

## SUBCHAPTER A—GENERAL

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

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

#### Subpart 301.1—Purpose, Authority, and Issuance

##### 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.

(b) The HHSAR implements *FAR* policies and procedures and provides additional policies and procedures that supplement the *FAR*.

(c) The HHSAR contains HHS policies and procedures that govern the acquisition process or otherwise control acquisition relationships between HHS' contracting activities and contractors.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21509, Apr. 26, 2010]

##### 301.103 Authority.

(b) The Assistant Secretary for Financial Resources (ASFR) prescribes the HHSAR under the authority of 5

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U.S.C. 301 and section 205(c) of the *Federal Property and Administrative Services Act of 1949*, as amended (40 U.S.C. 486(c)), as delegated by the Secretary.

(c) The HHSAR is issued in the Code of Federal Regulations (CFR) as *Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation*. It may be referenced as “48 CFR Chapter 3.”

**301.106 Office of Management and Budget approval under the Paperwork Reduction Act.**

(a) The Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting the same information from 10 or more members of the public.

(b) The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this chapter:

HHSAR segment No.	OMB control No.
315.4 .....	0990-0139
342.7101 .....	0990-0131
352.233-70 .....	0990-0133
352.270-1 .....	0990-0129
352.270-2 .....	0990-0129
352.270-3 .....	0990-0129
352.270-5 .....	0990-0130
352.270-8 .....	0990-0128
352.270-9 .....	0990-0128
370.1 .....	0990-0129
370.2 .....	0990-0129

(c) The Contracting Officer shall insert the clause in 352.201-70, Paperwork Reduction Act, in solicitations, contracts, and orders that include a requirement to collect the same information from 10 or more persons.

**Subpart 301.2—Administration**

**301.270 Executive Committee for Acquisition.**

(a) The Associate Deputy Assistant Secretary for Acquisition (Associate DAS for Acquisition) has established the Executive Committee for Acquisition (ECA) to facilitate the planning, development, and implementation of HHS acquisition policies and procedures and to share successful acquisition practices.

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(b) The ECA consists of members and alternates from the following organizations:

(1) ASFR/Office of Grants and Acquisition Policy and Accountability (OGAPA)/Division of Acquisition (DA).

(2) Agency for Healthcare Research and Quality (AHRQ).

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

(4) Centers for Disease Control and Prevention (CDC).

(5) Centers for Medicare and Medicaid Services (CMS).

(6) Food and Drug Administration (FDA).

(7) Health Resources and Services Administration (HRSA).

(8) Indian Health Service (IHS).

(9) National Institutes of Health (NIH).

(10) Program Support Center (PSC).

(11) Substance Abuse and Mental Health Services Administration (SAMHSA).

(c) The Associate DAS for Acquisition is the Chair of the ECA. The Chair will call all meetings and direct all ECA activities.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21509, Apr. 26, 2010]

**Subpart 301.4—Deviations From the FAR**

**301.403 Individual deviations.**

Contracting activities shall prepare requests for individual deviations to either the FAR or HHSAR in accordance with 301.470.

**301.404 Class deviations.**

Contracting activities shall prepare requests for class deviations to either the FAR or HHSAR in accordance with 301.470.

**301.470 Procedure.**

(a) Contracting activities shall prepare deviation requests in memorandum form and forward them through the Head of the Contracting Activity (HCA) to the Associate DAS for Acquisition. The Associate DAS for

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Acquisition (non-delegable) is the official authorized to approve all deviation requests. Contracting activities may request a deviation telephonically or by e-mail in an exigent situation, but shall confirm the request by memorandum as soon as possible.

(b) A deviation request shall clearly set forth the—

(1) Nature of the deviation, including what contract(s)/contractor(s) is involved;

(2) Identification of the FAR or HHSAR citation from which the deviation is needed;

(3) Circumstances under which the deviation will be used;

(4) Intended effect of the deviation;

(5) Period of applicability;

(6) Rationale for the deviation (NOTE: The Contracting Officer shall include a copy of pertinent background papers, such as a contractor's request, as part of the deviation request.); and

(7) Suggested wording for the deviation, if applicable.

### Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

#### 301.602 Contracting Officers.

##### 301.602-3 Ratification of unauthorized commitments.

(b) *Policy.*

(1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority. However, an authorized official may later ratify and execute otherwise proper contracts that were made by individuals without contracting authority or by Contracting Officers in excess of their delegated authority. The ratification shall be in the form of a written document that clearly states that ratification of a previously unauthorized act is intended.

