repair primary measurement light.. | X | X | X | X | X | X | X | — | — | — | — | Light source uniformity and position are key source to many performance parameters. |
| (3) Replace or repair components which are measurement noncritical.. | X | — | X | — | X | | X | — | — | — | — | See text description, section 10.5(2). |
| (4) Replace or repair components which are measurement critical.. | X | X | X | X | X | X | X | — | X | — | — | See test description, section 10.5(3). |
| (5) Replace or repair components which are measurement critical but do not involve optical or electro-optical components.. | — | — | X | — | X | X | X | X | — | — | — | Includes changes of components involving data acquisition and recording. |
| (6) Rebuild or substantially refurbish the analyzer.. | — | — | — | — | — | — | — | — | — | X | — | See text description, section 10.5(4). |
| (7) Change to, or addition of, analyzer components which may affect MCOC-specified performance parameters.. | — | — | — | — | — | — | — | — | — | X | X | Significant changes which are not part of the MCOC-designated configuration. |

Notes: (1) Optical alignment indicator assessment requires the operator to verify during an off the stack clear path zero assessment that the beam is centered on the reflector/retro reflector when the alignment indicator indicates on-axis centered alignment. If not, the analyzer optical train must be adjusted until this condition is met.
 (2) 7-Day zero and upscale drift assessment. Opacity measurement data recorded prior to completion of the 7-day drift test will be considered as valid provided that the first 7-day drift test is successful, that it is completed within 14 days of completion of the repair, and that other QA requirements are met during this time period.
 (3) Requires verification of the external zero-jig response, or recalibration of the same, after the off-stack clear path zero has been re-established.

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AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 704, 713, 714, 715, 716, 744, and 752

RIN 0412-AA63

Partner Vetting in USAID Acquisitions

AGENCY: United States Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is implementing a pilot for a Partner Vetting System for USAID assistance and acquisition awards. The purpose of the Partner Vetting System is to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. We are amending the USAID Acquisition Regulations (AIDAR) regulations in order to apply the Partner Vetting System to USAID acquisitions for the pilot and any subsequent implementation of PVS that is determined appropriate.

DATES: This final rule is effective on March 15, 2012.

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SUPPLEMENTARY INFORMATION:

A. Background

USAID's final rule exempting portions of the Partner Vetting System (PVS) from provisions of the Privacy Act of 1974 went into effect on August 4, 2009 after several extensions, the most recent of which was published on May 6, 2009 (74 FR 20871). Although USAID did not further extend the effective date, the agency did not implement PVS at that time in order to allow additional input from interested parties and to allow PVS to be applied to both assistance and acquisitions. Before the agency determines whether to implement PVS on a world-wide basis, USAID is launching a PVS pilot program to determine the costs and benefits of implementing PVS more broadly. At the conclusion of the pilot program, State and USAID will determine whether it is necessary to implement PVS more broadly, and/or make changes to the risk-based model it employs. In order to apply PVS to USAID acquisitions, USAID is amending 48 CFR Chapter 7, which is USAID's procurement regulation. USAID published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on June 26, 2009 (74 FR 30494) with a public comment period of 60 days, closing on August 25, 2009. During the 60-day comment period, USAID received comments from five separate respondents. All respondents expressed concerns about

USAID's intent to implement PVS and reiterated objections raised during and after the public comment period when USAID established the PVS as a new system of records (72 FR 39042) and exempted portions of PVS from one or more provisions of the Privacy Act (74 FR 9). However, since comments of this nature are outside the scope of the Proposed Rule, we are not addressing them in this Final Rule. Only those comments directly addressing the proposed amendments to the AIDAR and our responses are discussed below.

B. Summary of the Final Rule

USAID is issuing a final rule amending 48 CFR Chapter 7, as described in the proposed rule with some modifications in response to the public comments received. This final rule implements the partner vetting system for USAID acquisitions by adding a new subpart 704.70 to (48 CFR) AIDAR, with an associated solicitation provision and contract clause in (48 CFR) AIDAR Part 752. Additionally, this final rule amends (48 CFR) AIDAR Parts 713, 714, and 715, 716, and adds a new Part 744 to include reference to the requirements at (48 CFR) AIDAR Subpart 704.70.

C. Discussion of Comments

USAID received comments and suggestions from five organizations on its proposed rule to amend 48 CFR Chapter 7, which would enable USAID to apply the Partner Vetting System to USAID acquisitions. While some of the comments and suggestions received did

address the proposed amendments, many of the comments and suggestions focused instead on the Partner Vetting System itself. Most, if not all, of those comments and suggestions previously were responded to when USAID published in the **Federal Register** its Privacy Act final rule for the Partner Vetting System. See 74 FR 9 (January 2, 2009). Although that final rule exempted from release under the Privacy Act only information from other government agencies and related to investigations, USAID's discussion of all comments and suggestions received, beginning at 74 FR 10, addresses these general comments.

