

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

352.224–70 [Amended]

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

352.270–8 [Amended]

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

352.270–9 [Amended]

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

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

352.333–7001 Choice of Law (Overseas).

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

Choice of Law (Overseas)

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

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

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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

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

RIN 0599–AA11

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

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule.

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

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

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

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

- Fax: (202) 720–8972.

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

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

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

FOR FURTHER INFORMATION CONTACT:

Joseph J. Daragan, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

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

I. Background

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

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

This rule makes the following changes to the AGAR:

(a) Added parts. We are adding parts 410 and 439 to the AGAR. Part 410 is added to establish procedures for market research. Part 439 is added to incorporate supplementary guidance on USDA internal procedures for acquisition of information technology.

(b) Added subparts. We have added the following subparts to the AGAR:

(1) Subpart 404.2 is added to refer to internal procedures for entering Taxpayer Identification Number information into USDA's financial system.

(2) Subpart 404.11 is added to supplement FAR 4.11, Central Contractor Registration, by clarifying the contracting officer's role in the registration process.

(3) Subpart 425.6 is added to incorporate newly redesignated 425.602 (redesignated from 425.1002).

(c) Revised part. Part 423 is revised to reflect amendments to the FAR, to establish agency procedures to implement FAR Part 23 as amended, to remove directions concerning a superseded recycling and waste prevention program, and to provide internal guidance concerning its successor affirmative procurement program.

(d) Removed subparts. We have removed and reserved the following subparts:

(1) Subpart 407.3 is removed and reserved pending revision to FAR subpart 7.3 and Departmental directives to conform to the procedures and policy of Office of Management and Budget Circular A-76 dated May 21, 2004.

(2) Subpart 425.3 is removed and reserved to reflect an amendment to the FAR.

(3) Subpart 425.4 is removed and reserved because it is no longer necessary to publicize redeterminations of the Trade Agreement Act dollar thresholds as a Departmental Notice. The information is readily available on the USDA procurement Web site.

(4) Subpart 426.70 is removed and reserved because legislation establishing the program it implemented was repealed by Public Law 107-171, section 6201(a). AGAR provisions 452.226-70 through 452.226-72 are removed and reserved for the same reason.

(5) Subpart 445.6 is removed and reserved. This subpart implemented a property-screening requirement that was removed from the FAR.

(6) Subpart 450.1 is removed and reserved to reflect an amendment to the FAR.

(e) Redesignated sections. We have moved the following sections as follows to reflect amendments to the structure of the FAR:

(1) Paragraph (a) of 403.104-10 is redesignated 403.104-7, and paragraph (b) of 403.104-10 is removed.

(2) Section 403.409 is redesignated 403.405, and the citation therein to the corresponding FAR segment is updated.

(3) Section 411.105 is redesignated 411.106.

(4) Section 432.905 is redesignated 432.904, and its heading is amended.

(5) Section 432.906 is redesignated 432.007.

(f) Amendments to organizational references. The following amendments reflect changes in organizational designations or delegations of authority:

(1) In 401.301, "Food and Consumer Service" and "Office of Operations" are amended to read "Food and Nutrition Service", and "Departmental Administration", respectively.

(2) Sections 404.403, 405.404-1, and 414.409-2 are amended to reflect the delegation of authority over classified information to the Personnel and Document Security Division, Office of Procurement and Property Management.

(3) Subpart 408.7 is amended to reflect organizational changes and a change in organizational title within USDA's Javits-Wagner-O'Day (JWOD) program.

(4) Part 434 is amended to reflect the delegation of authority over information technology acquisition to the Chief Information Officer.

(g) Paragraph (b) of 401.105-1 is revised to inform users that the AGAR is no longer available in loose-leaf form. An electronic version of the AGAR is available at USDA's Procurement Homepage for downloading and reproduction.

(h) Paragraph (c) of 401.105-1 is revised to reflect the cancellation of Office of Federal Procurement Policy Letter 83-2. Citations to the "Hardin Statement of Policy" (36 FR 13804, July 24, 1971), to the Office of Federal Procurement Policy Act, 41 U.S.C. 418b, and to FAR 1.301 are added to refer to other policy and law governing amendments to the AGAR.

(i) Section 401.170 is revised to update the Internet address for the USDA Procurement Homepage.

(j) Section 401.201-1 is amended to improve clarity.

(k) Section 401.371 is amended to specify that AGAR Advisories are only available in electronic format.

(l) Section 403.502 is amended to correct a citation to the Anti-Kickback Act (41 U.S.C. 51-58).

(m) Subpart 404.6 is amended to remove references to the USDA

Procurement Reporting System (PRS). PRS was a feeder system that has been replaced by the Federal Procurement Data System-Next Generation (FPDS-NG). Subpart 404.6 also is amended to implement changes in reporting required by FAR 4.602, Federal Procurement Data System.

(n) Section 404.870 is revised, and 404.870-1 and 404.870-2 are removed. Guidance on document numbering will be provided by AGAR Advisories until USDA's Integrated Acquisition System is fully implemented.