(2) The HCA is the official authorized to ratify an unauthorized commitment—but see paragraph (b)(3) of this section.

(3) The HCA may redelegate ratification authority for actions up to \$100,000 to the Chief of the Contracting Office

(CCO). No other redelegations are authorized.

(c) *Limitations.*

(5) The concurrence of legal counsel concerning an unauthorized commitment is optional. If a contracting activity determines that a legal review is necessary, the HCA or CCO shall coordinate the request for ratification with the Office of General Counsel (OGC), General Law Division (GLD).

(e) *Procedures.*

(1) The individual who is responsible for the unauthorized commitment shall provide the reviewing Contracting Officer all records and documents concerning the commitment and a complete written statement of facts, including a description of the requirement; the estimated or agreed upon price; the funds citation; an explanation of why the contracting office was not used and why the proposed contractor was selected; a list of other sources considered; and a statement as to whether the contractor has commenced work or an item has been delivered.

(2) The Contracting Officer shall review the submitted material and, if the Contracting Officer determines that the ratification request has merit, prepare it for ratification. The Contracting Officer shall forward the ratification document and related materials to the HCA or CCO, as appropriate, with any comments or information which the approving official should consider in evaluating the ratification request.

(3) If the HCA or CCO approves the ratification request, the Contracting Officer shall issue a purchase order or contract, as appropriate, upon return of the approved ratification document and file.

#### 301.603 Selection, appointment, and termination of appointment of Contracting Officers.

##### 301.603-1 General.

(a) The HCA (non-delegable) shall select, appoint, and terminate the appointment of Contracting Officers—*i.e.*, those individuals who are authorized to obligate the Government to the expenditure of funds for contracts and orders with dollar values that exceed (or

are expected to exceed) the micro-purchase threshold. The procedures for selecting and appointing Contracting Officers apply to HHS employees. HCAs may not issue HHS Contracting Officer warrants to contractor personnel. OPDIVs shall follow local procedures in the event that the signature of another authorized official, in addition to that of the HCA, is required to appoint or terminate the appointment of Contracting Officers.

(b) The HCA shall use *Standard Form (SF) 1402*, "Certificate of Appointment," (also known as a warrant) to appoint personnel, whether in the General Schedule (GS) 1102 series or other series, as Contracting Officers. The SF 1402 shall indicate the Contracting Officer's warrant level—*i.e.*, maximum dollar signature authority (e.g., \$1 million or "unlimited") and any other limitations or restrictions. The HCA shall make changes to a Contracting Officer appointment (other than a termination of an appointment as provided in 301.603-4) by issuing a revised SF 1402. *FAR 1.603-1* prescribes the requirements for preparing and maintaining Contracting Officer warrants.

(c) Before an HCA may appoint an individual as a Contracting Officer, the individual must be certified in accordance with either the Federal Acquisition Certification in Contracting (FAC-C) program or the HHS Simplified Acquisition Certification (SAC) program, as appropriate, at the level required for the warrant authority requested. See 301.603-72 and the HHS Contracting Workforce Training and Certification Handbook.

(d) The dollar amount of an individual transaction determines whether a Contracting Officer has the authority to sign it in accordance with the delegated authority specified on the SF 1402. For new or follow-on awards, the dollar amount of an individual transaction is the amount obligated at the time of contract or order award plus any potential option amounts or future funding amounts established by the transaction. However, under an existing contract or order, when an option is subsequently exercised or a contract or order is otherwise modified to add funding, the dollar amount of the modification (individual transaction)

determines whether a Contracting Officer has the necessary delegated authority to sign it.

(e) For individuals that will exercise acquisition authorities (other than solely purchase card authorities) at or below the micro-purchase threshold, the HCA may—

(1) Use a document other than the SF 1402, such as a memorandum, that indicates a maximum dollar signature authority for individual transactions; and

(2) Determine training requirements for individuals who will exercise acquisition authorities at dollar levels below the micro-purchase threshold level.

#### **301.603-2 Selection and appointment.**

Contracting activities shall provide nominations for appointment of Contracting Officers through appropriate acquisition channels to the HCA for review. The HCA shall appoint an individual as a Contracting Officer only when a valid organizational need is demonstrated and after considering such factors as volume of actions, complexity of work, and structure of the requesting organization. The HCA shall also ensure that a Contracting Officer candidate meets the FAC-C or HHS SAC certification requirements, as appropriate. Consistent with *FAR 1.603-2*, the HCA shall determine the documentation required when the requested appointment and authority will not exceed the micro-purchase threshold.