While not required to respond to comments and suggestions which did not expressly address the proposed amendment to 48 CFR Chapter 7, USAID nevertheless would like to dispel one major misconception that was reiterated in many of those comments and suggestions. Some organizations that submitted comments and suggestions erroneously referred to the Privacy Act final rule as a rule applicable only to "non-profit, non-governmental applicants to USAID." That is not an accurate description of either the Privacy Act final rule or of any other Partner Vetting System notices published by USAID in the **Federal Register**. With the exception of the NPRM for 48 CFR Chapter 7, which is specific to acquisition, USAID's notices pertaining to the Partner Vetting System were all applicable to all non-governmental organizations (NGOs), both for-profit and non-profit, whether they are applying for assistance awards or submitting offers/bids for acquisition instruments. The term "NGO" as used in the following notices was comprehensive, covering all organizations that were non-governmental organizations. These notices established a system of records for the Partner Vetting System (72 FR 39042), proposed to exempt portions of this system of records from one or more provisions of the Privacy Act (72 FR 39768), proposed information collection procedures for the Partner Vetting System (72 FR 40110), and included a Partner Information Form for information collection purposes (72 FR 56041). While USAID initially determined that it was not necessary to amend its regulation on assistance (22 CFR 226) to implement the Partner Vetting System, we did determine, as reflected in the proposed rule to amend 48 CFR Chapter 7, that it is necessary to amend the AIDAR. We have subsequently determined that rulemaking is appropriate for our

assistance regulation, 22 CFR Part 226, and will publish separate Notices for that purpose.

The following responses address comments that were specific to the proposed rule for Partner vetting in USAID Acquisitions:

Source Selection vs. Vetting

Comment 1: "USAID declares that 'regardless of the point at which vetting begins, source selection proceeds separately from vetting' and the contracting officer only confirms with the vetting official whether an offeror has 'passed' the vetting process. We strongly concur and recommend that the declarative statement that 'source selection proceeds separately from vetting' be included in both the prescriptive provisions in Subpart 704.70 as well as in the clauses."

Response: USAID concurs with this recommendation. Although the proposed rule already stated in sections 704.7004-1(d) and 752.704-70(c) that the two processes are separate, we agree that the recommended declarative statements would strengthen the requirement. We have added the recommended statements. USAID also intends to provide its contracting officers and negotiators with detailed implementing procedures in the Agency's Automated Directives System (ADS) that will emphasize the importance of keeping the two processes separate.

Timing of Vetting

Comment 2: The Professional Services Council (PSC) provided extensive discussion on the timing of vetting. It recommended that USAID establish an "open season" on submissions of the Form to the USAID Office of Security (SEC). It also encouraged potential offerors to collect their information early and suggested that USAID should encourage early submission of the Form to SEC in order to allow for the maximum amount of time for vetting to occur. The PSC also suggested that untimely vetting could result in a constructive adverse "responsibility" determination.

Response: USAID appreciates the concern expressed in these comments about the need to carefully time vetting and would like to reassure all prospective offerors that we share this concern. As stated in the NPRM, for FAR Part 15 competitive negotiations, we determined that vetting should *typically* be done at the competitive range stage (see 48 CFR 15.306(c)), after we carefully weighed the need to allow as much time as possible for vetting against the burden to offerors and

USAID staff, especially SEC, of collecting information from offerors who may have no chance of receiving an award. Discussions would therefore occur concurrently with vetting. The Rule does allow for contracting officers to still have the discretion to request offerors to submit the Form at a different stage. And, for procurements using other procedures, including IQC task orders, contracting officers will have full discretion to decide the most appropriate time, and the Rule allows for this flexibility. We considered an "open season" approach of allowing prospective offerors to decide for themselves when to submit the vetting form, but because of the possible impact on the SEC's workload and the burden on offerors, we determined that early submission may not be practical.

We also recognize that for many contractors, the key individuals who are part of the company's management team are unlikely to change from one procurement to another, so most likely these key individuals' passing initial vetting will expedite subsequent vetting. For this reason, submitting the Vetting Form for key management individuals is unlikely to make much difference to the overall amount of time needed for vetting. Offerors and contractors may collect the vetting information at the time they consider more practical, but USAID will request submission at the time the contracting officer considers most appropriate, as stated in the solicitation.

Regarding the comment that should the Office of Security workload affect timing and potentially lead to a "constructive adverse 'responsibility' determination outside the acquisition process," we disagree with any characterization of a vetting determination as a responsibility determination, constructively or otherwise. USAID views vetting as an eligibility requirement.

Finally, USAID is formalizing plans for a joint pilot conducted with the Department of State. This pilot will implement PVS in 5 countries with varying levels of risk. The pilot will help the Agency determine the resource requirements for both the vetting officials and the Office of Security, as well as testing our assumptions about vetting and its impact on our programs. If the results of the pilot indicate that adjustments to improve timing will improve the vetting process, then we will certainly make those adjustments, including through rule-making if appropriate.

Definitions of “Key Individuals” and “Key Personnel”

Comment 3: “USAID differentiates between ‘key individuals’ and ‘key personnel,’ noting that ‘the terms are not synonymous; all key personnel will be key individuals but not all key individuals will be key personnel.’ Both the Background information accompanying the rule, the definition section in Part 704.7002 and the 752.204–71 clause define the terms ‘key individuals’ and ‘key personnel.’ *All key personnel, whether or not they are employees of the offeror, are considered key individuals and must be vetted* * * * As a technical matter, we believe the phrase ‘key individuals, including all key personnel’ should be modified to read ‘all key individuals’ since the term ‘key individual’ is specifically defined in the clause and incorporates all ‘key personnel.’”

Response: USAID agrees with this comment and has revised the final rule accordingly.