(o) Section 405.403 is amended to reflect an amendment to the FAR.

(p) Section 406.501 is revised to reflect a change in organizational title and to add an internal notification requirement.

(q) Section 407.170 is amended to remove reference to a cancelled Departmental Directive.

(r) Section 408.705 is amended as an editorial change, adopting the phrase "performance plan" in preference to the phrase "action plan".

(s) Section 408.1103 is amended to add references to alternative fuels and tires with recovered material content.

(t) Section 411.101 is added to specify the level at which a determination that a voluntary standard is inconsistent with law or otherwise impracticable may be made.

(u) Sections 413.307 and 453.213 are amended to allow the use of Optional Forms 347 and 348 when a simplified acquisition utilizes the USDA Integrated Acquisition System.

(v) Paragraph (d) of 415.207 is amended to update a citation to FAR 3.104-4.

(w) Section 416.505 is amended to update an organizational title and to require Heads of Contracting Activities to designate task order ombudsmen for their contracting activities.

(x) Subpart 419.2 is revised to include HubZone and veteran-owned small business concerns, to require small business coordinators to review large contract requirements for bundling, and to remove fixed due dates for subcontract reports, because these dates may vary.

(y) The heading of 419.508 is amended to reflect an amendment to the FAR.

(z) The heading of subpart 419.6 is amended to reflect an amendment to the FAR.

(aa) Section 422.604-2 is amended to update a citation to FAR 22.604-2(b).

(ab) Paragraph (b) of 422.807 is amended to reflect an amendment to FAR 22.807.

(ac) Subpart 422.13 is revised as follows:

(1) The heading of subpart 422.13 is amended to reflect an amendment to the FAR.

(2) Section 422.1303 is redesignated 422.1305 and revised to reflect an amendment to the FAR.

(3) Section 422.1306 is redesignated 422.1308, and the corresponding citation to the FAR amended, to reflect an amendment to the FAR.

(ad) The heading of subpart 422.14 is amended to reflect an amendment to the FAR.

(ae) Section 422.1403 is amended to reflect an amendment to the FAR.

(af) Section 424.203 is amended to remove unnecessary language.

(ag) Subpart 425.1 is revised to reflect amendments to the FAR.

(ah) The heading of 425.202 is amended, and the citation therein to the FAR is amended, to reflect an amendment to the FAR.

(ai) Subpart 425.6 is added to incorporate material currently in subpart 425.10, in order to reflect an amendment to the FAR. Section 425.1002 is redesignated 425.602, its heading is amended, and the citation therein to the FAR is amended.

(aj) Subpart 425.9 is redesignated 425.10, and its heading is amended, to reflect an amendment to the FAR.

(ak) Section 425.901 is redesignated 425.1001, and the citation therein to the FAR is amended, to reflect an amendment to the FAR. Subpart 425.9 is removed and reserved.

(al) The heading of subpart 428.1 is amended to reflect an amendment to the FAR.

(am) The heading of subpart 428.2 is amended to reflect an amendment to the FAR.

(an) Section 432.905 is redesignated 432.904, and its heading is amended, to reflect an amendment to the FAR.

(ao) Section 432.906 is moved to 432.007 to reflect an amendment to the FAR.

(ap) Section 433.104 is removed and reserved to simplify

USDA's internal protest procedures.

(aq) Section 452.211-70 is amended to correct an error in citation to 452.211-71.

(ar) Section 452.232-70 is amended to correct a typographical error.

(as) Section 452.236-78 is removed and reserved. This section referred to standard specifications that are now obsolete.

II. Procedural Requirements

A. Executive Orders Nos. 12866 and 12988

USDA prepared a work plan for this regulation and submitted it to the Office

of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 2004-01) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by the Paperwork Reduction Act, 44 U.S.C. Chapter 35, or OMB implementing regulations at 5 CFR part 1320.

D. Small Business Regulatory Enforcement Fairness Act

A report on this rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801-808. This rule is not a major rule for purposes of the Act.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. USDA has determined that this rule does not contain a Federal mandate. USDA has also determined that this rule would not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of Title II of UMRA.

F. Executive Order 13132: Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999),

imposes requirements in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

USDA has determined that this rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. Accordingly, this rule is not subject to the procedural requirements of Executive Order 13132 for regulatory policies having federalism implications.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), imposes requirements in the development of regulatory policies that have tribal implications. Executive Order 13175 defines "policies that have tribal implications" as those having "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." USDA has determined that this rule does not have tribal implications and, therefore, the consultation and coordination requirements of Executive Order 13175 do not apply to this rule.

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

Acquisition regulations, Government contracts, Government procurement, Procurement.

■ For the reasons set out in the preamble, 48 CFR Chapter 4 is amended as set forth below:

■ 1. The authority citation for parts 401, 403, 404, 405, 406, 407, 408, 411, 413, 414, 415, 416, 419, 422, 424, 425, 426, 428, 432, 433, 436, 445, 450, 452, and 453 continues to read as follows:

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

PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

- 2. Revise paragraphs (b) and (c) of 401.105–1 to read as follows:

401.105–1 Publication and code arrangement.