#### **301.603-3 Interim appointments.**

If it is essential to appoint an individual as a Contracting Officer who does not yet fully meet the FAC-C or HHS SAC certification requirements for the signature authority sought, the HCA (non-delegable) may make an interim appointment for up to 2 years. If an extension of time has been granted, but the individual does not complete the certification requirements by the extended date, the HCA's approval for the interim appointment will automatically terminate on that date.

#### **301.603-4 Termination of appointments.**

The HCA shall terminate or revoke Contracting Officer appointments in accordance with *FAR 1.603-4*.

**301.603-70 Delegation of Contracting Officer responsibilities.**

(a) Contracting Officers may re-delegate their acquisition responsibilities that do not involve the obligation or deobligation of funds, but involve the expenditure of previously obligated funds (such as approval of contractor scientific meeting travel and sub-contract consent) to acquisition staff (for example, those in the GS-1100 series) by means of a written memorandum that clearly delineates the delegation and its limits. *See 301.604* for responsibilities that Contracting Officers may delegate to technical personnel.

(b) Contracting Officers may designate individuals as ordering or approving officials to make purchases or place/approve orders under blanket purchase agreements (BPAs), indefinite-delivery, indefinite quantity (IDIQ) contracts, or other pre-established mechanisms. Ordering officials are not Contracting Officers.

**301.603-71 Waivers to warrant standards.**

There may be an unusual circumstance that requires issuance of a warrant to an individual who does not fully meet the FAC-C or HHS SAC certification program requirements. Contracting activities shall provide any request for a waiver of the FAC-C program requirements and policies in writing to the Senior Procurement Executive (SPE), through the HCA, for review and approval. The SPE (non-delegable) will either approve or disapprove in writing the request for waiver. The HCA (non-delegable) may approve or disapprove a waiver of the HHS SAC program requirements.

**301.603-72 FAC-C and HHS SAC certification requirements.**

(a) The FAC-C certification program is available to all acquisition staff who are/will be involved as Contracting Officers or Contract Specialists in acquisitions exceeding the simplified acquisition threshold. Personnel who, as part of prior certification programs, have completed some or all of the required training or have attained certification thereunder are not required to re-take training courses, but shall

follow FAC-C training requirements when considering additional or required core training, if needed. *See 301.603-74* for information regarding retention of certification, including the requirement to earn continuous learning points (CLPs). FAC-C certification also does not apply to—

(1) The SPE;

(2) Senior level officials responsible for delegating acquisition authority;

(3) Personnel who are not in the GS-1102 series whose warrants are used to acquire emergency goods and services; or

(4) Personnel who are not in the GS-1102 series whose warrants are so limited as to be outside the scope of this program, as determined by the Chief Acquisition Officer (CAO). (NOTE: The HHS CAO has determined that individuals with warrants which are limited to simplified acquisitions are deemed to be outside the scope of the FAC-C program.)

(b) HHS does not require personnel with Contracting Officer warrants issued prior to January 1, 2007 to be FAC-C certified unless they are seeking a change in authority on or after that date. Individuals applying for a new Contracting Officer warrant or an increase in warrant authority on or after January 1, 2007, regardless of GS series, *must* be FAC-C certified at the level appropriate for the warrant authority sought. To obtain an unlimited warrant, FAC-C Level III certification is required. (Note: New Contracting Officer warrants are defined in the Office of Federal Procurement Policy's (OFPP's) FAC-C memorandum, dated January 20, 2006, as warrants issued to employees for the *first time* at a department or agency.)

(c) The FAC-C certification is based on three sets of requirements: Education, training, and experience, and the requirements are cumulative—*i.e.*, an individual must meet the requirements of each previous certification level before attaining a higher level certification. The FAC-C certification requirements, including additional HHS-specific training requirements for certain types of acquisitions, are specified in the HHS Contracting Workforce Training and Certification Handbook.

(d) HHS SAC certification is based on three sets of requirements: Training, experience, and satisfactory performance rating. Personnel who are involved in the award of simplified acquisitions must meet the appropriate HHS SAC certification requirements. (NOTE: While personnel who are FAC-C certified are not required to obtain HHS SAC certification in order to award simplified acquisitions, they should obtain appropriate training before doing so.) The HHS SAC certification requirements, including additional HHS-specific training requirements for certain types of acquisitions, are specified in the HHS Contracting Workforce Training and Certification Handbook.