Subpart 704.7004–2: Post-award Requirements—Annual Vetting

Comment 4: “This subpart imposes both a new annual vetting submission, as well as a continuous vetting submission if there are changes in (1) any key individual, including all key personnel, and (2) subcontractors for which vetting is required. Neither of these factors has been addressed in the Agency’s prior paperwork clearance forms or in the discussion of the PVS program. Nevertheless, while we can appreciate the importance of vetting new key individuals who were not part of any prior vetting to achieving the objectives of the PVS program, we see little value to USAID, and considerable burden to both USAID and its implementing partners, in requiring an annual re-submission of the PVS Form from those that have already ‘passed’ the vetting process. If USAID determines that new issues arise that should trigger another review, or if USAID determines to randomly sample recipients, we recommend that the regulations reserve for USAID, through the contracting officer, the right to require key individuals of a specific contractor and/or its covered subcontractors to submit the PVS Form for one-time vetting.”

Response: USAID agrees with this comment and we have revised the rule to remove annual submittal of the Form. Contractors will still be required to submit the Form any time key individuals change and before issuance of covered subcontractors, but will not be required to resubmit the form

annually if no information has changed. Instead, USAID will conduct post-award vetting based on the latest submittal.

Ambiguity Regarding Which Subcontractor Personnel Must Be Vetted

Comment 5: Subpart 704.7004–2 “provides that vetting is required for all subcontracts for which consent to subcontract is required under FAR 52.244–2 and the contracting officer may not consent until the subcontractor has ‘passed’ vetting. The Background information accompanying the rule makes it clear that ‘the contracting officer will not consent to a subcontract until the subcontractor’s key individuals have passed vetting’ (emphasis added), but the rule itself is silent on the vetting of subcontractors. We have assumed, and strongly recommend that the rule explicitly state, that subcontractors are required to vet only ‘key individuals’ as that term is defined in the proposed rule.”

Response: USAID agrees with this comment and revised the final rule accordingly, in sections 704.7004–2(b), 704.7004–3(a), and 704.7004–3(c).

Classes of Items Requiring Sub-tier Vetting Should Be Specific

Comment 6: “However, subsection (c) of subpart 7004–3 also authorizes vetting for subcontracts at any tier (for subcontractors not otherwise subject to consent) for ‘certain classes of items (supplies and services)’ that the contracting officer identifies in the solicitation. While we recognize the flexibility the Agency must have to require vetting of any additional ‘classes of items’ based on the Agency’s internal risk-based assessment, it is also important that any of these selected classes of items are described with specificity and, if they remain appropriate for vetting at the time of award, that these designated ‘classes of items’ are also carried over into the resulting contracts—because only if these additional classes of items are included in the resulting contract will there be a post-award requirement for vetting.

Response: USAID agrees that a contract must specifically identify the classes of items subject to sub-tier vetting and considers Alternate I to the clause at 752.204–71 to adequately address this. Further, we will emphasize in the separate internal guidance in the ADS to contracting officers the need to be specific about the class of subcontracts that are subject to vetting at any tier.

Coverage of Subcontractors in the Definition of ‘Key Individuals’

Comment 7: “In addition, there is no coverage for subcontractors under the definition of the term ‘key individual’ in 704.7002 or in the 204–71 clause. The ‘policy’ statement in Subpart 704.7003 notes that USAID will require vetting of first tier subcontractors only, although the coverage for subcontractors in Subpart 704.7004–3(c) provides that vetting may be required at any tier for certain classes of items identified in the solicitation; yet neither of the clauses address the scope of coverage for subcontractors except in terms of submissions to the vetting official and through the requirement in 204–71(i) that the prime contractor flow down certain provisions of the 204–71 clause to ‘all subcontracts under this contract.’ Furthermore, there is no provision in the clauses for the contracting officer to designate any additional ‘classes of items’ as authorized in 704.7003. The gaps create considerable confusion between the policy and the clause and the actions that prime contractors should take during the solicitation process and after source selection.”

Response: USAID agrees in part and disagrees in part. We revised the policy statement in section 704.7003 to apply vetting to subcontracts for specified classes of items if these subcontracts are not subject to contracting officer consent. We did not revise the definition of key individual in section 704.7002 since it is not specific to the prime offeror, contractor or first tier subcontractor; it uses the term “organization” which applies to the prime offeror, contractor and any subcontractors when vetting applies to such subcontractors through subsection (h) of the base clause 752.704–71 and its Alternate I. In fact, regarding the comments that neither clause addresses the “scope of coverage for subcontractors” or that there is no provision for the contracting officer to designate any classes of items, we disagree since subsection (h) in the base and Alt. I specifically applies vetting to subcontracts, and Alt. I provides for the contracting officer to designate classes of items subject to vetting at any subcontract tier.

Lack of Coverage for Schedules Purchases Under FAR Part 8.4

Comment 8: “While the rule addresses the PVS treatment for contracts awarded under AIDAR Parts 713 (Simplified Acquisition Procedures), 714 (Sealed Bidding), and 715 (Contracting by Negotiation), there is no coverage in the proposed rule for

contracts awarded under Schedules purchases under FAR Part 8.4. While there is no current coverage in the AIDAR regarding Schedules purchases, and while we cannot foresee that any such awards might be subject to the PVS requirements, we believe it easier to address this contract type and not use it than to need this contract type and not have the appropriate coverage.”

Response: USAID does not envision applying PVS to GSA Schedule Orders as the basic contract would not include the vetting clause and the contractors would not have been made aware of the requirement to vet prior to award. Should GSA and USAID determine that vetting is appropriate for purchases made under FAR Part 8.4, appropriate action will be taken at that time.