* * * * *

(b) The AGAR and its subsequent changes are published in:

- (1) Daily issues of the **Federal Register**,
- (2) Cumulative form in the CFR, and,
- (3) Electronic form on the USDA Departmental Administration Procurement Homepage (see 401.170).

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the Administrative Procedure Act exception, and USDA agencies generally are required to provide notice and an opportunity for public comment on proposed rules (36 FR 13804, July 24, 1971). The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA also is required to publish for public comment procurement regulations in the **Federal Register**, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.

- 3. Amend 401.170 to remove “URL <http://www.usda.gov/da/procure.html>” and add, in its place, “URL <http://www.usda.gov/procurement/>”.

- 4. Revise paragraph (b) of 401.201–1 to read as follows:

401.201–1 The two councils.

* * * * *

(b) The Procurement Policy Division will coordinate proposed FAR revisions within USDA.

- 5. Amend 401.301 as follows:
 - a. Remove “Food and Consumer Service” and add, in its place, “Food and Nutrition Service”.
 - b. Remove “Office of Operations” and add, in its place, “Departmental Administration”.
- 6. Add paragraph (d) to 401.371, to read as follows:

401.371 AGAR Advisories.

* * * * *

(d) AGAR Advisories are only available in electronic format on the

USDA Procurement Web site at <http://www.usda.gov/procurement/>.

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 7. Remove “(a)” and paragraph (b) in 403.104–10, and redesignate 403.104–10 as 403.104–7.

- 8. Amend 403.409 to remove “FAR 3.409(b)”, and add, in its place, “FAR 3.405(b)”, and redesignate 403.409 as 403.405.

- 9. Amend 403.502 to remove “(41 U.S.C. 51–54)”, and add, in its place, “(41 U.S.C. 51–58)”.

PART 404—ADMINISTRATIVE MATTERS

- 10. Revise the table of contents to read as follows:

Subpart 404.2—Contract Distribution

Sec.
404.203 Taxpayer identification information.

Subpart 404.4—Safeguarding Classified Information Within Industry

404.403 Responsibilities of contracting officers.

Subpart 404.6—Government Contract Reporting

404.601 [Reserved]
404.602 Federal Procurement Data System.

Subpart 404.8—Government Contract Files

404.870 Document numbering system.

Subpart 404.11—Central Contractor Registration

404.1103 Procedures.

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.
Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

- 11. Add subpart 404.2 to read as follows:

Subpart 404.2—Contract Distribution

404.203 Taxpayer identification information.

(a) If the contractor furnishes taxpayer identification number (TIN) and type of organization information pursuant to solicitation provision 52.204–3 or 52.212–3, and the USDA Office of the Chief Financial Officer, Controller Operations Division, New Orleans will be the payment office, that information will be entered into the Foundation Financial Information System (FFIS) in accordance with FFIS Vendor Table Maintenance Procedures set forth in FFIS Bulletins issued by the Office of the Chief Financial Officer and AGAR

Advisories issued by the Office of Procurement and Property Management.

(b) Separate submission of the TIN or type of organization information, in accordance with 52.204–3 or 52.212–3, is not required for contractors registered in the Central Contractor Registration (CCR) database.

- 12. Revise 404.403 to read as follows:

404.403 Responsibilities of contracting officers.

When a proposed solicitation is likely to require access to classified information, the contracting officer shall consult with the Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management, regarding the procedures that must be followed.

404.601 [Removed and Reserved]

- 13. Remove and reserve 404.601.
- 14. Revise 404.602 to read as follows:

404.602 Federal Procurement Data System.

(a) Contracting activities shall report contract actions into the Federal Procurement Data System in accordance with the instructions issued or distributed by the SPE.

(b) The unique identifier for each contract action reported to the Federal Procurement Data System shall begin with the two-letter USDA Agency Prefix “AG”.

- 15. Revise subpart 404.8 to read as follows:

Subpart 404.8—Government Contract Files

404.870 Document numbering system.

The SPE shall issue AGAR Advisories to establish and maintain a numbering system for USDA contracts, modifications, and delivery/task orders. USDA contracting offices shall number contracts, modifications, and orders in accordance with this numbering system.

- 16. Add subpart 404.11 to read as follows:

Subpart 404.11—Central Contractor Registration

404.1103 Procedures.

(a) Contracting officers and other USDA employees shall not enter information into the Central Contractor Registration (CCR) database on behalf of prospective contractors. Prospective contractors who are unable to register on-line at the CCR Web site should be advised to submit a written application to CCR for registration into the CCR database. USDA employees may assist prospective contractors by downloading

the registration template, CCR handbook, and other information from the CCR Web site and providing copies of that material to requesters. Written applications for registration may be submitted to Department of Defense Central Contractor Registration, 74 Washington Ave., Suite 7, Battle Creek, MI 49017-3084.

(b) Verification that the prospective contractor is registered in the CCR database shall be done via the CCR Internet Web site *http://www.ccr.gov*. This verification process using the CCR Web site applies both to acquisitions executed using USDA legacy procurement systems and the USDA Integrated Acquisition System.

(c) AGAR Advisories issued by the Office of Procurement and Property Management will address internal procedures for integration of contractor information in the CCR database with the USDA FFIS payment system.

PART 405—PUBLICIZING CONTRACT ACTIONS

405.403 [Amended]

■ 17. Amend 405.403 to remove “FAR 5.403(a)” and add, in its place, “FAR 5.403”.

■ 18. Revise paragraph (b) of 405.404-1 to read as follows:

405.404-1 Release procedures.

* * * * *

(b) Classified information shall not be released without the approval of the Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management. Departmental Manuals and Regulations (3400 series) contain guidance on classified information.

PART 406—COMPETITION REQUIREMENTS

■ 19. Revise 406.501 to read as follows:

406.501 Requirements.

(a) The Chief, Procurement Policy Division, Office of Procurement and Property Management, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity. The HCA shall forward a copy of the designation memorandum to the Competition Advocate for USDA.

PART 407—ACQUISITION PLANNING

■ 20. Revise 407.170 to read as follows:

407.170 Advance acquisition plans.

Each HCA shall maintain an advance acquisition planning system.

Subpart 407.3—[Removed and Reserved]

■ 21. Remove and reserve subpart 407.3.

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 408.7—Amended

■ 22. Amend subpart 408.7 to remove the word “Advocate” wherever it appears and add, in its place, the word “Liaison.”

■ 23. Revise 408.701 to read as follows:

408.701 Definitions.

Committee Member is the Presidential appointee representing USDA as a member of the Committee for Purchase from People Who Are Blind or Severely Disabled.

Organization head is the Under Secretary or Assistant Secretary of a mission area or the head of a USDA staff office.

408.705 [Amended]

■ 24. Amend 408.705 to remove the word “action” and add, in its place, the word “performance.”

■ 25. Revise 408.1103 to read as follows:

408.1103 Contract requirements.

If the requirement includes the need for the vendor to provide operational maintenance such as fueling, lubrication, or other fluid changes or replenishment, the contracting officer shall include in the contract:

(1) A requirement for the use of fluids and lubricants containing the maximum available amounts of recovered materials, and alternative fuels whenever available; and

(2) A preference for retreaded tires meeting the Federal retread specifications, tires with the maximum recovered material content, or retreading services for the tires on the vehicle.

PART 410—MARKET RESEARCH

■ 26. Add new Part 410, to read as follows:

Sec.

410.001 Policy.

410.002 Procedures.

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

410.001 Policy.

In addition to those uses listed in FAR 10.001, agencies must use the results of market research to—

(a) Ensure the minimum use of hazardous or toxic materials;

(b) Ensure the maximum use of biobased products and biofuels; and

(c) Identify products and services on or eligible for addition to the Javits-

Wagner-O'Day Act Procurement List in order to achieve USDA's goal to increase participation in this program.

410.002 Procedures.

Market research must include obtaining information on the commercial quality assurance practices as an alternative for Government inspection and testing prior to tender for acceptance.

PART 411—DESCRIBING AGENCY NEEDS

■ 27. Add new 411.101, as follows:

411.101 Order of precedence for requirements documents.

(a) Office of Management and Budget (OMB) Circular A-119 establishes a Federal policy requiring the use of voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

(b) The HCA is authorized to submit the determination required by OMB Circular A-119 that a voluntary standard is inconsistent with law or otherwise impracticable. The HCA must submit the determination to OMB through the National Institute of Standards and Technology in accordance with the Circular with a copy provided to the SPE.

■ 28. Redesignate 411.105 as 411.106.

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

■ 29. Revise 413.307 to read as follows:

413.307 Forms.

Form AD-838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms (OFs) 347 and 348 except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System.

PART 414—SEALED BIDDING

■ 30. Revise 414.409-2 to read as follows:

414.409-2 Award of classified contracts.

Disposition of classified information shall be in accordance with Departmental Regulation and Manual (3400 Series) and in accordance with direction issued by the Information Security Staff, Personnel and Document Security Division, Office of Procurement and Property Management.

PART 415—CONTRACTING BY NEGOTIATION

415.207 [Amended]

- 31. In paragraph (d) of 415.207, remove “FAR 3.104–5”, and add, in its place, “FAR 3.104–4”.

PART 416—TYPES OF CONTRACTS

- 32. Revise paragraphs (a) and (b) of 416.505 to read as follows:

416.505 Ordering.

(a) The Chief, Procurement Policy Division, Office of Procurement and Property Management, has been designated as the Departmental Task Order Ombudsman.

(b) Each HCA shall designate a task order ombudsman for the contracting activity. The HCA shall forward a copy of the designation memorandum to the Departmental Task Order Ombudsman. Contracting activity ombudsmen shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

* * * * *

PART 419—SMALL BUSINESS PROGRAMS

- 33.–35. Revise subpart 419.2 to read as follows:

Subpart 419.2—Policies

Sec.

419.201 General policy.

419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

419.201–71 Small business coordinators.

419.201–73 Reports.

419.201 General policy.

It is the policy of USDA to provide maximum practicable contracting and subcontracting opportunities to small business (SB), small disadvantaged business (SDB), HUBZone small business, women-owned business (WOB), veteran-owned small business (VOSB), and service-disabled veteran-owned small business (SDVOSB) concerns.

419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU) develops rules, policy, procedures and guidelines for the effective administration of USDA's small business program that includes all categories named under 419.201.

419.201–71 Small business coordinators.

The head of the contracting activity (HCA) or a representative of the HCA

shall designate in writing a small business coordinator in each contracting office. Supervisors of small business coordinators are encouraged to provide sufficient time for the coordinators to carry out their small business program duties. Coordinators' duties shall include, but not be limited to, the following:

(a) Reviewing each proposed acquisition expected to exceed the simplified acquisition threshold prior to its solicitation. The coordinator shall:

(1) Recommend section 8(a), HUBZone, or SDVOSB action and identify potential contractors, or

(2) Identify available SDB, WOB, and VOSB to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participating in goal-setting procedures and planning activities and establishing aggressive SDB, WOB, and SDVOSB goals based on the annual review of advance acquisition plans.

(c) Participating in the review of those contracts which require the successful offeror to submit written plans for the utilization of small businesses as subcontractors to include all preference program areas in 419.201.

(d) Ensuring that purchases exceeding \$2,500 and not exceeding the simplified acquisition threshold are reserved exclusively for small businesses, including all preference program areas named in 419.201. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintaining comprehensive source listings of small businesses.

(f) Upon written request, providing small businesses (in the preference program areas named in 419.201) the bidders' mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled “Utilization of Small Business Concerns” (FAR 52.219–8). These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Developing a program of contacts with local and small (to include all preference program areas named in 419.201) trade, business, and professional associations and organizations and Indian tribal councils to apprise them of USDA's program needs and recurring contract requirements.

(h) Periodically meeting with program managers to discuss requirements of the

small business preference program, to explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small firms, and to encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(i) Establishing internal operating procedures which implement the requirements of the regulations as set forth in this part 419.

(j) Compiling data and preparing all reports pertaining to the small business program activities, and ensuring that these reports are accurate, complete and up-to-date.

(k) Assisting and counseling small business firms.

(l) Reviewing proposed large contract requirements that may be bundled to determine the potential for breaking out components suitable for purchase from small business firms.

(m) Ensuring that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation that meets the dollar threshold for small business (including all preference program areas named in 419.201) subcontracting plans.

419.201–73 Reports.

The Director, OSDBU, shall be responsible for submitting reports concerning USDA's progress and achievements in the procurement preference program.

- 36. Amend the heading of 419.508 to remove “Solicitation provisions” and add, in its place, “Solicitation provisions and contract clauses”.

- 37. Amend the heading of subpart 419.6 to remove “Determinations of Eligibility” and add, in its place, “Determinations of Responsibility”.

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

422.604–2 [Amended]

- 38.–39. Amend 422.604–2 as follows:
 - a. Remove “FAR 22.604–2(c)” and add, in its place, “FAR 22.604–2(b)”.
 - b. Remove “Secretary of labor” and add, in its place, “Secretary of Labor”.
- 40. Amend 422.807 to remove “Director, Office of Federal Contract Compliance Programs”, and add, in its place, “Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor”.
- 41. Revise subpart 422.13 to read as follows:

Subpart 422.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.
422.1305 Waivers.
422.1308 Complaint procedures.

422.1305 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determination in FAR 22.1305(b) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.1305(a) and (b) through the HCA to the SPE for determination by the Assistant Secretary for Administration or referral to the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor as appropriate.

422.1308 Complaint procedures.

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act directly to the Department of Labor as prescribed in FAR 22.1308.

■ 42. Amend the heading of subpart 422.14 to remove the words “the Handicapped” and add, in their place, “Workers With Disabilities”.

■ 43. Amend paragraph (a) of 422.1403 to remove the words “concurrence of the Director, OFCCP” and add, in their place, the words “the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor”.

PART 423—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 44. Revise Part 423 to read as follows:

Subpart 423.1—[Reserved]

Subpart 423.2—Energy and Water Efficiency and Renewable Energy

Sec.
423.202 Policy.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.
423.402 [Reserved]
423.403 Policy.
423.404 Agency affirmative procurement programs.
423.405 Procedures.

Subpart 423.5—Drug-Free Workplace

423.506 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

Subpart 423.7—Contracting for Environmentally Preferable Products and Services

423.703 Policy.

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

Subpart 423.1—[Reserved]

Subpart 423.2—Energy and Water Efficiency and Renewable Energy

423.202 Policy.

Information on Energy Star, energy efficient, water efficient, and low standby products covered by this policy is available via the Internet at <http://www.eere.energy.gov/femp/technologies/eeproducts.cfm>.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for affirmative procurement programs in accordance with Executive Order 13101 and 42 U.S.C. 6962.

423.402 [Reserved]

423.403 Policy.

It is the policy of USDA to acquire and use Environmental Protection Agency (EPA) designated recycled content products.

423.404 Agency affirmative procurement programs.

The USDA affirmative procurement program (APP) policy applicable to all USDA agencies and staff offices is hereby established. The components of this APP include:

(a) *Recovered Materials Preference Program*. In accord with the requirements of Section 402(c) of Executive Order 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition, USDA agencies will include, in all applicable solicitations and contracts, a preference for products and services which meet or exceed the EPA purchasing guidelines as contained in the EPA product Recovered Materials Advisory Notices (RMANs). Agencies may choose an evaluation factor preference, or other method of indicating preference in accord with

their agency needs. Agencies will, as appropriate, eliminate virgin material requirements in contract specifications and replace them with a statement of preference for recycled materials.

(b) *Promotion program*. USDA agencies will actively promote a preference for recovered materials, environmentally preferable products, and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

(c) *Reasonable estimation of recovered materials used in the performance of contracts*. USDA agencies annually will provide in writing to the USDA Senior Procurement Executive, in response to a call for data for the Resource Conservation and Recovery report, reasonable estimates, certification, and verification of recovered material used in the performance of contracts.

(d) *Annual review and monitoring of effectiveness of the program*. USDA agencies will provide an annual assessment of the effectiveness of their affirmative procurement program actions in increasing the purchase and use of EPA designated products.

(e) *Purchase of EPA designated products*. USDA agencies will require that 100% of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

(f) The 100% purchase requirement of paragraph (e) of this section applies to all USDA agency purchases, including those at or below the micro-purchase threshold.

423.405 Procedures.

(a) The threshold of purchase for EPA designated items is \$10,000 per year at the USDA departmental, not individual agency, level. Therefore, the APP requirements above, including the 100% purchase requirement, apply at the individual agency and staff office level.

(b) Contracting officers should refer to EPA's list of designated products and products identified as recycled content when purchasing supplies or services. Information on EPA designated products is available at: www.epa.gov/cpg/products.htm.

(c) All agencies and USDA Contracting Officers must take necessary actions to carry out the provisions of the USDA APP policy described in this subpart.

Subpart 423.5—Drug-Free Workplace**423.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) The contracting officer may recommend waiver of the determination to suspend payments, to terminate a contract, or to debar or to suspend a contractor.

(b) The recommendation shall be submitted through the HCA to the SPE and shall include a full description of the disruption of USDA operations should the determination not be waived.

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

Subpart 423.6—Notice of Radioactive Material**423.601 Requirements.**

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

Subpart 423.7—Contracting for Environmentally Preferable Products and Services**423.703 Policy.**

(a) USDA's Affirmative Procurement Program promotes energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services. In its acquisitions, USDA will support federal "green purchasing" principles in the acquisition of products and services that are environmentally preferable or that are biobased content products and services.

(b) USDA agencies will actively promote this preference for environmentally preferable products and biobased products in contacts with vendors, in written materials, and other appropriate opportunities.

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

- 45. Revise 424.203 to read as follows:

424.203 Policy.

USDA regulations implementing the Freedom of Information Act are found in 7 CFR, Subtitle A, Part 1, Subpart A. Contracting officers shall follow these regulations when responding to requests for information.

PART 425—FOREIGN ACQUISITION

- 46. Revise the table of contents of part 425 to read as follows:

Subpart 425.1—Buy American Act—Supplies

Sec.
425.102 [Reserved]

425.103 Exceptions.
425.104 Nonavailable articles.
425.105 Determining reasonableness of cost.
425.108 [Reserved]

Subpart 425.2—Buy American Act—Construction Materials

425.202 Exceptions.
425.203 [Reserved]
425.204 [Reserved]

Subpart 425.3—[Reserved]**Subpart 425.4—[Reserved]****Subpart 425.6—Trade Sanctions**

425.602 Exceptions.

Subpart 425.9—[Reserved]**Subpart 425.10—Additional Foreign Acquisition Regulations**

425.1001 Waiver of right to examination of records.

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

- 47. Revise subpart 425.1 to read as follows:

Subpart 425.1—Buy American Act—Supplies

425.102 [Reserved]

425.103 Exceptions.

(a) The Senior Procurement Executive (SPE) shall make the determination prescribed in FAR 25.103(a).

(b) Copies of determinations of nonavailability in accordance with FAR 25.103(b)(2) or 25.202(a)(2), for articles, material or supplies not listed in FAR 25.104, may be submitted to the SPE for submission to the Civilian Agency Acquisition Council (CAAC).

425.104 Nonavailable articles.

Information required by FAR 25.104(b) shall be submitted to the SPE for submission to the CAAC.

425.105 Determining reasonableness of cost.

The SPE may make the determination prescribed in FAR 25.105(a). Requests for a determination by the SPE shall be submitted by the HCA, in writing, and shall provide a detailed justification supporting why evaluation factors higher than those listed in FAR 25.102(b)(1) and (2) should be applied to determine whether the offered price of a domestic end product is unreasonable.

425.108 [Reserved]

- 48. Amend 425.202 as follows:
 - a. In the heading of 425.202, remove the word "Policy" and add, in its place, "Exceptions".
 - b. Remove "FAR 25.202(a)(3)", and add, in its place, "FAR 25.202(a)(1)".

Subpart 425.3—[Removed and Reserved]

- 49. Remove and reserve subpart 425.3.

Subpart 425.4—[Removed and Reserved]

- 50. Remove and reserve subpart 425.4.
- 51. Add subpart 425.6, to read as follows:

Subpart 425.6—Trade Sanctions**425.602 Exceptions.**

The Secretary, without power of redelegation, has the authority to make the necessary determination(s) and authorize award(s) of contract(s) in accordance with FAR 25.602(b).

Subpart 425.9—[Removed and Reserved]

- 52. Remove and reserve subpart 425.9.
- 53. Revise subpart 425.10 to read as follows:

Subpart 425.10—Additional Foreign Acquisition Regulations

425.1001 Waiver of right to examination of records.

The SPE shall make the determination under FAR 25.1001(a)(2)(iii).

PART 426—OTHER SOCIOECONOMIC PROGRAMS

- 54. Remove and reserve subpart 426.70.

PART 428—BONDS AND INSURANCE

- 55. Revise the heading of subpart 428.1 to read as follows:

Subpart 428.1—Bonds And Other Financial Protections

- 56. Revise the heading of subpart 428.2 to read as follows:

Subpart 428.2—Sureties And Other Security For Bonds**PART 432—CONTRACT FINANCING**

- 57. Redesignate 432.905 as 432.904, and revise the section heading to read as follows:

432.904 Determining payment due dates.

- 58. Redesignate 432.906 as 432.007.

PART 433—PROTESTS, DISPUTES AND APPEALS

- 59. In Part 433, revise all references to "General Accounting Office" to read "Government Accountability Office".

433.104 [Removed and Reserved]

- 60. Remove and reserve 433.104.

PART 434—MAJOR SYSTEM ACQUISITION

- 61. Revise Part 434 to read as follows:

Subpart 434.0—General

Sec.

- 434.001 Definitions.
- 434.002 Policy.
- 434.003 Responsibilities.
- 434.004 Acquisition strategy.
- 434.005 General requirements.
- 434.005-6 Full production.

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

Subpart 434.0—General**434.001 Definitions.**

Pursuant to OMB Circular No. A-109 (A-109) and the definition at FAR 2.101, within USDA, a system shall be considered a major system if:

(a) The total acquisition costs (for information technology, life cycle costs) are estimated to be \$50 million or more, or

(b) The system, regardless of estimated acquisition or life cycle costs, has been specifically designated to be a major system by the USDA Acquisition Executive or by the Major Information Technology Systems Executive.

434.002 Policy.

In addition to the policy guidance at FAR 34.002 and other parts of the FAR, the policies outlined in paragraph 6 of A-109 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

434.003 Responsibilities.

(a) The Secretary of Agriculture or other designated USDA key executive is responsible for making four key decisions in each major system acquisition process. These are listed in paragraph 9 of A-109 and elaborated on in paragraphs 10 through 13. The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a group will participate in this decision making process.

(b) The Chief Information Officer (CIO) is the Major Information Technology Systems Executive. For acquisitions of information technology, the CIO will ensure that A-109 is implemented in USDA and that the management objectives of the Circular are realized. The CIO is responsible for designating the program manager for each major information technology system acquisition, designating an acquisition to be a major information

technology system acquisition, and approving the written charter and project control system for each major information technology system acquisition.

(c) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive for major system acquisitions other than acquisitions of information technology. The ASA will ensure that A-109 is implemented in USDA and that the management objectives of the Circular are realized. The ASA is responsible for designating the program manager for each major system acquisition, designating an acquisition to be a major system acquisition, and approving the written charter and project control system for each major system acquisition.

(d) Heads of contracting activities must:

(1) Ensure compliance with the requirements of A-109, FAR Part 34 and AGAR Part 434.

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive or the Major Information Technology Systems Executive, as appropriate.

(3) Recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the ASA and Major Information.

Technology Systems Executive in implementing the requirements of A-109.

(e) The program manager is responsible for planning and executing the major system acquisition, ensuring appropriate coordination with the USDA Acquisition Executive and Major Information Technology Systems Executive and other key USDA executives.

434.004 Acquisition strategy.

(a) The program manager will develop, in coordination with the Acquisition Executive or Major Information Technology Systems Executive, a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(b) The program manager will develop, subject to the approval of the Acquisition Executive or Major Information Technology Systems Executive, a project control system to schedule, monitor, and regularly report on all aspects of the project. The control system shall establish reporting periods and milestones consistent with the key

decisions listed in paragraph 9 of A-109.