**301.603-73 Additional HHS training requirements.**

HHS acquisition personnel are required to complete, as applicable, the additional training requirements specified below. These courses may be used as electives for the purpose of satisfying FAC-C requirements or as continuous learning for maintenance of FAC-C or SAC certifications.

(a) *Earned value management training.* Effective January 1, 2010, all personnel in the GS-1102 series who are responsible for, or may become responsible for, the award or administration of any contract to which earned value management (EVM) is applied pursuant to 334.201(a) or (b) must successfully complete an EVM training course before they commence administration of the contract or are authorized to award the contract. After completion of the initial course, a refresher course is required every 2 years. This course is in addition to the training requirements for FAC-C certification at the specified levels. Determination of course suitability shall be made by the Operating Division (OPDIV) HCA, in conjunction with HHS' Office of the Chief Information Officer (OCIO) or Office of Facilities Management and Policy (OFMP), as appropriate. To be eligible, the basic and refresher courses must each be 8 hours or more in length.

(b) *Performance based acquisition training.* Effective January 1, 2010, all GS-1102s, who award or administer service contracts, are required to complete a Performance-Based Acquisition (PBA)

course prior to assuming such responsibilities. Refresher training in PBA is required every 4 years. To be eligible, a course must be 8 hours or more in length. Determination of course suitability shall be made by the HCA.

(c) *Federal appropriations law training.* Effective January 1, 2010, all GS-1102s and GS-1105s are required to complete both HHS University's classroom-based and on-line Federal appropriations law course, by January 1, 2011 (for current employees) and within 1 year of entering on duty (for new employees). Employees are required to take the HHS University on-line course as refresher training every year. Determination of course equivalency shall be made by the HCA.

(d) *Green purchasing training.* Effective January 1, 2010, all GS-1102s and GS-1105s are required to complete green purchasing training by January 1, 2011 (for current employees) and within 1 year of entering on duty (for new employees). Refresher training is required every 2 years. To be eligible, a course must be 4 hours or more in length. Determination of course suitability shall be made by the HCA.

(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.

(f) *Training policy exceptions—(1) EVM training.* In the event that there is an urgent requirement for a Contracting Officer/Contract Specialist to award or administer a 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 9 months from the date of assignment to the contract. If the individual does not complete the training requirement within 9 months, the

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HCA's approval for the individual's assignment to the contract will automatically terminate on that date. The Contract Specialist is not required to take the class as long as the Contract Specialist is working under the direction of a Contracting Officer 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 an individual to complete the PBA, Federal appropriations law, green purchasing, and Section 508 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.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21509, Apr. 26, 2010]

### **301.603-74 Requirement for retention of FAC-C and HHS SAC certification.**

To maintain FAC-C certification, all warranted Contracting Officers, regardless of series, as well as Contract Specialists, must earn 80 CLPs every 2 years. To maintain HHS SAC certification, all individuals with delegated Contracting Officer authority, including those in the GS-1102, GS-1105, GS-1106, and non-1100 series, must earn a minimum of 40 hours (CLPs) every 2 years after completing all mandatory training requirements. FAC-C and HHS SAC certification will expire if the CLPs are not earned every 2 years (from the date of initial certification or re-certification) and, if applicable, may result in a loss of warrant authority. (NOTE: The certification programs' continuous learning requirement applies to all applicable personnel, including those who were certified under prior certification programs.)

### **301.604 Training and certification of Contracting Officers' Technical Representatives.**

#### **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 certifi-

cation 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. See also 302.101(c) for further information regarding the definition of a COTR and when designation of a COTR is appropriate. All references to COTRs also apply to their alternates.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21509, Apr. 26, 2010]

### **301.604-71 HCA authorities and responsibilities.**

(a) HCAs are authorized to determine (1) equivalencies for the Basic Contracting Officer's Technical Representative Course; (2) course prerequisites; and (3) approve completion of CLP continuous learning activities, education, and training for maintenance of COTR certification. This authority does not apply to EVM training—see 301.603-73. Course equivalencies must meet the Federal Acquisition Institute's (FAI's) required COTR competencies. HCAs may re-delegate the authorities in (1) and (2) to OPDIV Acquisition Career Managers (ACMs) or other comparable officials.