Lack of Coverage for Commercial Items Awarded Under Part 712

Comment 9: “While the rule addresses the PVS treatment for contracts awarded under AIDAR Parts 713 (Simplified Acquisition Procedures), 714 (Sealed Bidding), and 715 (Contracting by Negotiation), there is no coverage in the proposed rule for contracts awarded for commercial items under FAR Part 12 (Commercial Items), even though there is no current coverage in the AIDAR regarding commercial items. In our view, given the policy approach USAID recommends—that ‘key personnel’ of the prime contractor and for all subcontracts for which consent to subcontract is required under FAR 52.244–2 (but see our comments above), we believe it appropriate and consistent with USAID’s policy to exempt from the PVS requirements solicitations and resulting awards entered into pursuant to FAR Part 12 and subcontracts for commercial items regardless of the method of procurement of the prime contract. Again, while we cannot foresee that any such awards might be subject to the PVS requirements, we believe it easier to address this contract type and not use it than to need this contract type and not have the appropriate coverage.”

Response: In preparing the Proposed Rule, USAID considered the need to address commercial item procurements but determined that such coverage was unnecessary since commercial purchases are made through either FAR Part 13, Part 14, Part 15, or Part 16.5 (indefinite delivery contracts, see Comment 10) procedures. There is no contracting process that is unique to commercial items, so we do not consider it necessary to address vetting in AIDAR Part 712.

Lack of Coverage for IQCs Awarded Under Part 716

Comment 10: “While the rule addresses the PVS treatment for contracts awarded under AIDAR Parts 713 (Simplified Acquisition Procedures), 714 (Sealed Bidding), and 715 (Contracting by Negotiation), there is no coverage for contracts awarded under Part 716 (relating to IQCs). While the background information recognizes that PVS could apply to task orders under IQCs, there are no special procedures called out for contracting officers or IQC holders to follow when PVS is required after the award of the underlying IQC but during the competitive solicitation, evaluation and subsequent award of a task order under an IQC. This type of contract still dominates USAID contracting and should be specifically addressed.”

Response: USAID agrees with this comment and has revised AIDAR Subpart 716.5 and added a contract clause at 752.216–70 to address the procedures for vetting indefinite-delivery contracts and orders placed against them. This revised subpart may appear to be a substantial addition to the rule but since it merely clarifies procedures we intended under the proposed rule and is consistent with the overall approach we are taking with PVS, we consider the added coverage to be within the scope of the proposed rule. As noted in the comment, the proposed rule was clear about applying vetting to IQCs, so this added coverage addresses the concern expressed in the comment.

Location of the Treatment of Indefinite Quantity Contracts and Task Orders

Comment 11: “Task order competitions under Indefinite Quantity Contracts (IQC) always come ‘post-award’ of the underlying contracts but are more likely to trigger a new vetting requirement. Subpart 7004–1(c) is the only other place in the proposed rule where IQCs are addressed, but it covers only ‘potential awardee(s)’ and does not address competition for task orders under awarded contracts or modifications to existing contracts. We strongly recommend that the treatment of task orders under IQCs be addressed in this post-award requirements section. Here, too, we strongly support an ‘open season’ for submission of the Form to USAID’s Office of Security to minimize the risk that vetting will not be completed in a timely manner to meet the timeliness requirements of the acquisition process.”

Response: Regarding the timing of vetting for IQC task orders, we stand by

our position discussed above (Comment 2) and will allow the task order contracting officer to determine the appropriate stage to vet. However, USAID agrees that the rule must more clearly address how partner vetting will apply to IQC task orders. Task orders are placed after the basic IQC has been awarded, but the task orders themselves are “awards” in their own right and for that reason we included them in the pre-award section. The process for vetting task orders is more similar to pre-award vetting for contracts rather than to post-award vetting, since the key individuals for each task order must pass vetting before the contracting officer may place the order. However, in acknowledgement of the “post-award” nature of task orders, we have added a contract clause at 752.216–70 which includes the standard post award vetting requirements and also addresses the procedures for vetting orders against Indefinite Delivery contracts.

D. Impact Assessment

Regulatory Planning and Review

Under Executive Orders (E.O.) 13563 and 12866, USAID must determine whether a regulatory action is “significant” and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB).

USAID has determined that this Rule is not an “economically significant regulatory action” under Section 3(f)(1) of E.O.12866. The application of the Partner Vetting System to USAID acquisitions will not have an economic impact of \$100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. However, as this rule is a “significant regulatory action” under Section 3(f)(4) of the E.O., USAID submitted it to OMB for review.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), USAID has considered the economic impact of the rule and has certified that its provisions would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The changes to the (48 CFR) AIDAR use information collected via USAID Partner Information Form, USAID Form 500–13, which was approved in accordance with 44 U.S.C. 3501 by the Office of Management and Budget on

August 19, 2015 (OMB Control Number 0412-0577).

List of Subjects in 48 CFR Parts 704, 713, 714, 715, 744, and 752

Government procurement.

Regulatory Text

For the reasons set forth in the preamble, the U. S. Agency for International Development amends 48 CFR chapter 7 as follows:

1. The authority citation for 48 CFR Parts 704, 713, 714, 715, 744, and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 704—ADMINISTRATIVE MATTERS

■ 2. Add Subpart 704.70 to read as follows:

Subpart 704.70—Partner Vetting

Sec.

704.7001 Scope of subpart.

704.7002 Definitions.

704.7003 Policy.

704.7004 Procedures.

704.7004-1 Preaward requirements.

704.7004-2 Post award requirements.