(c) Upon initiation of the project, the program manager will report regularly to the Acquisition Executive or Major Information Technology Systems Executive.

(d) Specific procedures and requirements for information technology systems are included in the USDA Information Technology Capital Planning and Investment Control Guide which can be accessed on the USDA OCIO Web site at <http://www.ocio.usda.gov>.

434.005 General requirements.**434.005-6 Full production.**

The Secretary or the USDA key executive designated by the Secretary for the specific program is the agency head for the purposes of FAR 34.005-6.

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**436.578 [Removed and Reserved]**

- 62. Remove and reserve 436.578.

PART 439—ACQUISITION OF INFORMATION TECHNOLOGY

- 63. Add Part 439 to read as follows:

Subpart 439.1—General

Sec.

- 439.101 Policy.

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

Subpart 439.1—General**439.101 Policy.**

(a) In addition to policy and regulatory guidance contained in the FAR and AGAR:

(1) The USDA Information Technology Capital Planning and Investment Control Guide (CPIC) establishes requirements for the acquisition of information technology.

(2) Specific thresholds at which USDA Office of the Chief Information Officer Information Technology Acquisition Approval is required have been established.

(3) The procurement authority delegated to USDA Agencies is established in Departmental Regulations 5000 series.

(4) The CPIC Guide and USDA CIO policy and procedural guidance are available on the USDA OCIO Web site at <http://www.ocio.usda.gov>. Notices of changes in the Information Technology Acquisition Approval Thresholds are also promulgated by AGAR Advisory.

(b) Acquisition of on-line courseware libraries and learning management system services requires specific

approval of the ASA and CIO. Information regarding the specific approval requirements and processes is promulgated by AGAR Advisory.

PART 445—GOVERNMENT PROPERTY

Subpart 445.6—[Removed and Reserved]

- 64. Remove and reserve subpart 445.6.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 450.1—[Removed and Reserved]

- 65. Remove and reserve subpart 450.1.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

452.211–70 [Amended]

- 66. Amend paragraph (a) of 452.211–70 to remove the words “clause 452.211–2” and add, in their place, “clause 452.211–71”.

452.215–71 [Amended]

- 67. In paragraph (c) of 452.215–71, remove the words “Requirements for Cost or Pricing Data or Other Than Cost or Pricing Data” and add, in their place, “Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data”.

452.226–70, 452.226–71 and 452.226–72 [Removed and Reserved]

- 68. Remove and reserve 452.226–70, 452.226–71, and 452.226–72.

452.232–70 [Amended]

- 69. In 452.232–70, remove the words “Payments Under Fixed-Price Construction Contract” and add, in their place, “Payments Under Fixed-Price Construction Contracts”.

452.236–78 [Removed and Reserved]

- 70. Remove and reserve 452.236–78.

PART 453—FORMS

- 71. Revise 453.213 to read as follows:

453.213 Simplified Acquisition and other simplified purchase procedures (AD–838).

Form AD–838, *Purchase Order*, is prescribed for use as a Simplified Acquisition Procedure/delivery order/task order document in lieu of OF 347 and OF 348, except that use of the OF 347 and OF 348 is authorized when utilizing the USDA Integrated Acquisition System (See 413.307).

Done in Washington, DC, this 21st day of December, 2004.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 04–28439 Filed 12–30–04; 8:45 am]

BILLING CODE 3410–96–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995; Notice 12]

Pipeline Safety: Random Drug Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: Each year pipeline operators randomly select employees to test for prohibited drugs. The number of selections may not be less than the minimum annual percentage rate the Research and Special Programs Administration’s (RSPA) Office of Pipeline Safety (OPS) determines, either 50 percent or 25 percent of covered employees, based on the industry’s positive rate of random tests. In accordance with applicable standards, RSPA/OPS has determined that the positive rate of random drug tests reported by operators this calendar year for testing done in calendar year 2003 is less than 1.0 percent. Therefore, in calendar year 2005, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2005, through December 31, 2005.

FOR FURTHER INFORMATION CONTACT:

Sheila Wright, RSPA, OPS, Room 2103, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4554 or e-mail sheila.wright@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must

randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, RSPA/OPS may lower the rate to 25 percent if RSPA/OPS determines that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, RSPA/OPS will increase the rate to 50 percent if RSPA/OPS determines that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines “positive rate” as “the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *”

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in calendar years 1994 and 1995, RSPA/OPS lowered the minimum rate from 50 percent to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); 2002 (67 FR 2611; Jan. 18, 2002); 2003 (67 FR 78388; Dec. 24, 2002); and 2004 (68 FR 69046; Dec. 11, 2003).

Using the MIS reports received this year for drug testing done in calendar year 2003, RSPA/OPS calculated the positive rate of random testing to be 0.83 percent. Since the positive rate continues to be less than 1.0 percent, RSPA/OPS is announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2005 through December 31, 2005.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC on December 22, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.
[FR Doc. 04–28679 Filed 12–30–04; 8:45 am]

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