(b) In addition to the authorities specified in 301.604-71(a), HCAs or their designees (except where the authority is shown as non-delegable) are responsible for—

(1) Reviewing a candidate's qualifications to be a COTR;

(2) Granting, suspending, denying, and revoking COTR certifications and their continuance;

(3) Authorizing (non-delegable) an individual to perform COTR duties on an interim basis for up to 90 days—see 301.604-73; and

(4) Determining (non-delegable) on a case-by-case basis whether to postpone (for up to 90 days) withdrawal of any interim COTR delegation for failure of a candidate to qualify for certification—see 301.604-73.

### **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

### 301.604-73

OFPP's FAC-COTR memorandum, dated November 26, 2007, and HHS' COTR Handbook for information on CLPs.

[75 FR 21509, Apr. 26, 2010]

#### **301.604-73 Certification policy exception.**

(a) In the event that an individual who is not currently certified under HHS' FAC-COTR program is urgently required to serve as a COTR, the head of the sponsoring program office (Program Manager) or designee (e.g., the immediate supervisor) may request, and the HCA (non-delegable) may authorize, the individual to perform the designated duties on an interim basis for up to 6 months, provided that—

(1) The individual agrees to become certified during that period and provides evidence of training course registration; and

(2) Prior to assignment to the contract, the individual meets with the cognizant Contracting Officer to discuss the role and specific responsibilities of a COTR and the interrelationships, as applicable, among the Project Officer, Contracting Officer, Program/Project Manager, and COTR functions.

(b) If an extension has been granted, but the individual does not complete the training by the extended date, the HCA's approval for the individual's assignment to the contract will automatically terminate on that date.

#### **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 auto-

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matically 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.

[75 FR 21509, Apr. 26, 2010]

#### **301.605 Contracting Officer designation of Contracting Officer Technical Representative.**

The Contracting Officer shall ensure that a COTR candidate is currently certified under HHS' FAC-COTR program before delegating authority to that individual to act as a COTR. Even if an individual is FAC-COTR-certified, a candidate becomes a COTR only when a Contracting Officer provides in writing the authorities the individual may exercise for a specified contract or order. Authority for such designations rests solely with the Contracting Officer. The Contracting Officer shall retain in the contract or order file the individual's active FAC-COTR certificate. In the event that the HCA has granted an exception—see 301.604-73, the Contracting Officer shall include the HCA's approval in the file.

#### **301.606 Training requirements for Project Officers.**

##### **301.606-70 General.**

HHS has established a program for training personnel for certification and designation as Project Officers. See 302.101(g) for further information regarding the definition of a Project Officer and when designation of a Project Officer is appropriate. All references to Project Officers also apply to their alternates. Program Managers or their designees are authorized to designate individuals to serve as Project Officers. (*Note*: If an individual will also serve as the COTR for a proposed project, the

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individual shall comply with the training certification requirements for COTRs—*see* 301.604.)

### 301.606–71 Project Officer training.

Before an individual may perform the duties of a Project Officer, including development of an Acquisition Plan (AP) or other acquisition request documentation—*see* 307.71, for a proposed project, the Program Manager or designee shall designate an individual as a Project Officer in writing by means of a memorandum to the Project Officer candidate with a copy to the cognizant Contracting Officer. A Project Officer must successfully complete HHS University's Basic Contracting Officer's Technical Representative Course or equivalent and any OPDIV-specific course prerequisites. The Project Officer must provide a course completion certificate to the Contracting Officer with any AP or other acquisition request documentation submitted. 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).

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21509, Apr. 26, 2010]

### 301.606–72 Delegation of authority to HCAs.

HCAs are authorized to determine equivalencies for the Basic Contracting Officer's Technical Representative Course and any OPDIV-specific course prerequisites. This authority may be re-delegated to OPDIV acquisition ACMs or other comparable officials.

### 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.

[75 FR 21510, Apr. 26, 2010]

### 301.606–74 Training policy exception.

(a) In the event that an individual who has not successfully completed the required training course is urgently required to serve as a Project Officer, the Program Manager or designee may au-

thorize the individual to perform the designated duties on an interim basis for up to 6 months, provided that—

(1) The individual agrees to take the Basic Contracting Officer's Technical Representative course during that period and provides evidence of course registration; and

(2) The individual meets, prior to assignment to the project, with the cognizant Contracting Officer to discuss the specific role and responsibilities of a Project Officer and the interrelationships, as applicable, among the Project Officer, Contracting Officer, Program/Project Manager, and COTR functions.

(b) If an extension of time has been granted, but the individual fails to complete the training by the extended date, the Program Manager's or designee's approval for the individual's assignment to the project will automatically terminate on that date.