704.7004-3 Subcontracts.

704.7005 Solicitation provision and contract clause.

Subpart 704.70—Partner Vetting

704.7001 Scope of subpart.

This subpart prescribes the policies and procedures to apply partner vetting to USAID acquisitions.

704.7002 Definitions.

As used in this subpart—

Key individual means:

(1) Principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees);

(2) The principal officer and deputy principal officer of the organization (e.g., executive director, deputy director, president, vice president);

(3) The program manager or chief of party for the USG-financed program; and

(4) Any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as described in Automated Directives System Chapter 302. Key personnel, whether or not they are employees of the prime contractor, must be vetted.

Vetting official means the USAID employee identified in the solicitation

or contract as having responsibility for receiving vetting information, responding to questions about information to be included on the Partner Information Form, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each offeror, potential subcontractors subject to vetting, and the contracting officer. The vetting official is not part of the contracting office and has no involvement in the source selection process.

704.7003 Policy.

In the interest of national security, USAID may determine that a particular acquisition is subject to vetting. In that case, USAID will require vetting of all key individuals of offerors, first tier subcontractors, and any other class of subcontracts if identified in the solicitation and resulting contract. When USAID conducts partner vetting, it will not award a contract to any offeror who does not pass vetting.

704.7004 Procedures.

704.7004-1 Preaward requirements.

(a) When USAID determines an acquisition to be subject to vetting, the contracting officer determines the appropriate stage of the acquisition cycle to require offerors to submit the completed USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in the solicitation. The contracting officer must specify in the solicitation the stage at which the offerors will be required to submit the USAID Partner Information Form.

(b) For negotiated procurements using FAR part 15, this stage will typically be when the contracting officer establishes the competitive range (48 CFR 15.306(c)). However, the contracting officer may determine that vetting is more appropriate at a different stage of the source selection process, such as immediately prior to award, and then require only the apparently successful offeror to submit the completed USAID Partner Information Form.

(c) For Indefinite Delivery contracts under FAR subpart 16.5, vetting will occur prior to award of the basic contract if the contracting officer anticipates placing orders subject to vetting under that contract. Vetting will also occur before USAID places any orders subject to vetting. The contracting officer will notify awardees of the appropriate timing for vetting in the request for task or delivery order proposals. See AIDAR subpart 716.5 for vetting procedures for task and delivery orders.

(d) For all other acquisitions, including those under FAR parts 13 and 14, the contracting officer determines the appropriate time to require potential awardee(s) to submit the completed USAID Partner Information Form to the vetting official.

(e) Source selection proceeds separately from vetting. The source selection authority makes the source selection determination separately from the vetting process and without knowledge of vetting-related information other than that the apparently successful offeror has passed or not passed vetting.

(f) The contracting officer may only award to an offeror who has passed vetting.

704.7004-2 Post award requirements.

(a) For those contracts and task orders the agency has determined are subject to vetting, the contractor must submit the completed USAID Partner Information Form any time it changes:

(1) Key individuals, and

(2) Subcontractors for which vetting is required.

(b) USAID may vet key individuals of the contractor and any required subcontractors periodically during contract performance using the information already submitted on the Form.

704.7004-3 Subcontracts.

(a) When the prime contract is subject to vetting, vetting is required for key individuals of all subcontracts under that contract for which consent is required under FAR clause 52.244-2, Subcontracts.

(b) The contracting officer must not consent to a subcontract with any subcontractor subject to vetting until that subcontractor has passed vetting.

(c) Vetting may be required for key individuals of subcontracts at any tier for certain classes of items (supplies and services). The contracting officer must identify these classes of items in the solicitation.

(d) The contractor may instruct prospective subcontractors who are subject to vetting to submit the USAID Partner Information Form to the vetting official as soon as the contractor submits the USAID Partner Information Form for its key individuals.

704.7005 Solicitation provision and contract clause.

(a) The contracting officer will insert the provision at 752.204-70 Partner Vetting Pre-Award Requirements, in all solicitations USAID identifies as subject to vetting.

(b) Except for awards made under FAR part 16, the contracting officer will—

(1) Insert the clause at 752.204–71 Partner Vetting, in all solicitations and contracts USAID identifies as subject to vetting, or

(2) Use the clause with its Alternate I when USAID determines that subcontracts at any tier for certain classes of supplies or services are subject to vetting.

(c) For awards made under FAR part 16, see (48 CFR) subpart 716.5.

PART 713—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Add section 713.106–370 to subpart 713.1 to read as follows:

713.106–370 Partner vetting.

If an acquisition is identified as subject to vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

PART 714—SEALED BIDDING

■ 4. Add section 714.408–170 to subpart 714.4 to read as follows:

714.408–170 Partner vetting.

If an acquisition is identified as subject to vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

PART 715—CONTRACTING BY NEGOTIATION

■ 5. Add subpart 715.70 to read as follows:

Subpart 715.70—Partner Vetting

715.70 Partner vetting.

If an acquisition is identified as subject to vetting, see (48 CFR) AIDAR 704.70 for the applicable procedures and requirements.

PART 716—TYPES OF CONTRACTS

■ 6. Add subpart 716.5 to read as follows:

Subpart 716.5 Indefinite-Delivery Contracts

Sec.

716.501–270 Partner vetting—indefinite-delivery contracts.

716.505–70 Vetting orders under indefinite delivery contracts.

716.506 Solicitation provision and contract clause.

716.501–270 Partner vetting—indefinite-delivery contracts.

If a task order or delivery order under an indefinite-delivery contract has the

potential to be subject to vetting, then the contract itself will be subject to the applicable procedures and requirements for partner vetting in (48 CFR) AIDAR 704.70.

716.505–70 Vetting orders under indefinite delivery contracts.

(a) The task order contracting officer will specify in the request for task or delivery order proposals whether the order is subject to vetting and when awardees must submit the USAID Partner Information Form.

(b) For orders under multiple award contracts, fair opportunity selection procedures are conducted separately from vetting. The contracting officer for the order must follow the ordering procedures in the contract to select the order awardee without knowledge of vetting-related information, other than that the contractor has passed or not passed vetting.

(c) The contracting officer may only place an order subject to vetting with an awardee that has passed vetting for that order.

716.506 Solicitation provision and contract clause.

(a) As prescribed in 48 CFR 704.7005(a), the contracting officer will insert the provision at 752.204–70 Partner Vetting Pre-Award Requirements, in solicitations for indefinite delivery contracts when USAID anticipates that any orders placed under the contract will be subject to vetting.

(b)(1) The contracting officer will insert the clause at 752.216–71 Partner Vetting, in those solicitations and contracts for indefinite-delivery contracts that USAID identifies as subject to vetting.

(2) The contracting officer will use the clause with its Alternate I when USAID determines that subcontracts at any tier for certain classes of supplies or services are subject to vetting.

■ 7. Add Part 744 to read as follows:

PART 744—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 744.2—Consent to Subcontracts

Sec.

744.202–170 Partner vetting.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

744.202–170 Partner vetting.

If an acquisition is identified as subject to partner vetting, see (48 CFR)

AIDAR 704.70 for the applicable procedures and requirements.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend Part 752 by adding sections 752.204–70 and 752.204–71 to subpart 752.2 to read as follows:

752.204–70 Partner vetting pre-award requirements.

As prescribed in (48 CFR) AIDAR 704.7005(a), insert the following provision in all solicitations subject to vetting:

PARTNER VETTING PRE-AWARD REQUIREMENTS (FEB 2012)

(a) USAID has determined that any contract resulting from this solicitation is subject to vetting. Terms used in this provision are defined in paragraph (b) of the AIDAR clause at 752.204–71 Partner Vetting, of this solicitation. An offeror that has not passed vetting is ineligible for award.

(b) The following are the vetting procedures for this solicitation:

(1) Prospective offerors review the attached USAID Partner Information Form, USAID Form 500–13, and submit any questions about the USAID Partner Information Form or these procedures to the contracting officer by the deadline for questions in the solicitation.

(2) The contracting officer notifies the offeror when to submit the USAID Partner Information Form. For this solicitation, USAID will vet at *[insert in the provision the applicable stage of the source selection process at which the Contracting Officer will notify the offeror(s) who must be vetted]*. Within the timeframe set by the contracting officer in the notification, the offeror must complete and submit the information on the USAID Partner Information Form in accordance with instructions from the vetting official named in paragraph (d) of the AIDAR clause at 752.204–71 Partner Vetting, of this solicitation.

Note: Offerors who submit using non-secure methods of transmission do so at their own risk.

(3) The offerors must notify proposed subcontractors of this requirement when the subcontractors are subject to vetting.

(c) Source selection proceeds separately from vetting. Vetting is conducted independently from any discussions the contracting officer may have with an offeror. The offeror and any subcontractor subject to vetting must not provide vetting information to other than the vetting official. The offeror and any subcontractor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the contracting officer or his/her representatives. Exchanges between the Government and an offeror about vetting information submitted by the offeror or any proposed subcontractor are clarifications in accordance with FAR 15.306(a) (48 CFR

15.306(a). The contracting officer designates the vetting official as the only individual authorized to clarify the offeror's and proposed subcontractor's vetting information.

(d)(1) The vetting official notifies the offeror that it:

- (i) Has passed vetting,
- (ii) Has not passed vetting, or
- (iii) Must provide additional information,

and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(2) The vetting official will include in the notification any information that USAID's Office of Security (SEC) determines releasable. In its determination, SEC will take into consideration the classification or sensitivity of the information, the need to protect sources and methods, or status of ongoing law enforcement and intelligence community investigations or operations.

(e) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's notification, an offeror that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the offeror's additional information warrants a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(f) *Revisions to vetting information.* (1) Offerors who change key individuals, whether the offeror has previously passed vetting or not, must submit a revised USAID Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical proposal.

(2) The vetting official will follow the vetting process in paragraph (d) of this clause for any revision of the offeror's Form.

(g) *Award.* At the time of award, the contracting officer will confirm with the vetting official that the apparently successful offeror has passed vetting. The contracting officer may award only to an apparently successful offeror that has passed vetting.

752.204-71 Partner vetting.

As prescribed in (48 CFR) AIDAR 704.7005(b)(1) and 716.506(a), insert the following clause in all contracts subject to vetting:

PARTNER VETTING (FEB 2012)

(a) The contractor must comply with the vetting requirements for key individuals under this contract.

(b) Definitions. As used in this provision—*Key individual* means:

- (i) Principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees);
- (ii) The principal officer and deputy principal officer of the organization (e.g.,

executive director, deputy director, president, vice president);

(iii) The program manager or chief of party for the USG-financed program; and

(iv) Any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as described in Automated Directives System Chapter 302. Key personnel, whether or not they are employees of the prime contractor, must be vetted.