[74 FR 62398, Nov. 27, 2009. Redesignated at 75 FR 21509, Apr. 26, 2010]

### 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,

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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.

[75 FR 21510, Apr. 26, 2010]

### 301.607 Certification of Program and Project Managers.

#### 301.607-70 General.

In accordance with the Federal Acquisition Certification—Program and Project Managers (FAC-P/PM) program, HHS has established a certification program for Program or Project Managers. *See* HHS' Federal Acquisition Certification—Program and Project Managers Handbook (P/PM Handbook) for information on the methods for earning FAC-P/PM certification.

#### 301.607-71 FAC-P/PM levels and requirements.

(a)(1) The FAC-P/PM certification program specifies three different levels of certification, depending on the core competency, training, and experience required to manage different types of acquisitions—

- (i) Entry/Apprentice—Level I;
- (ii) Mid-level/Journeyman—Level II; and
- (iii) Senior/Expert—Level III.

(2) Each FAC-P/PM certification level is independent of the others—*i.e.*, applicants for the Senior/Expert level need not have been certified at the Mid-level/Journeyman or Entry/Apprentice levels. General and specific core competencies, training, and required experience vary by certification level. (*Note:* Individuals certified under the FAC-P/PM program meet the general competency and experience standards for P/PM certification. However, IT Program and Project Managers should attain/demonstrate IT-specific P/PM requirements. *See* Appendix C, Federal Acquisition Certification—Program and Project Managers—Information Technology Technical Competencies, in the P/PM Handbook for additional information.

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(b)(1) *Competencies.* An applicant can satisfy the competency requirements through:

- (i) Successful completion of training;
  - (ii) Completion of comparable education or certification programs;
  - (iii) Demonstration of knowledge, skills, and abilities; or
  - (iv) Any combination of these three.
- (2) The FAI describes the following three sets of general core competencies on its Web site:

(3) *General Business Competencies:* Includes decision-making, interpersonal skills, oral communication, team-building, and writing.

(4) *Technical Competencies:* Includes contracting, financial management, quality assurance, and risk management.

(5) *Essential Competencies and Proficiencies:* Includes management processes, systems engineering, test and evaluation, contracting, and business.

(6) Specific core competencies also apply to the three certification levels. *See* Chapter 2, Federal Acquisition Certification—Program and Project Managers—Requirements and Performance Accountability, in the P/PM Handbook for additional information.

(c) *Training.* (1) Suggested training includes coursework, varying from 16-24 hours in duration, in:

- (i) Acquisition;
- (ii) Project management;
- (iii) leadership and interpersonal skills;
- (iv) Government-specific training; and
- (v) Earned value management and cost estimating.

(2) The depth of the training for each course required may vary by certification level.

(d) *Experience.* Experience requirements vary by certification level. For example, for certification at the Entry/Apprentice—Level I, at least 1 year of project management experience within the last 5 years is required. The Mid-level/Journeyman—Level II requires at least 2 years of program or project management experience within the last 5 years. The Senior/Expert—Level III requires at least 4 years of program and project management experience on *Federal* projects within the last 5 years.

(e) *Additional OPDIV guidance.* OPDIVs may issue supplemental guidance and requirements for selection and assignment of Program and Project Managers and require additional skills and competencies to meet organizational or mission needs. However, OPDIVs may not reduce the requirements specified in the P/PM Handbook.

#### **301.607-72 Applicability.**

(a) The FAC-P/PM certification prerequisites and continuous learning requirements apply to all HHS employees who seek to obtain a FAC-P/PM certification. Although obtaining a FAC-P/PM certification qualifies employees to serve as a Program or Project Manager, it does not ensure their selection or designation as such. (*Note:* Contractors and their employees are not eligible to be certified or to serve as Program or Project Managers.)

(b) Mandatory certification is limited to major and non-major IT and construction capital investment acquisitions. Consistent with OFPP guidance, HHS requires FAC-P/PM Level III certification for Program and Project Managers responsible for major IT and construction capital investments—*i.e.*, those requiring preparation of an OMB Exhibit 300, HHS Form 300, or equivalent. An individual must obtain FAC-P/PM Level III certification within 1 year from the date of being assigned to such a major capital investment. Also, HHS requires that an individual obtain FAC-P/PM Level II or I certification for non-major IT and construction—*i.e.*, tactical or supporting, capital investments, respectively, within 2 years from the date of being assigned to such a non-major capital investment. *See* Appendix A, Federal Acquisition Certification—Program and Project Managers—HHS Projects and Programs with Associated Certification Levels, in the P/PM Handbook for additional information regarding major and non-major IT and construction capital investments. FAC-P/PM certification for other types of investments [e.g., advanced research and development (R & D)] is encouraged, but is not mandatory.

#### **301.607-73 Certification waivers.**

(a) Waivers to certification requirements may be approved in certain situations. Waivers for additional time to complete certification requirements are not necessary for the first year following an assignment to a major IT or construction capital investment and for 2 years following an assignment to a non-major capital investment. For waivers beyond those periods (for up to 1 additional year), the HHS Chief Information Officer (CIO) (for IT programs and projects) and the Deputy Assistant Secretary for Facilities Management and Policy (DASFMP) (for construction programs and projects) are delegated authority to approve waiver requests. The HHS CAO is the only individual authorized to approve waiver requests for additional time beyond the initial 1-year waiver period.

(b) Approval of a waiver request does not relieve an individual from meeting the certification requirements. Also, unlike FAC-P/PM certifications, waivers issued by other Federal departments and agencies do not transfer to HHS, since a waiver is agency-specific.

#### **301.607-74 Certification transfers.**

(a) HHS recognizes and accepts FAC-P/PM certifications issued by other Federal departments and agencies. In addition, HHS complies with FAI determinations as to which certifications by organizations outside the Federal government are eligible for full or partial consideration under FAC-P/PM. *See* FAI's Web site, and Chapter 3, Federal Acquisition Certification—Program and Project Managers—Application and Certification Procedures, in the P/PM Handbook for additional information.

(b) A certification transfer should not be initiated when an individual, who holds a current FAC-P/PM certification from another Federal department or agency, becomes an HHS employee. Instead, the individual must apply for recertification (which will result in issuance of an HHS certification) at the time the candidate's immediate supervisor performs the bi-annual assessment to determine whether the individual has met the HHS FAC-P/PM CLP requirements.

**301.607-75 Maintenance of FAC-P/PM certification.**

(a) FAC-P/PM certification lasts for 2 years. To maintain FAC-P/PM certification, HHS Program and Project Managers are required to earn 80 CLPs of skills currency every 2 years, starting from the date of their initial certification or recertification, and document completion of all training. If the required CLPs are not earned within each 2-year period, a FAC-P/PM certification will lapse. Lapsed certifications may be reinstated when 80 CLPs have been accumulated.

(b) Continuous learning activities related to FAC-P/PM include, but are not limited to—

- (1) Training activities, such as teaching, self-directed study, and mentoring;
- (2) Courses completed to achieve certification at the next higher level;
- (3) Professional activities, such as attending/speaking/presenting at professional seminars/symposia/conferences, publishing papers, and attending workshops;
- (4) Educational activities, such as formal training and formal academic programs; and
- (5) Experience, such as developmental or rotational assignments.

See Appendix F, Federal Acquisition Certification—Program and Project Managers—Guidance on Meeting Requirements for Continuous Learning Points, in the P/PM Handbook for additional information.

**301.607-76 FAC-P/PM application process.**

The P/PM Handbook contains application procedures and forms to be completed for basic certification; certification transfer; certification through fulfillment; recertification; and certification waiver. Applicants for HHS FAC-P/PM certification actions shall comply with the requirements and procedures specified in the P/PM Handbook and refer any questions to their OPDIV ACM for resolution.

**301.607-77 Governance.**

The Departmental ACM, in ASFR/OGAPA/DA, serves as the Departmental FAC-P/PM Program Manager and is responsible for administering the program. To support the overall management of the FAC-P/PM certification program at the OPDIV level, Executive Officers and their HCAs may either use their existing ACM or designate an additional ACM, whose professional background includes program and project management. See Appendix B, Federal Acquisition Certification—Program and Project Managers—Roles and Responsibilities, in the P/PM Handbook for additional information.

[74 FR 62398, Nov. 27, 2009. Redesignated at 75 FR 21510, Apr. 26, 2010]

**301.607-78 Contracting Officer designation of a Program/Project Manager as the Contracting Officer's Technical Representative.**

Personnel who are FAC-P/PM certified, at any level, meet the requirements for FAC-COTR certification and are, therefore, not required to obtain FAC-COTR certification to serve as a COTR for an HHS acquisition. However, for those individuals serving as a Program or Project Manager under a FAC-P/PM certification waiver—see 301.607-73, the Contracting Officer shall ensure that the individual meets the requirements of HHS' FAC-COTR program before delegating authority to that individual to act as a COTR. See 301.605 for additional information regarding the Contracting Officer's designation of a COTR.

[74 FR 62398, Nov. 27, 2009. Redesignated at 75 FR 21510, Apr. 26, 2010]

**301.608 Training requirements for purchase cardholders, Approving Officials, and Agency/Organization Program Coordinators.**

Training requirements for purchase cardholders, Approving Officials, and Agency/Organization Program Coordinators are listed in the following table:

HHS PURCHASE CARD TRAINING PROGRAM, BY AUTHORITY LEVEL

Authority <sup>a</sup>	Program participant	Required training <sup>b</sup>
Up to \$3,000 .....	Prospective/newly appointed purchase cardholders and Approving Officials. Purchase card holders and Approving Officials ...	Basic purchase card training (HHS University course or an OPDIV equivalent course). Yearly refresher purchase card training.

HHS PURCHASE CARD TRAINING PROGRAM, BY AUTHORITY LEVEL—Continued

Authority <sup>a</sup>	Program participant	Required training <sup>b</sup>
\$3,001 to \$25,000 .....	Prospective/newly appointed purchase cardholders and Approving Officials.	<ul style="list-style-type: none"> <li>• Basic purchase card training (HHS University course or an equivalent).</li> <li>• Basic simplified acquisition procedures (e.g., DAU's CON 237).</li> <li>• Advanced simplified acquisition procedures or Appropriations law.</li> </ul>
\$25,001 to \$100,000 .....	Purchase card holders and Approving Officials ... Prospective/newly appointed purchase cardholders and Approving Officials.	<ul style="list-style-type: none"> <li>• Basic purchase card training (HHS University course or an OPDIV equivalent course).</li> <li>• Basic simplified acquisition procedures (e.g., DAU's CON 237).</li> <li>• Advanced simplified acquisition procedures or Appropriations law.</li> <li>• CON 100 (Shaping Smart Business Arrangements).</li> <li>• CON 110 (Mission Support Planning).</li> </ul>
Not applicable .....	Purchase cardholders and Approving Officials ... Prospective/newly appointed Agency/Organization Program Coordinators.  Agency/Organization Program Coordinators .....	<ul style="list-style-type: none"> <li>• Basic purchase card training (HHS University course or an OPDIV equivalent course).</li> <li>• Basic simplified acquisition procedures or DAU's CON 237.</li> <li>• Advanced simplified acquisition procedures or appropriations law.</li> <li>• CON 100 (Shaping Smart Business Arrangements).</li> <li>• CON 110 (Mission Support Planning).</li> </ul>

<sup>a</sup> Cardholders and Approving Officials with authorized increases in delegation of procurement authority (DPA) have up to 3 months to complete the training requirements for the new DPA.  
<sup>b</sup> CON 237, CON 100, and CON 110 are available at the DAU Web site at <http://www.dau.mil/registrar/enroll.asp>. CON 100 is also offered through HHS University (see Web site at: <http://learning.hhs.gov>).

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

**Subpart 302.1—Definitions**

**Subpart 302.1—Definitions**

Sec.  
302.101 Definitions.

**Subpart 302.2—Definitions Clause**

302.201 Contract clause.

**Subpart 302.70—Common HHSAR Acronyms and Abbreviations**

302.7000 Common HHSAR acronyms and abbreviations.

**Subpart 302.71—HHS Standard Templates and Formats**

302.7100 HHS standard templates and formats

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

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

**302.101 Definitions.**

(a) *Agency head* or *head of the Agency*, unless otherwise stated, means the head of the OPDIV for: AHRQ; CDC; CMS; FDA; HRSA; IHS; NIH; SAMHSA; and ASFR for the Office of the Secretary (OS), including PSC. The Assistant Secretary for Preparedness and Response (ASPR) is the head of the agency for BARDA contracting functions.

(b) *Chief of the Contracting Office* is typically a mid-level management official, usually an office director, division director, or branch chief, who manages and monitors the daily contract operations of an OPDIV or major component of an OPDIV. The CCO is subordinate to the HCA, except where the same individual is the HCA and CCO.

(c) *Contracting Officer's Technical Representative* is a Federal employee whom a Contracting Officer has designated in writing to act as the Contracting Officer's representative in monitoring and administering specified aspects of contractor performance *after* award of a