Vetting official means the USAID employee identified in paragraph (d) of this clause as having responsibility for receiving vetting information, responding to questions about information to be included on the USAID Partner Information Form, USAID Form 500-13, coordinating with the USAID Office of Security, and conveying the vetting determination to each offeror, potential subcontractors subject to vetting, and to the contracting officer. The vetting official is not part of the contracting office and has no involvement in the source selection process.

(c) The Contractor must submit a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified below during the contract when the Contractor replaces key individuals with individuals who have not been previously vetting for this contract. Note: USAID will not approve any key personnel who have not passed vetting.

(d) The designated vetting official is:
Vetting official:

Address: _____

Email: _____ (for inquiries only)

(e)(1) The vetting official will notify the Contractor that it—

- (i) Has passed vetting,
- (ii) Has not passed vetting, or
- (iii) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specifies.

(2) The vetting official will include in the notification any information that USAID's Office of Security (SEC) determines releasable. In its determination, SEC will take into consideration the classification or sensitivity of the information, the need to protect sources and methods, or status of ongoing law enforcement and intelligence community investigations or operations.

(f) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's notification, the contractor or prospective subcontractor that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the contractor's additional information warrants a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(g) A notification that the Contractor has passed vetting does not constitute any other approval under this contract.

(h) When the contractor anticipates awarding a subcontract for which consent is required under FAR clause 52.244-2, Subcontracts, the subcontract is subject to vetting. The prospective subcontractor must submit a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in paragraph (d) of this clause. The contracting officer must not consent to award of a subcontract to any organization that has not passed vetting when required.

(i) The contractor agrees to incorporate the substance of paragraphs (a) through (g) of this clause in all subcontracts under this contract.

(End of clause)

Alternate I (FEB 2012). As prescribed in 704.7005(b)(2), substitute paragraphs (h) and (i) below for paragraphs (h) and (i) of the basic clause:

(h)(1) When the contractor anticipates awarding a subcontract for which consent is required under FAR clause 52.244-2, Subcontracts, the subcontract is subject to vetting. The prospective subcontractor must submit a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in paragraph (d) of this clause. The contracting officer must not consent to award of a subcontract to any organization that has not passed vetting when required.

(2) In addition, prospective subcontractors at any tier providing the following classes of items (supplies and services):

_____ must pass vetting. Contractors must not place subcontracts for these classes of items until they receive confirmation from the vetting official that the prospective subcontractor has passed vetting.

(i) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

■ 9. Amend Part 752 by adding section 752.216-71 to subpart 752.2 to read as follows:

752.216-71 Partner vetting in indefinite delivery contracts.

As prescribed in (48 CFR) AIDAR 716.506(b)(1), insert the following clause in all indefinite-delivery contracts subject to vetting:

PARTNER VETTING IN INDEFINITE DELIVERY CONTRACTS (FEB 2012)

(a) The contractor must comply with the vetting requirements for key individuals under this contract and in any orders that are identified as subject to vetting.

(b) Definitions. As used in this provision—*Key individual* means:

- (i) Principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees);
- (ii) The principal officer and deputy principal officer of the organization (e.g.,

executive director, deputy director, president, vice president);

(iii) The program manager or chief of party for the USG-financed program; and

(iv) Any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as described in Automated Directives System Chapter 302. Key personnel, whether or not they are employees of the prime contractor, must be vetted.

Vetting official means the USAID employee identified in paragraph (d) of this clause as having responsibility for receiving vetting information, responding to questions about information to be included on the USAID Partner Information Form, USAID Form 500-13, coordinating with the USAID Office of Security, and conveying the vetting determination to each contractor, potential subcontractors subject to vetting, and to the cognizant contracting officer. The vetting official is not part of the contracting office and has no involvement in the source selection process.

(c) The contractor must submit a USAID Partner Information Form, USAID Form 500-13 to the designated vetting official:

(1) when the contractor replaces key individuals under the basic contract with individuals who have not been previously vetted.

(2) when the contractor replaces key individuals under an order subject to vetting with individuals who have not been previously vetted. For changes to any key individuals associated with both the basic contract and any orders subject to vetting, the contractor must submit updated vetting forms to each designated vetting official. Note: USAID will not approve any key personnel who have not passed vetting.

(d)(1) The designated vetting official for the basic contract is:

Vetting official:

Address:

Email: _____ (for inquiries only)

(2) Each order subject to vetting will identify the vetting official for that order. The contractor must submit vetting information specific to an order to the vetting official identified in that order.

(e)(1) The vetting official will notify the contractor that it—

(i) Has passed vetting,

(ii) Has not passed vetting, or

(iii) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specifies.

(2) The vetting official will include in the notification any information that USAID's Office of Security (SEC) determines releasable. In its determination, SEC will take into consideration the classification or sensitivity of the information, the need to protect sources and methods, or status of ongoing law enforcement and intelligence community investigations or operations.

(f) *Reconsideration.* (1) Within 7 calendar days after the date of the vetting official's

notification, the contractor or prospective subcontractor that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the contractor's additional information warrants a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(g) A notification that the contractor has passed vetting does not constitute any other approval under this contract.

(h) The request for task or delivery order proposals will identify whether the order is subject to vetting. The following are the procedures for vetting orders under this contract. Note that the term "awardee" as used below refers to a contractor under multiple-award indefinite-delivery contracts, consistent with the use of the term in (48 CFR) FAR 16.505(b):

(1) The contracting officer will notify the awardees when to complete and submit the USAID Partner Information Form to the vetting official named in the request for order proposals. Note: Awardees who submit using non-secure methods of transmission do so at their own risk.

(2) The awardee must notify proposed subcontractors of this requirement when the subcontractors are subject to vetting.

(3) The fair opportunity process proceeds separately from vetting. Vetting is conducted independently from any discussions the contracting officer may have with an awardee. The awardee and any subcontractor subject to vetting must not provide vetting information to other than the vetting official identified in the request for order proposal. The awardee and any subcontractor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the contracting officer or his/her representatives.

(4)(i) The vetting official notifies the awardee that it:

(A) Has passed vetting,

(B) Has not passed vetting, or

(C) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(ii) The vetting official will include in the notification any information that USAID's Office of Security (SEC) determines releasable. In its determination, SEC will take into consideration the classification or sensitivity of the information, the need to protect sources and methods, or status of ongoing law enforcement and intelligence community investigations or operations.

(5) *Reconsideration.* (i) Within 7 calendar days after the date of the vetting official's notification, an awardee that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation

and any other relevant written material for reconsideration.

(ii) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the contractor's additional information warrants a revised decision.

(iii) The Agency's determination of whether reconsideration is warranted is final.

(6) *Revisions to vetting information.* (i) Before the order is awarded, any awardee who changes key individuals, whether it has previously passed vetting or not, must submit a revised USAID Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical proposal.

(ii) The order vetting official will follow the vetting process in paragraph (e) of this clause for any revision of the awardee's Form.

(7) *Award of order.* The contracting officer may award an order subject to vetting only to an apparently successful awardee that has passed vetting for that order.

(i) When the contractor anticipates awarding a subcontract for which consent is required under FAR clause 52.244-2, Subcontracts, the subcontract is subject to vetting. The prospective subcontractor must submit a USAID Partner Information Form, USAID Form 500-13, to the designated vetting official. The contracting officer must not consent to award of a subcontract to any organization that has not passed vetting when required.

(j) The contractor agrees to incorporate the substance of paragraphs (a) through (g) of this clause in all subcontracts under this contract.

(End of clause)

Alternate I (FEB 2012). As prescribed in 716.506(b), substitute paragraphs (i) and (j) below for paragraphs (i) and (j) of the basic clause:

(i)(1) When the contractor anticipates awarding a subcontract for which consent is required under FAR clause 52.244-2, Subcontracts, the subcontract is subject to vetting. The prospective subcontractor must submit a USAID Partner Information Form, USAID Form 500-13, to the designated vetting official. The contracting officer must not consent to award of a subcontract to any organization that has not passed vetting when required.

(2) In addition, prospective subcontractors at any tier providing the following classes of items (supplies and services):

_____ must pass vetting. Contractors must not place subcontracts for these classes of items until they receive confirmation from the vetting official that the prospective subcontractor has passed vetting.

(j) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

Aman S. Djahanbani,

Senior Procurement Executive, US Agency For International Development.

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BILLING CODE 6116-01-P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1511

[EPA-HQ-OARM-2010-0273; FRL-9630-4]

EPAAR Prescription for Work Assignments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA will amend the EPA Acquisition Regulation (EPAAR) prescription for the work assignment clause. This final rule provides revised language to the prescription for the work assignment clause, incorporating prescriptive language that provides further instructions on the use of the related clause.

DATES: This final rule is effective February 29, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OARM-2010-0273. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Office of Environmental (OEI) Information Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT:

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DC 20460; telephone number: 202-564-1130; fax number: 202-565-2475; email address: blanding.donna@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include firms that are performing or will perform under contract for the EPA. This includes firms in all industry groups.

II. Background

Recent contract file review activities revealed better guidance is needed for EPA Contracting Officers (COs) on the work plan and work assignment processes with regard to when a CO should provide the expected level of service needed to the contractor.

As a result, clarifying policy is being added to the prescription for 1511.011-74. Accordingly, the revised language incorporated into EPAAR prescription 1511.011-74 provides the EPA contracting officer with further instructions on the use of EPAAR clause 1552.211-74, when administering work assignments under Cost Reimbursable type term form contracts.

III. General Comments

One comment was received on June 6, 2011. The comment appears to be misplaced; it appears the commenter may have been attempting to address a different notice. The comment in reference to physician owned physical therapy practices is not relevant to this requirement. This rule focuses on the administration of work assignments under Cost Reimbursable contracts and not physical therapy practices. As a result, after in-depth review of this public comment, no changes will be made to this final rule.

IV. Final Rule

This rule amends the EPAAR to add policy to prescription 1511.011-74 for work assignments under clause 1552.211-74. The original prescription language generally states that the work assignment clause, 1552.211-74, shall be used when a Cost Reimbursable type term form contract with work assignments will be issued. This policy revision only adds additional instructive language. The new policy language contained under 1511.011-74, Work Assignments (Deviation), will serve to provide contracting officers with better guidance on issuing a work assignment. Therefore a revision will not be required to the related EPAAR clause, 1552.211-74 Work Assignments; as this change does not affect the

meaning of the clause. The revised language communicates to contract personnel and program staff that government cost-related estimates should not be provided to contractors prior to receiving the contractor's work plan (proposal); and how to address exceptions. The exceptions addressed in the policy involve circumstances where a contracting officer may need to be able to provide some of the expected level of service needed to the contractor prior to receipt of the work plan (proposal) due to the nature of the work.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011). Therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit