

# Rules and Regulations

Federal Register

Vol. 80, No. 123

Friday, June 26, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### 2 CFR Part 701

RIN 0412-AA71

#### Partner Vetting in USAID Assistance

**AGENCY:** United States Agency for International Development.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Agency for International Development (USAID) is implementing a pilot for a Partner Vetting System (PVS) for USAID assistance and acquisition awards. The purpose of the Partner Vetting System is to help mitigate the risk that USAID funds and other resources could inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. This final rule sets out the requirements for the vetting of Federal awards, requirements including award terms for PVS, and applies PVS to a pilot program and any subsequent implementation of PVS that is determined appropriate. It follows publication of a proposed rule and takes into consideration the public comments received.

**DATES:** This final rule is effective July 27, 2015.

**FOR FURTHER INFORMATION CONTACT:** Michael Gushue, Telephone: 202-567-4678, Email: [mgushue@usaid.gov](mailto:mgushue@usaid.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, USAID established a new system of records (see 72 FR 39042), entitled the “Partner Vetting System” (PVS) to support the vetting of key individuals of non-governmental organizations (NGOs) who apply for

USAID contracts, grants, cooperative agreements, or other funding and of NGOs who apply for registrations with USAID as Private and Voluntary Organizations. In January 2009, USAID published a final rule (74 FR 9) to add PVS to its Privacy Act regulation, 22 CFR 215, and to exempt portions of this system of records from any part of 5 U.S.C. 552a, Records maintained on individuals, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) if the records in the system are subject to the exemption found in 5 U.S.C. 552a(j). To the extent applicable, records in this system may be exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a if the records in the system are subject to the exemption found in 5 U.S.C. 552a(k). Any other exempt records from other systems of records that are recompiled into this system are also considered exempt to the extent they are claimed as such in the original systems. USAID’s final rule exempting portions of the Partner Vetting System (PVS) from provisions regarding the accounting of certain disclosures (5 U.S.C. 552a(c)(3) and (4)); access to records (5 U.S.C. 552a(d)); agency requirements (2 U.S.C. 552a(e)(1), (2), and (3), (e)(4)(G), (H), and (I), (e)(5) and (8)); agency rules(f), civil remedies(g), and rights of guardians(h) of the Privacy Act of 1974 went into effect on August 4, 2009. Subsequently, USAID published a proposed rule (74 FR 30494) to amend 48 CFR Chapter 7, which is USAID’s procurement regulation, in order to apply PVS to USAID acquisitions. The final rule implementing PVS for USAID acquisitions was published on February 14, 2012 with an effective date of March 15, 2012. In order to apply PVS to USAID assistance, USAID published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 29, 2013 (78 FR 168) with a public comment period of 99 days, closing on December 6, 2013. During the 99-day comment period, USAID received comments from 23 separate respondents. Those comments and our responses are discussed below.

##### B. Legal Basis for Partner Vetting

The Foreign Assistance Act of 1961, as amended (the “FAA”), provides the President with broad discretion to set terms and conditions in the area of

foreign assistance. Specifically, numerous sections of the FAA authorize the President to furnish foreign assistance “on such terms and conditions as he may determine”. See, e.g., section 122 of the FAA, which provides that, “[i]n order to carry out the purposes of this chapter [*i.e.*, development assistance], the President is authorized to furnish assistance, on such terms and conditions as he may determine, to countries and areas through programs of grant and loan assistance, bilaterally or through regional, multilateral, or private entities.” Similarly, sections 103 through 106 of the FAA authorize the President to furnish assistance, on such terms and conditions as he may determine, for agriculture, rural development and nutrition; for population and health (including assistance to combat HIV/AIDS); for education and human resources development; and for energy, private voluntary organizations, and selected development activities, respectively. The FAA also authorizes the President to “make loans, advances, and grants to, make and perform agreements and contracts with, any individual, corporation, or other body of persons, friendly government or government agency, whether within or without the United States and international organizations in furtherance of the purposes and within the limitations of this Act.”

These authorities have been delegated from the President to the Secretary of State and, pursuant to State Department Delegation of Authority 293, from the Secretary of State to the Administrator of USAID. Agency delegations of authority, in turn, delegate these authorities from the Administrator to Assistant Administrators, office directors, Mission Directors, and other Agency officials.

In providing foreign assistance, the Administrator must take into account relevant legal restrictions. For example, the FAA requires that all reasonable steps be taken to ensure that assistance is not provided to or through individuals who have been or are illicit narcotics traffickers. Pursuant to annual foreign operations appropriations acts, assistance to foreign security forces requires vetting to ensure that assistance is not provided to units where there is credible information that the unit has

committed gross violations of human rights. Restrictions in the FAA against supporting terrorism (Pub. L. 87–195, Sec 571–574) or providing assistance to terrorist states (Pub. L. 87–195, Sec 620A, Sec 620G, and Sec 620H) as well as restrictions in Title 18 of the United States Code on the provision of support or resources to terrorists (18 U.S.C. 113B) similarly support a decision by the Administrator of USAID to authorize terrorist screening procedures.

In addition, the broad authority of the FAA permits the Administrator of USAID to consider a range of foreign policy and national security interests in determining how to provide foreign assistance. The United States has a strong foreign policy and national security interest in ensuring that U.S. assistance is not provided to or through individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists. This interest arises both because of our concern about the potential diversion of U.S. assistance to other uses and also our interest in ensuring that these individuals or entities do not garner the benefit of being the distributor of U.S. assistance to needy recipients in foreign countries. The United States is an advocate of strong anti-terrorism provisions and has urged other nations to control the flow of funds and support to terrorists. There could be significant negative foreign policy repercussions if it were determined that the United States was funding individuals and entities that are terrorists, supporters of terrorists, or affiliated with terrorists.

Further, Homeland Security Presidential Directive/HSPD–6 states that to protect against terrorism it is the policy of the United States to (1) develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, and (2) use that information as appropriate and to the full extent permitted by law to support Federal screening processes. HSPD–6 also requires the heads of executive departments and agencies to conduct screening using Terrorist Information (as defined therein) at all appropriate opportunities. In accordance with HSPD–11, USAID has identified NGO applications for USAID funds as one of the opportunities for which screening could be conducted. Accordingly, use by USAID of information contained in U.S. Government databases, *i.e.*, vetting, is entirely consistent with HSPD–6.

Finally, legislative and Executive Order prohibitions against furnishing

financial or other support to terrorists or for terrorist related purposes, or against engaging in transactions with individuals or entities that engage in terrorist acts, provide justification not to award assistance if USAID already has access to information showing that the applicant for assistance has such connections to terrorism. Some of these prohibitions can be found in Sections 2339A and 2339B of Title 18 of the United States Code, Executive Order 12947, as amended by Executive Order 13099, Executive Order 13224, and Title VIII of the USA Patriot Act. Accordingly, USAID's authority to conduct vetting is implied from these authorities.

Based upon all of the above, USAID has concluded that it has the legal authority to implement the PVS.

### C. Summary of the Final Rule

USAID is issuing a final rule to add 2 CFR part 701, with an associated application provision and award term. The application provision, Partner Vetting Pre-Award Requirements, defines the vetting process and the applicant's responsibilities for submitting information on individuals who will be vetted, prior to award. The award term, Partner Vetting, sets forth the recipient's responsibilities for vetting during the award period, and the partner vetting process that takes place after award.

### D. Discussion of Comments

USAID received comments and suggestions from 23 organizations on its proposed rule, which would enable USAID to apply the Partner Vetting System to USAID assistance.

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

#### *Demonstrated Need for PVS and Adequacy of Procedures*

Comment: There is no evidence that USAID funds are flowing to terrorist organizations through USAID-funded programs. Moreover, partners have already implemented due diligence procedures, and there is no plausible evidence that current practices are inadequate. As an alternative to PVS, USAID should consider creating a system for U.S. organizations to obtain an exemption from PVS based on these organizations demonstrating to USAID that their own due diligence processes are sufficient to address potential diversion of aid.

Response: Some organizations submitted comments that USAID does not need to implement a partner vetting

system since there is no evidence that (1) USAID funds are flowing to terrorist organizations through USAID-funded programs; or that (2) due diligence procedures implemented by USAID or its partners are inadequate to address the potential diversion of aid.

USAID addressed similar comments in publishing its final rule exempting portions of its system of records (Partner Vetting System, or PVS) from one or more provisions of the Privacy Act. See 74 FR 9 (January 2, 2009). Consistent with Executive Order 13224, terrorist sanctions regulations administered by the Office of Foreign Assets Control (OFAC) within the U.S. Department of Treasury, the material support criminal statutes found at 18 U.S.C. 2339A, 2339B, and 2339C, as well as other related Executive Orders, statutes and Executive Branch policy directives, USAID has over the years taken a number of steps, when implementing the U.S. foreign assistance program, to minimize the risk that agency funds and other resources might inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists. Specifically, USAID requires inclusion of clauses in its solicitations, contracts, grants, cooperative agreements and other comparable documents that remind our contractor and grantee partners of U.S. Executive Orders and U.S. law prohibiting transactions with, and the provision of support and resources to, individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists. USAID also requires anti- or counter-terrorist financing certifications from all U.S. and non-U.S. non-governmental organizations seeking funding from USAID under grants and cooperative agreements. USAID contracting and agreement officers, prior to making awards of agency funds, check the master list of specially designated nationals and blocked persons maintained by OFAC. Implementing partners, as part of their due diligence, can check these public lists. However, given the range of activities carried out by USAID and the range of circumstances under which they are implemented, additional procedures may be warranted to ensure appropriate due diligence. In such instances, checking the names and other personal identifying information of key individuals of contractors and grantees, and sub-recipients, against information contained in U.S. Government databases, *i.e.*, vetting, is an appropriate higher level safeguard that USAID can conduct and its implementing partners cannot. In certain high risk countries,

such as Afghanistan, USAID has determined that vetting is warranted to protect U.S. taxpayer dollars. In conducting due diligence, USAID's implementing partners do not have access to these non-public databases and therefore cannot avail themselves of the same universe of information as USAID does in conducting vetting in Afghanistan, West Bank/Gaza and elsewhere. In protecting U.S. taxpayer resources from diversion, the importance in accessing information from non-public databases for the purposes of vetting has been clearly demonstrated. For instance, in Afghanistan, we have prevented approximately \$100 million from being awarded to entities that did not meet USAID's vetting requirements. As a result of USAID's vetting programs, 1.5–2.5 percent of potential awardees were deemed ineligible. While this percentage may seem insignificant, USAID believes that such vetting results have prevented the diversion of Agency funds from their intended development purpose. USAID is implementing the PVS pilot program in an effort to evaluate vetting in countries selected to represent a range of terrorist threat risks, geographic diversity, and locations where both Agencies have comparable programs. The PVS pilot program is mandated by section 7034(i) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Pub. L. 112–74) and related acts.

Vetting seeks to close the gap between publicly available information and information that can only be obtained from U.S. Government databases. The Office of Foreign Assets Control (OFAC) list of Specially Designated Nationals (SDN) is publicly available and includes both individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries and individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. The collective list promotes OFAC's enforcement efforts, and as a result, SDN assets are blocked, and U.S. persons are generally prohibited from dealing with them. While the SDN list serves as a useful resource, it is not fully inclusive of terrorist information included in U.S. Government databases. Through access to U.S. Government databases, USAID's vetting team can view and analyze terrorist information that is not publicly available for national security reasons but is accessible to USAID in accordance with HSPD–6 and HSPD–11. To date, all ineligible determinations

from USAID's vetting process have been derived from information obtained from U.S. Government databases and not from OFAC's SDN list. Accordingly, USAID supports continued use of such databases to mitigate the risk of U.S. taxpayer funds flowing to individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists.

As an additional safeguard against the potential diversion of aid, the vetting conducted under PVS complements the stringent due diligence procedures undertaken by USAID and its implementing partners. Beyond examining business sources, U.S. government records, and other publicly available information to ensure proper use of appropriated funds in the contracting and grant making process, USAID requires supplemental information from organizations applying for these awards. While our implementing partners are required to be diligent in their efforts to screen their employees and employees of their subrecipients, they do not have access to all information relevant to U.S. national security interests. Rather than duplicating current due diligence efforts, PVS complements these efforts, providing another method to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners.

#### *Risk to Partners*

Comment: NGOs will be perceived as intelligence arms of the U.S. government, versus independent and neutral actors, increasing the security risk for implementing partner employees and local partners. Moreover, PVS will discourage international and local partners from working with U.S. NGOs and will deter U.S. citizens and foreign nationals from working for U.S.-funded programs. As evidenced under existing vetting programs, lower-tier partners and vendors may be unwilling or unable to provide their personal information . . . artificially limiting the pool of eligible partners and vendors. In addition, the burden will disproportionately affect smaller, nascent local organizations that lack the capacity to understand and comply with vetting requirements (contrary to USAID Forward).

Response: Organizations commented on the potential security risk to implementing partners and local partners that will be required to collect and submit personally identifiable information (PII) to USAID, since they

might be perceived to be agents for U.S. law enforcement or intelligence. Moreover, commenters suggested that PVS could artificially limit the pool of eligible partners and contractors since they may opt not to be included in an application for an award in which the submission of PII is required for vetting purposes.

USAID understands the concern expressed by organizations that collecting PII suggests a linkage with U.S. intelligence gathering. The concern has been raised before, including in connection with USAID's vetting program in West Bank/Gaza. PVS is not a U.S. intelligence collection program. Moreover, USAID is not a Title 50 Agency and is not authorized by law to collect intelligence information. USAID complies with all laws and regulations regarding information collection (including Paperwork Reduction Act, OMB/OIRA approved collection, which was authorized following a comment and response period), usage, and storage. Consistent with guidance from our General Counsel, we have established procedures for the use of PII for vetting purposes under the PVS pilot program. The primary intent of the program is to safeguard U.S. taxpayer funds. USAID collects the least amount of information possible, while remaining cognizant of the need to eliminate false positives. There is no other way that USAID can perform this screening unless this information is collected. PII on key individuals of organizations applying for USAID funds, either as a prime awardee or as a sub-awardee, is entered into a secure USAID database that is housed within USAID servers. Access to this data is strictly controlled and provided only to authorized U.S. Government staff with vetting responsibilities. Authorized U.S. Government personnel who have been assigned roles in the vetting process are provided role-specific training to ensure that they are knowledgeable in how to protect personally identifiable information. Access to this data is further restricted through role-based limitations.

Using data provided by the applicant, USAID analysts search for any possible matches between the applicant organization or key individuals associated with that organization and one or more names contained in U.S. Government databases. Where a possible match is found, USAID staff will thoroughly analyze all available and relevant data to determine the likelihood of the match and make a recommendation regarding the eligibility of the organization to receive USAID funding. In those instances

where there is a positive match, USAID will update the existing public or non-public database records for those organizations or individuals with any pertinent data provided by the organization or individual. USAID only updates the record once we have determined a match and there is more accurate information on the individual that was voluntarily provided on the Partner Information Form. Failure to provide these updates would be counterproductive to the U.S. Government's comprehensive counterterrorism efforts and inconsistent with a whole of government approach.

Given the standard assumption that an exchange of personal information is required as a part of government employment and government funding opportunities, the provision of personally identifying information for that purpose is not extraordinary, and its collection does not imply an improper use. USAID has a responsibility to take necessary actions to effectively safeguard U.S. taxpayer funds from misuse, as well as to deprive terrorist organizations and their supporters of money that might be diverted to fund their operations. USAID's experience has been that organizations advancing humanitarian and foreign assistance operations adapt to such requirements. Due diligence to prevent diversion to those with terrorism connections has increased substantially in the wake of the terrorist attacks of September 11, 2001, without jeopardizing the effectiveness of foreign assistance objectives, and we believe that the requirements of PVS will not preclude our implementing partners' ability to find subcontractors and/or employees abroad. USAID's experience with vetting in Afghanistan, West Bank/Gaza and elsewhere demonstrates that assistance programs can operate effectively while implementing vetting programs.

USAID will continue to consider these issues when evaluating the effectiveness of the PVS pilot program.

#### *Program Execution Delays*

Comment: The time associated with processing and clearing vetting applications will result in significant delays in program execution. In addition, because it is difficult to know who all contractors for a project will be during the application stage, large amounts of post-award vetting would need to be conducted, causing significant implementation delays.

Response: Commenters expressed concern regarding delays in program execution attributable to the vetting

process. USAID recognizes that any additional requirement—whether related to PVS or otherwise—will affect the delivery of assistance. USAID's goal is to achieve the purpose behind any new requirement in the most efficient manner that will minimize any potential negative impact on implementation of activities.

Based on USAID's experience with vetting in West Bank/Gaza and Afghanistan, the additional time needed for PVS will vary depending on the individual circumstances of each award. It should be noted that USAID is increasing its vetting staff to accommodate the additional vetting required by the pilot program. Additional time, if any, may be required to verify proper completion of the forms by implementing partners. Should an adverse finding occur, the award decision will be paused while officials consider the nature of the findings and other relevant factors. USAID designed the PVS application and process to allow for the flexibility to balance the need to make a timely award with the need to respond appropriately to adverse findings.

#### *Transparency*

Comment: USAID should provide applicants with a clear explanation about the purpose of PVS. Regulations should state that USAID will provide a clear explanation in writing to applicants in the local languages of the pilot countries about (1) the purpose of PVS; (2) the type of information that will be collected from key individuals in the PIF; (3) how data on key individuals will be used and shared among different actors in the USG; and (4) how long such information will be stored. USAID should provide notice of clear restrictions on the use and sharing of personal data. Several organizations note language in Senate Report 113–81 that is incorporated by reference in the Joint Explanatory Statement of the Conference accompanying P.L. 113–76, the Department of State, Foreign Operations, and Related Programs Appropriations Act for FY 2014:

“All individuals and organizations being vetted should be provided with full disclosure of how information will be stored and used by the U.S. Government, including how information regarding a ‘positive match’ will be handled and how to appeal such a match.”

Response: Some organizations noted that USAID should include an explanation about the purpose of PVS in writing to organizations applying for awards, as well as the type of information collected and how that information would be used and stored.

As noted in the summary to the proposed rule, the purpose of PVS is to help ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners.

Prior **Federal Register** notices regarding USAID's PVS and the proposed rule detail the type of information that will be collected in the Partner Information Form and the use of such information. Our response to a previous question details how the PII that is collected is used in the vetting process. An applicant's PII will not be used to create a “blacklist” of organizations and/or individuals who will be barred from seeking U.S. government contracts and grants. Using the information for that purpose would constitute a de facto suspension or debarment, which is contrary to law. Organizations and key individuals are vetted based on a specific contract or grant to be considered for an award. Findings based on vetting results do not preclude an organization's eligibility to bid on subsequent solicitations.

#### *Agency Authority To Approve Individual Subawards*

Comment: We recommend that USAID remove proposed changes in 226.92(g) as 226.25(c)(8) does not give USAID authority to approve individual subawards. [226.92(g) reads as follows: “When the prime recipient is subject to vetting, vetting may be required for key individuals of subawards under the prime award when prior approval in accordance with 22 CFR 226.25(c)(8) for the subaward, transfer or contracting out of any work.”]

Comment: USAID should ensure vetting requirements are not tied to administrative approval requirements. The clause at 226.92(g) is incomplete and links the need for vetting to an administrative approval requirement, 226.25(c)(8), \* \* \* which relates not only to subawarding but also to the transfer or contracting out of work. We recommend striking the references to 226.25(c)(8) as follows: “When the prime recipient is subject to vetting, vetting may be required for key individuals of subawards under the prime award. Alternate I. When subrecipients will be subject to vetting, add the following paragraphs to the basic award term: (h) When subawards are subject to vetting, the prospective subrecipient must submit a USAID PIF . . .”

Response: Several organizations recommended that USAID remove

references to prior approval required by 2 CFR 200.308(c)(6) and previously found at 22 CFR part 226.25(c)(8). 2 CFR 200.308(c)(6) states that “For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons . . . Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award.” The purpose of the requirement is to ensure that, when vetting is required, subrecipients proposed by the recipient after award are properly vetted. Although the need for vetting is triggered by the introduction of a new subrecipient to the award, administrative approval requirements are separate from the vetting process. However, as stated in the rule, when the vetting of subawards is required, the agreement officer must not approve the subaward, transfer, or contracting out of any work until vetting is complete and the subrecipient has been determined eligible. When vetting of contractors is required, the recipient may not procure the identified services until vetting is complete and the contractor has been determined to be eligible. In cases where the recipient is procuring services, contractors of those services are subject to vetting when specified in the award. There is, however, no administrative approval process for recipient procurements.

It was also noted that the clause at 2 CFR 701.2(g) is incomplete. USAID has revised the clause to state that USAID may vet subrecipients when the prime is vetted and the prime requests approval of a new subaward.

#### *Delegation of Authority to Agreement Officers*

Comment: Can delegation of the authority entrusted to AOs under this rule be made to AORs?

Response: An organization inquired as to whether delegation of the authority entrusted to Agreement Officers under this rule would also be made to Agreement Officers’ Representatives. Please note that the pre-award vetting process itself proceeds separately from the selection process for award to a successful applicant. For vetting requirements prior to an award, the Agreement Officer’s duties and responsibilities cannot be delegated to an Agreement Officer’s Representative or Award Manager. As the USAID official responsible for all aspects of the recipient selection process, only the Agreement Officer can perform the tasks that assist the vetting process. These

include determining the appropriate stage of the award cycle to require applicants to submit the completed USAID Partner Information Form (PIF), USAID Form 500–13, to the vetting official identified in the assistance solicitation; specifying in the assistance solicitation the stage at which the applicants will be required to submit the USAID PIF; identifying the services in the assistance solicitation and any resulting award where the contractor will be subject to vetting; and making the award to an applicant that vetting has determined eligible. As such, all vetting procedures are the responsibility of the vetting official and are not delegable as part of the Agreement Officer’s authority.

For post-award vetting requirements, the vetting official is the USAID employee designated to receive and communicate vetting information from the recipient, subrecipients, and contractors subject to vetting. The Agreement Officer cannot delegate these responsibilities as they are not part of the Agreement Officer’s authority.

#### *Application of Rule to Non-U.S. Organizations*

Comment: The new rules apply to U.S. organizations and their subrecipients but not to non-U.S. organizations as implementers of prime awards. USAID should clarify whether the contents of the proposed rule will apply equally to non-U.S. organizations as they do to U.S. organizations. If the rule applies to non-U.S. organizations, how will requirements be documented for non-U.S. recipients?

Response: USAID received a comment from an organization seeking clarification as to whether the contents of this rule will apply equally to non-U.S. organizations and U.S. organizations. Requirements related to PVS rulemaking will apply to non-U.S. organizations just as they apply to U.S. organizations. The rule has been revised to include non-U.S. organizations.

#### *Statutory Parameters of Pilot*

Comment: Please confirm that the pilot will be limited to the five countries listed. If so, please remove reference to “other vetting programs” in the proposed rule. USAID should revise the proposed rule by specifically articulating the geographic and time limitations of the pilot program to comport with the relevant statutory requirements. [It should also be noted that vetting activities not part of the pilot] were not preceded by any formal rulemaking process allowing for public comment.

Response: USAID was asked to confirm that the pilot will be limited to five countries (Guatemala, Kenya, Lebanon, Philippines, and Ukraine) and to articulate the geographic and time limitations of the pilot. While the FY 2012 Appropriations Act mandates a PVS pilot program and a report to Congress on the pilot program, it provides USAID and the Department of State with flexibility to design the policies and procedures for the pilot program, to select particular countries for the pilot program, and to implement administrative rulemaking to govern the vetting of acquisitions and assistance. The Department of State and USAID agreed on five countries for the pilot program because they represent a range of risks and are located where both agencies have comparable programs. As explained in a previous response, USAID has the legal authority to conduct vetting outside of the PVS pilot program where a risk assessment indicates that vetting is an appropriate higher level safeguard that is needed to protect U.S. taxpayer resources in high-risk environments like Afghanistan.

#### *Use of Existing Data Collection Tools*

Comment: USAID should incorporate any vetting-related eligibility constraints into existing public tools such as the U.S. System for Award Management rather than creating a separate onerous process.

Response: It was suggested that USAID incorporate any vetting-related eligibility constraints into existing tools such as the U.S. System for Award Management (SAM). The Agency recognizes that partner vetting places additional requirements on its partners. However, incorporating vetting into SAM is not feasible. The partner vetting process established in this rule applies only to USAID. SAM is the U.S. Government-wide successor to the Central Contractor Registration (CCR) and combines users’ records from the CCR and eight separate Web sites and databases that aided in the management of Federal procurement. USAID cannot alter SAM and cannot impose vetting processes onto other agencies. SAM collects data from suppliers, validates and stores this data, and disseminates it to various government agencies. The purpose of partner vetting for assistance is fundamentally different from and incompatible with the purpose and function of SAM.

#### *Partner Information Form (PIF)*

Comment: One of the greatest burdens for applicants is the mandatory requirement that applicants collect a Government-issued photo ID number for

each vetted individual. The provision of a Government ID number should not be mandatory.

Comment: Concern was expressed about the open-ended nature of (d)(1)(iii) in Appendix B: "Must provide additional information, and resubmit the PIF with the additional information within the number of days the VO specifies." The organization requested specific parameters for the sort of information a VO can request and when that request can be made.

Comment: There is no mention that data can be submitted via a secure portal.

Comment: To reduce costs and burden for NGOs, USAID and DOS should standardize data collection mechanisms and vetting procedures.

Comment: There is an inconsistency in the **Federal Register** regarding the retention of PIF data. The announcement states that information will be collected annually if the grant is a multi-year award. However, it also states that USAID may vet key individuals using information already submitted on the PIF.

Response: Organizations provided various recommendations to reduce the burden for applicants to comply with requirements related to the submission of data on the Partner Information Form (PIF).

One organization recommended that USAID not make it a mandatory requirement that applicants collect a government-issued photo ID number for each individual. In many cultures in locations where USAID provides development assistance, the provision of name and date of birth information only is insufficient for purposes of PVS. Some cultures identify individuals using one-part names, descriptive names, or titles. Additionally, the same individuals may have no recorded date of birth. Consequently, USAID requires a certified form of identification. Providing such unique identifiers better enables USAID to conduct the vetting process efficiently and effectively. Generally, applicants may be asked to provide telephone numbers or family information, or to clarify personally identifiable information that may have been provided erroneously. By requesting additional information, USAID aims to reduce the number of false positives.

Another organization requested confirmation that data can be submitted via the secure portal. Organizations applying for assistance awards in countries covered under the PVS pilot may either submit data via the Agency's PIF or the secure portal.

One general comment on the proposed rule was that USAID and the Department of State should standardize data collection mechanisms and vetting procedures. USAID and the Department of State are distinct agencies with differing programs and operational models. USAID and the Department of State have closely coordinated efforts on PVS and conformed approaches as much as possible. For example, the Agencies use similar information technology systems (PVS and RAM) to complete the vetting process. However, USAID and State apply different vetting procedures since USAID procurements are often executed at its overseas missions, while State's procurement function is centralized in Washington, DC. As a result, in the PVS pilot program, USAID staff at the pilot Missions coordinate with USAID staff in Washington, DC on the vetting process, whereas State conducts vetting in Washington, DC. We believe the added burden of using different partner information forms represents a modest increase in burden on complying organizations and is important to allow the pilot to achieve the same purpose for two agencies with different procurement processes. We can also consider the issue of different identification forms as part of our assessment of the pilot should unanticipated challenges or burdens arise due to the existence of separate forms.

Lastly, it was noted that there was conflicting information in the rule regarding the retention of PIF data. When PIFs are received containing personally identifiable information for a key individual assigned to a pending award, the relevant data are added to the PVS application. Applicants are vetted at that time using the information provided. When awards are reviewed for successive year options, partners are required to update information, and that information must be vetted by USAID prior to the option year. The vetting official will contact the awardee to confirm that the key individual information has not changed. If there have been no changes to key individuals or their identifiers, information for those initially vetted is available in PVS and may be used for re-vetting.

#### *The Risk-Based Approach*

Comment: Who performs the risk-based assessment, and what would the criteria be to vet? How will the data from each pilot country be compared? Can USAID provide the full internal process on how an RBA determination will be made, including who is involved and what recourse mechanisms there

are to the nature of the program, the type of entity implementing the activity, the geographic location of the activity, the safeguards available, and how easily funds could be diverted or misused. Other considerations may include the urgency of the activity and the foreign policy importance of the activity.

Response: Rather than introduce a monetary threshold, whereby prime organizations and their partners applying for an award at or above the threshold are subject to vetting regardless of the nature of the award, operating environment, or program or activity to be implemented, as suggested by some organizations, the PVS pilot program uses a risk-based assessment.

Regarding the commenter inquiring about recourse mechanisms, an applicant may only request reconsideration of an ineligibility determination. The risk-based assessment does not focus on or capture data on implementing partners or subprime organizations. Rather, the assessment takes a holistic approach by evaluating a myriad of factors contributing to the overall level of risk of a new program or activity, including, but not limited to, the operating environment, nature of the program or activity, geographic locations of the proposed program or activity, and the amount of the award. Moreover, the risk-based assessment is designed to be conducted during the pre-solicitation phase, after the Statement of Work has been finalized, by USAID personnel who are most familiar with the proposed award and program or activity to be implemented. Given the nature and timing of the assessment as it relates to the procurement process, providing a recourse mechanism would not be appropriate.

Another concern raised in comments received was that the nature of the RBA process, which is conducted by AORs, would lead to significant pilot inconsistencies. While the AOR will primarily be designated to conduct the RBA, USAID's Office of Security, Bureau for Management, and other Agency stakeholders are responsible for ensuring that the data be as accurate and complete as possible. Analysis of data collected from each RBA will help USAID determine whether there is a correlation and the nature of the correlation between vetting results and the level of risk established in the RBA. Solicitations for assistance awards under which vetting may occur will include language indicating that potential applicants may be vetted (pending the outcome of the RBA). An important aspect of the PVS pilot is testing the RBA model.

One organization inquired as to who would be responsible for conducting the RBA when the grants program is managed by a contractor and not directly by USAID. Grants programs managed by contractors are properly part of vetting under acquisition rather than assistance. RBAs that USAID conducts for a particular planned acquisition will include consideration of Grants Under Contracts when these are part of the planned activities.

Lastly, an organization requested that USAID specify the full range of assistance agreements to be covered by the RBA. The applicable range of federal assistance instruments is identified in the definition of Federal award found at 22 Part 200.38.

#### *Direct Vetting Approach*

Comment: We recommend adopting a direct vetting approach, whereby subrecipients and vendors would be required to interact directly and solely with USAID for vetting purposes. The rule should make it more explicit that (1) no organization will be required to gather or verify information from a different organization or its key individuals; (2) organizations must submit their information directly to the VO; and (3) VO determinations must be communicated directly to the organization. The role of prime grantees should be limited to notifying local partners that they would need to submit their own information to the USAID vetting official, and directing them to the appropriate portal or Web site for information on such vetting. We urge USAID to state explicitly that PVS will not require prime recipients to verify information on the subrecipients or vendors, to convey vetting determinations to subrecipients or vendors, or to act as an intermediary in any way with respect to such vetting processes. The rule should specify that subrecipients submitting their vetting data directly to USAID have the responsibility to monitor and submit updated PIF or vetting data to USAID.

Response: Some organizations requested that USAID adopt what is termed a "direct vetting approach," in which subprime organizations would interact directly with USAID for vetting purposes. USAID will offer a type of direct vetting approach as an option to implementing partners for a select group of awards under the pilot program. Under the direct vetting approach, a prime organization applying for an award to be implemented in a pilot country would request potential subprime awardees to submit information required for vetting to USAID directly instead of sending such information to

USAID via the prime. In this approach, USAID would communicate directly with the potential sub-prime awardee solely for the purposes of vetting, including the transmittal of eligibility and ineligibility notices. However, the prime would remain responsible for ensuring that the information provided by its sub-prime organizations to USAID for the purposes of vetting is accurate and complete to the best of its knowledge.

In evaluating the direct vetting approach, USAID will consider the extent to which the approach was utilized and analyze its impact on USAID and partner organizations.

#### *Privacy/Data Protection Laws*

Comment: Consistent with applicable privacy and data protections laws of countries where NGOs, their subrecipients, or vendors operate, USAID should provide significantly greater clarity on how the vetting processes will allow NGOs and their subrecipients or vendors to comply with those laws while implementing PVS. It is important to specify in detail who will have access to the data and the extent to which the data will be shared, how long the data will remain in any vetting database or otherwise be kept by USAID or other agencies, whether any individual could seek to have personal data removed from any vetting or other intelligence database, and the safeguards around the storing, sharing and use of such personal data. [CRS requested that the rule be modified to include an exemption to its application when it can be demonstrated that implementation will force an NGO to violate applicable local law.]

Response: Commenters requested information regarding the storing, sharing, and use of personal data and cited concerns about potential conflict with applicable foreign privacy and data protection laws.

Prior **Federal Register** notices regarding USAID's PVS detail how data is stored, shared, and used under PVS. See 72 FR 39042 (July 17, 2007) and 74 FR 9 (January 2, 2009). USAID will review data retention policies as part of the PVS pilot.

Throughout the design process of PVS, USAID has been committed to protecting national security while complying with all administrative requirements, and protecting privacy and other rights of its partners and their employees. USAID places a high priority on data protection and has a strong information security program. USAID is required to report annually on Federal Information Security Management Act compliance.

Additionally, USAID's information security program is audited by the USAID Office of the Inspector General. USAID will continue to evaluate issues relating to privacy and data protection during implementation of the pilot and consider accommodations as necessary.

#### *The Vetting Process*

Comment: Please confirm that only new awards (not existing awards) will be vetted under the pilot. Under what circumstances does USAID contemplate post-award vetting?

Comment: We request that you provide a specific timeframe in which vetting officials have to make a vetting determination.

Comment: The flow-down applicability for vetting is unclear, including for lower-tier awards. How far does vetting flow down? Which types of subrecipients and vendors have to be vetted? What triggers vetting of subrecipients and vendors? What about in-kind procurements conducted by contractors for grants-under-contract?

Comment: The determination as to who should be vetted is highly subjective and variable. The subjectivity of the determination that a given award or environment requires vetting means that universal guidance on preparing and implementing USAID-funded programs cannot be developed.

Comment: There is no guidance in the regulation instructing AOs on how to determine which parties should be vetted in any particular circumstance or when to exempt activities and individuals from the vetting process.

Comment: Nowhere in this proposed rule \* \* \* does USAID explain the relationship between key individuals and the organization and whether the failure of any individual to pass the vetting process also acts as a disqualification of the entire organization and its applications for assistance.

Comment: There is significant concern about the accuracy of the TSC lists (referenced DoJ's OIG audit documenting higher error rate and dysfunction of central terrorist watchlist). How will USAID ensure that an applicant does not fail vetting due to a false positive?

Response: USAID received a variety of comments related to the pilot vetting process. One organization requested confirmation that only new awards will be vetted under the pilot and sought further details on circumstances that could lead to post-award vetting. Under the PVS pilot, it is anticipated that vetting will be implemented for assistance awards made after the effective date of this rule. In most

instances, we anticipate that post-award vetting may be required whenever RBA parameters or a change in key individuals indicate that vetting is necessary.

**Comment:** Another organization requested that vetting officials provide a vetting determination within a specific timeframe.

**Response:** The vetting procedures utilized by USAID are in accordance with HSPD-11. Analysts assess the credibility of information obtained from U.S. government databases. USAID processes vetting requests as quickly as possible and has taken steps to increase USAID staff to expedite the processing of vetting requests. A hard and fast deadline for processing vetting requests and making a final decision on vetting requests cannot be provided due to the nature of the vetting process. The vetting process includes analysis of information by USAID analysts who make recommendations, and evaluation of those recommendations by USAID mission staff, with the possibility that USAID/Washington staff may be called upon to evaluate recommendations from analysts and mission staff. That said, USAID is mindful of the importance of timely processing and vetting decisions to the effective implementation of foreign assistance and is working on a regular basis to improve the vetting process by including efforts to make the process as expeditious as possible without undercutting efforts to safeguard U.S. taxpayer resources from diversion from their development purpose.

Regarding the impact of the vetting process on providing urgently needed humanitarian assistance, under the PVS Pilot Program, USAID has the authority not to require pre-award vetting, and does not intend to require pre-award vetting, where vetting would hinder the delivery of urgently needed humanitarian assistance. USAID reserves the right to conduct post-award vetting in such situations. Factors such as the number of key individuals, the accuracy and completeness of the personally identifiable information provided, and the country or region in which programs will be implemented may impact the amount of time it will take from submission of the requisite information to the final vetting determination. It is in the interest of both USAID and its partners that the vetting process be conducted and the vetting determination made as effectively and expeditiously as possible.

Organizations also commented that the rule is unclear about the level and type of organizations subject to vetting.

In general, vetting will take place at the first and second tiers. However, certain circumstances may dictate less vetting or more vetting. This policy applies to subrecipients who benefit from U.S. dollars funding an award without limits. A subrecipient must notify the primary award recipient (Prime) when another award is to be made for any portion of the government award. The Prime will then notify the USAID Agreement Officer and arrange for the additional vetting.

Organizations also suggested that the Agency's determination as to who should be vetted is subjective and variable. As referenced in a previous response to public comment, USAID's decision on whether or not to vet is based on objective criteria documented in the Risk-Based Assessment, such as the amount of an award, location and nature of the program or activity being implemented, and the national origin or association of the organization. In addition, USAID's Office of Security maintains and utilizes standard operating procedures when vetting applicants for those Missions and Bureaus implementing PVS.

It was suggested during the comment period that USAID clarify in the rule the relationship between an organization and its key individuals as far as the vetting process is concerned. For example, when a key individual is found ineligible through the vetting process, is the organization applying for the award (the applicant) no longer eligible for that award or future awards? The organization applying for an award subject to vetting is responsible for selecting key individuals and verifying that the Partner Information Form for each key individual is accurate and completed before it is submitted to USAID for vetting. As the responsible agent for its key individuals, the organization is found ineligible if any key individual is found ineligible. If USAID determines that the applicant is ineligible for the award based on the ineligibility of one or more of its key individuals, USAID notifies the applicant that it is ineligible for that particular award but has the opportunity to submit a reconsideration request to USAID. The applying organization may opt to remove and/or replace a key individual and reapply for an award. In this case, the applicant would be re-vetted based on the key individuals identified in the renewed application. Regardless of the outcome on this particular solicitation, the organization may continue to apply for other USAID awards since each final vetting determination decision is specific to a particular solicitation

under PVS and does not in and of itself constitute a basis for evaluating an application for a different award.

Another organization inquired as to how the Agency will ensure that an applicant will not fail vetting due to a false positive. As stated in the Agency's publication of its final rule exempting portions of its system of records (Partner Vetting System, or PVS) from one or more provisions of the Privacy Act, decisions by USAID under PVS as to whether or not to award funds to applicants will not be based on the mere fact that there is a "match" between information provided by an applicant and information contained in non-public databases and other sources. See 74 FR 9 (January 2, 2009). Rather, in a timely manner, USAID will determine whether any such match is valid or is a false positive. The detailed identifying information required of applicants under the PVS in and of itself significantly reduces the risk of individuals being misidentified. Additionally, USAID's vetting team will review and analyze the matching information to further minimize false positives.

#### *Perceived Vague or Broad Vetting Criteria*

**Comment:** The vetting criteria are vague and overly broad, extending to those "affiliated" with or with "linkages" to terrorists. These terms are not defined and could be interpreted so broadly that a person could fail vetting on the basis of activities they do not support or control.

Commenters expressed some concern that vetting criteria were vague or overly broad, particularly as they may be applied to those "affiliated" with or having "linkages" to terrorists.

**Response:** It is a top priority for USAID to mitigate the risk that its funds and other resources could inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. USAID responded to similar comments regarding potentially vague criteria when USAID published in the **Federal Register** its Privacy Act final rule for PVS. See 74 FR 9 (January 2, 2009).

USAID conducts vetting in accordance with HSPD-6 and HSPD-11, focusing on "individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism." Consequently, USAID defines individuals or entities with "affiliations" or "linkages" to terrorism



as “individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.”

USAID appreciates the concerns of its partners and, in order to help address potential concerns regarding the application of vetting criteria, is incorporating an administrative appeal process during which applicants can request that the Agency reconsider an ineligibility determination and submit any relevant documentation.

#### *Timing of Vetting*

Comment: USAID should require PIFs from only “apparently successful” applicants [as opposed to awardees], similar to the requirements for providing a Branding and Marking Plan as outlined in 22 CFR 226.91 (much more efficient and less burdensome). Requiring vetting at the applicant stage vastly increases the administrative burden on NGOs and the invasion of privacy of key individuals in the applicant organizations.

Response: USAID appreciates the concern expressed in comments about the most appropriate time in the award cycle to require submission of the PIF. As stated in the NPRM, “When USAID determines an award to be subject to vetting, the agreement officer determines the appropriate stage of the award cycle to require applicants to submit the completed USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in the assistance solicitation. The agreement officer must specify in the assistance solicitation the stage at which the applicants will be required to submit the USAID Partner Information Form, USAID Form 500–13.” We have carefully weighed the need to allow as much time as possible for vetting against the burden on applicants and USAID staff. The rule provides that as a general matter those applicants who will be vetted typically will be the applicants that have been determined to be apparently successful. We envision that, to the extent practicable, the selection and award process will occur concurrently with vetting. That said, the Rule provides Agreement Officers with discretion to require applicants to submit the Partner Information Form at a different stage of the award cycle.

This pilot will implement PVS in five countries with varying levels of risk. The pilot will help the Agency determine resource requirements, as well as test the RBA, and other aspects of the PVS vetting process such as the point in time in the award cycle in which vetting takes place.

#### *Exemptions to Vetting Requirements*

Comment: PVS should include a formal system for exempting vetting for special circumstances. [We recommend] a formal waiver system that provides express guidance on the circumstances that warrant special review and clear deadlines for both NGOs to request a review and USAID to provide a response. Waiving vetting on an ad hoc basis would result in inconsistencies and delays in program implementation. Clear language on the circumstances or types of programs exempted is critical.

Recommendations include clarifying in the rule that the following are exempt from vetting (1) humanitarian emergencies; (2) democracy and governance programs; (3) in cases where compliance with vetting would conflict with a nation’s privacy and data protection laws; (4) grants-under-contract; (5) subrecipients and vendors of commercial items; (6) beneficiaries, U.S. citizens, and permanent legal residents.] Regulatory precedence for exemption includes 2 CFR 700.16 (Branding and Marking) and 2 CFR 25.110 (Reporting under Federal Funding and Accountability Act). USAID should ensure that the term “key individual” does not include beneficiaries of the programs or activities funded under the award. The SACFO FY2014 report notes that “there should also be a provision for waiving the vetting requirements to prevent delaying responding to humanitarian crises.”

Response: Commenters recommended including a number of specific exemptions from vetting requirements and requested greater clarity regarding accommodations that might be made to standardize vetting procedures in special circumstances. USAID appreciates the concerns of its partners regarding consistency and expediency in program implementation and has taken partner concerns into account during the Agency’s guidance and protocol development process. USAID retains the discretion to address emergency or unique situations on a case-by-case basis when a vetting requirement would impede USAID’s ability to respond to an emergency situation. For example, it is USAID’s intention that vetting will not prevent the immediate delivery of goods and services in a humanitarian crisis. Following stabilization, vetting may occur on a case-by-case basis. Further adjustments to policies and procedures are possible during implementation of the PVS pilot as appropriate.

#### *Vendor Contracts/Services and Procurements*

Comment: What types of vendor contracts or services would be subject to vetting?

Vendors and procurements do not fall under the definition of key individuals and should be removed from vetting. Inclusion of vendors in the vetting process would be unwieldy and in contradiction to 22 CFR 226.43.

Response: Organizations sought further clarification on the types of contracts or services that would be subject to vetting. One recommended that contracts below the simplified threshold of \$150,000 and beneficiaries be exempt from vetting. In general, most suppliers (e.g., commercial suppliers or contractors) will not be subject to vetting. However, in certain circumstances, USAID may determine that key individuals of a contractor are subject to vetting. This is consistent with the requirements of the subpart “Procurement Standards” of 2 CFR 200 where USAID has determined that contracts for services are subject to vetting since in those cases vetting will be a requirement that the bidder or offeror must fulfill to be eligible for an award. Beneficiaries will generally not be vetted unless they are receiving scholarships, training, cash, or in-kind assistance.

#### *Determination of Successful and Unsuccessful Applicants*

Comment: The rule should stipulate that an AO should not be able to pass on making an award to a candidate until confirmation is received from the vetting official that the candidate has passed vetting. One organization recommended that the rule specify that no applicants be excluded from an award until after vetting has been completed.

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

Although the selection process for award proceeds separately from the vetting process, USAID agrees that excluding an applicant from consideration for award prior to a vetting determination would not be appropriate. When an applicant is subject to vetting, the Agreement Officer will be directed not to make a determination regarding the inclusion or exclusion of the applicant from award until after the vetting process is complete.

#### *Ineligible Determinations*

Comment: Please clarify the repercussions of failing the vetting

process. What actions, apart from denying the award, would USAID take? Would these actions involve other federal agencies, and if so, which ones? How would the applicant organization and the specific individual be notified of any actions? Would these actions result in an investigation by another federal agency?

Response: USAID was asked to clarify the repercussions of failing the vetting process, including actions that USAID would take, potential actions taken by other federal agencies, and details on how the applying organization and the key individual(s) would be notified of the ineligible determination.

Under the PVS pilot, the vetting official will notify applicants who are determined to be ineligible for award based on vetting. It is the responsibility of the AO to notify applicants of the award decision. Only applicants who are deemed ineligible as a result of the vetting process may receive an award. In the event that an ineligible determination has been made, USAID may consult with other U.S. government agencies and share terrorism information per Executive Order 13388. Information shared will be used to update existing records in order to protect U.S. citizens and U.S. national security interests.

#### *Re-Vetting*

Comment: We are concerned that U.S.-based international organizations that receive multiple awards in a year will be vetted for each award as well as annually (if multi-year awards) for each award. Internal processes would also have to be established to collect, compile, and safeguard PII for submission. The requirement that PIFs be collected annually was struck from the final PVS acquisitions rule, and it should be removed from the assistance rule as well.

Comment: We recommend removing the requirement for annual re-vetting or re-vetting upon change of key individuals. Perhaps allow the AO the ability to request re-vetting on a case-by-case basis without making it an automatic requirement for all implementing partners.

Comment: The frequency of re-vetting is unclear. The proposed rule makes no mention of duration or validity of a vetting approval, including when a cleared grantee must be re-vetted (assuming there are no changes to key individuals).

Response: Some organizations expressed concern that if they receive multiple awards that each of those awards would be subject to vetting. Additionally, they noted that USAID's

requirement for annual re-vetting or re-vetting upon change of key individuals would be burdensome. Another organization requested more clarity on when re-vetting would occur. USAID has amended the rule to remove annual submittal of the PIF as a requirement. Recipients will still be required to submit the PIF any time key individuals change and before issuance of covered subawards, but will not be required to resubmit the form annually if no information has changed or expired. Instead, USAID will conduct post-award vetting based on the latest available submittal.

#### *Reconsideration Process*

Comment: The process for appealing a positive match should be strengthened and clarified. The [reconsideration] period is too short for the reasonable preparation of a written determination. [A couple of organizations recommended specific timeframes for applicants to provide supplementary information to appeal the positive match, ranging from 14 to 21 days.] Moreover, USAID is not required to disclose the reason for the denial, and there is no requirement that the party evaluating the redetermination request be different from the party making the initial determination. Reconsideration procedures should be more open and accountable, and USAID should include a complete and meaningful description of the vetting failure to allow an applicant to adequately rebut any allegations.

Response: Commenters requested that USAID make certain changes to the reconsideration process in the event of a determination of ineligibility due to vetting concerns. Specifically, commenters asked that USAID provide more detail when denying an award due to vetting concerns, extend the seven-day period provided for appeal, and require that the Agency official evaluating an appeal be different from the Agency official that made an initial determination of ineligibility.

Organizations will be given a reason for denial of an award due to vetting, with a reasonable amount of detail given the nature and source of the information that led to the decision, and they will be allowed to challenge the decision as provided in the proposed rule. The amount of information provided to a denied applicant will depend on the sensitivity of the information, including whether the information is classified and whether its release would compromise investigative or operational interests. USAID cannot disclose classified material or compromise national security. Upon receipt of a

request for reconsideration, the Agency will also consider any additional information provided by the applicant.

USAID has determined that a seven-day reconsideration period is appropriate given the need to ensure that USAID funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists, while also minimizing the impact on USAID programs and its implementing partners. The seven-day reconsideration period is consistent with the reconsideration period provided for in the PVS pilot program for USAID acquisition awards. See 77 FR 8166 (February 14, 2012).

During the PVS pilot, USAID currently plans to elevate reconsideration of any eligibility determinations to senior policy makers within the Agency.

USAID recognizes the value of meaningful reconsideration procedures and is in the process of further defining internal policies regarding such procedures. Because the pilot is intended to help further refine and adjust PVS, USAID will continue to evaluate the efficacy of its reconsideration procedures as part of its assessment of the PVS pilot program.

#### *Definition of Key Individual*

Comment: The definition of "key individual" is too vague/very broad and the decision as to who should be vetted is left up to the AO. Does the definition of key individuals include both U.S. and non-U.S. citizens? The definition should be limited, and there should be a cap on the number of key individuals to be vetted. One commenter recommended that vetting be limited to key personnel as identified by the applicant in its proposal, in accordance with the definition typically used by USG agencies.

Response: Several organizations commented that the definition of key individual is too vague. The rule provides that, for purposes of partner vetting, "key individual" means the principal officer of the organization's governing body (for example, chairman, vice chairman, treasurer, or secretary of the board of directors or board of trustees); the principal officer and deputy principal officer of the organization (for example, executive director, deputy director, president, or vice president); the program manager or chief of party for the U.S. Government-financed program; and any other person with significant responsibilities for administration of the U.S. Government-financed activities or resources, such as key personnel as identified in the

solicitation or resulting cooperative agreement. The definition applies to both U.S. citizens and non-U.S. citizens. Key personnel, whether or not they are employees of the prime recipient, must be vetted.

Limiting vetting to key personnel would be inadequate for vetting purposes. The rule uses the term “key individual” to describe those individuals with an ability or potential ability to divert funds. The term “key personnel” designates only those individuals that are essential to the successful implementation of the program under the award and does not necessarily include all individuals with an ability or potential ability to divert funds. The use of the term “key individual” as defined above serves a different purpose than “key personnel” and is essential for USAID to address the potential diversion of funds under PVS.

Comment: The AIDAR does not separately define “key personnel” but subsumes that term under the term “key individual.” In addition, the AIDAR requires the automatic vetting of all subcontractors for which consent is required under FAR 52.255–2 while the assistance rule grants the AO wide discretion in applying vetting procedures to subrecipients or others.

Response: USAID received a comment that the AIDAR does not define the term “key personnel” and that the AIDAR requires vetting of subcontractors for which consent is required under FAR 52.255–2, versus the PVS Assistance Rule, which gives the AO wide discretion in applying vetting procedures to subrecipients and other entities.

The rules for vetting under assistance and vetting under acquisition are not and cannot be identical because of the fundamental difference between acquisition and assistance and the differing rules and requirements that result from this. Neither the AIDAR nor the Federal Acquisition Regulation is applicable to Federal assistance.

The term “key personnel” is defined for assistance in USAID’s Automated Directive System. The term “key individual” is defined in this rule, since it is applicable to partner vetting. The terms “key individual” and “key personnel” are not synonymous. However, all key personnel are considered key individuals for the purpose of vetting.

Similarly, subawards and the approval of subawards under assistance differ fundamentally from subcontracts and subcontract consent under acquisition. Because of these differences, the decision to vet

subawards or not is based on the results of the RBA, which will assess whether the vetting of a subaward under a particular program is merited.

When USAID determines that the results of the RBA merit vetting subrecipients, USAID will require vetting at the time of the initial award and when the recipient makes new subawards during the grant period.

#### *Definition of Subaward*

Comment: The definition of “subaward” needs clarification, particularly on how it differs from vendors.

Response: Organizations requested that USAID clarify the definition of “subaward.” Subaward is defined at 2 CFR part 200.92 as “an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.” The term “vendor” is replaced by the term “Contractor” in 2 CFR 200. “Contract” is defined at 2 CFR 200.22, and “Contractor” is identified at 2 CFR 200.23.

#### *Burden on Applicants*

Comment: The administrative burden estimates are too low (e.g., significant additional operational burdens for contractors implementing grants-under-contracts, replacement of key individuals, completion of the form, and staffing and recordkeeping costs). The paperwork burden and cost estimates should be recalculated based on more accurate assumptions to better reflect the true incremental cost of vetting.

Comment: The paperwork burden and cost estimates are based on estimated pilot costs, but the proposed amendments to 22 CFR 226 do not limit the application of the new rules to the pilot only, so the estimates should reflect the comparable cost of implementing PVS worldwide.

Response: Commenters expressed concern that USAID’s burden estimate of the proposed collection of information for PVS was inaccurate and did not reflect the actual administrative and operational burdens that would be imposed on organizations applying for awards.

USAID addressed similar comments in publishing its final rule exempting portions of its system of records (Partner Vetting System, or PVS) from one or

more provisions of the Privacy Act. See 74 FR 9 (January 2, 2009). USAID’s cost estimates are based in part on the Agency’s existing vetting programs and are meant to serve as a baseline for the upcoming pilot program. Accordingly, our cost estimate references costs anticipated to be incurred during the pilot.

In addition to having established a secure portal to streamline the vetting process and reduce the burden on implementing partners and Agency personnel, USAID will continue to review policies and procedures to determine how to further mitigate the operational and administrative costs for the pilot while achieving its objectives. Furthermore, the pilot will allow the Agency to get a better sense of the burden on our implementing partners and to determine what PVS will cost USAID in terms of dollars and personnel hours. As part of the pilot, USAID will monitor the impact of PVS on our implementing partners. USAID also intends to request input from implementing partners on costs incurred during the pilot so that these costs may be considered in our evaluation of the pilot.

#### *Comments on the Pilot Evaluation*

Comment: USAID should put forth specific evaluation criteria for the pilot [before the program begins]. How would USAID measure the burden on recipients and ascertain any negative impacts on program implementation and/or achievement of foreign assistance objectives? Will the evaluation consider factors like (1) the number of NGOs that refuse to apply for or to accept USAID funding due to vetting requirements, or the number and quality of bids for direct assistance awards and subcontracts in pilot countries; (2) number of NGOs that alter program implementation due to the pilot; (3) impact on the safety and effectiveness of NGOs and their local and national partners (bad press coverage, threats to staff, effect on local and national NGO staff retention rates, etc.); (4) number of individuals and NGOs erroneously identified as being involved in terrorism; and (5) summary of any legal risks NGOs faced due to compliance with the pilot program. We request that the evaluation process include substantive engagement with NGOs to help assess the value and success of the pilot and that the evaluation be made publicly available.

Response: Some organizations sought further information on evaluation criteria for the PVS pilot program and requested that USAID engage with them to help assess the pilot.

Consistent with our ongoing consultations with implementing partners, USAID will continue outreach with our partners to assess the impact of the pilot program. During pilot implementation, we will solicit feedback from partners participating in the pilot on the extent to which the pilot has impacted their ability (and that of their local and national partner organizations) to achieve U.S. foreign assistance objectives and to implement USAID-funded programs and activities efficiently and effectively.

As part of our pilot evaluation, we will assess partner feedback along with data collected from the Agency's Office of Security and pilot Missions to increase our understanding of the resource implications and costs related to the pilot in order to inform the Agency's way forward on partner vetting. USAID intends to include feedback from our implementing partners in the Agency's final evaluation report.

#### *Post-Pilot*

**Comment:** Implementation of the pilot should not be codified into CFR 226 until after the evaluation has been completed with implementation details modified in line with evaluation results. USAID should delay further rulemaking on PVS until the pilot program is completed.

**Response:** One organization recommended that the rule not be codified until evaluation of the pilot has been completed so that the rule can be modified according to the results of the pilot evaluation. USAID initiated informal rulemaking prior to implementation of the pilot program to give interested parties the opportunity to comment and provide feedback on the rule, since the pilot will impact our foreign assistance programs and activities and the organizations selected to implement them. USAID determined that rulemaking was the best approach to ensure that the widest range of views was considered in the design, implementation, and evaluation of the PVS pilot program.

### **E. Impact Assessment**

#### *Regulatory Planning and Review*

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

USAID has determined that this Rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O. 12866. The application of the

Partner Vetting System to USAID assistance will not have an economic impact of \$100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. However, as this rule is a "significant regulatory action" under Section 3(f)(4) of the E.O., USAID submitted it to OMB for review. We have also reviewed these regulations pursuant to Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866.

This regulatory action is needed for USAID to meet its fiduciary responsibilities by helping to ensure that agency funds and other resources do not inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. NGOs will provide information on key individuals when applying for USAID grants or cooperative agreements. This information will be used to screen potential recipients and key individuals. The screening will help ensure that funds are not diverted to individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. The final benefit to the public will be the increased assurance that Federal funds will not inadvertently provide support to entities or individuals associated with terrorism.

Although the primary benefit of vetting will be to prevent the diversion of USAID funds, implementing partners will benefit when their subrecipients have also been vetted and the prime recipient is working with legitimate organizations. In addition, as the vetting program becomes better known in the community, it will deter organizations associated with terrorism from applying for assistance funds.

Based on the average number of applications for USAID's assistance awards in 2009, 2010, and 2011, USAID estimates that 10,120 applicants prepare assistance award applications in a given year. Based on feedback from our implementing partners and on our experience implementing vetting programs to date, we estimate that the additional requirements for Partner Vetting will add 75 minutes to each application. We calculated this burden estimate under the assumptions that the average form submitted will include information on three key individuals and that it would take approximately 75 minutes to gather the necessary information, complete the form, submit the form to USAID, and respond to requests by USAID for additional

information, if necessary. In the event that the applicant elects direct vetting, this burden estimate includes the amount of time for applicants to inform proposed sub-grantees of their responsibility to complete and submit the form and for those proposed sub-grantees to complete and submit the form to USAID. The burden estimate also includes the time required for an applicant or proposed sub-grantee to provide additional vetting information on new key individuals or new sub-grantees. We recognize that this burden estimate may overestimate the amount of time required to comply with vetting requirements. As USAID continues to implement its vetting programs and obtains more data from those participating in the vetting process, we may adjust the burden estimate accordingly.

USAID estimates the cost of partner vetting per submission to be \$40.93. This amount is based on the mean hourly wage of an administrative support employee, as calculated by the U.S. Department of Labor, Bureau of Labor Statistics, multiplied by the time required for the administrative support employee to collect the information, complete the form, submit the form to USAID, and follow up with USAID on information related to the form (hourly wage rate of \$32.74, multiplied by 75 minutes per form, divided by 60 minutes). USAID estimates the impact of partner vetting on implementing partners from completing additional paperwork to be \$414,212 annually (\$40.93 per application \* 10,120 submissions). USAID would like to emphasize, however, that this estimate was calculated under the assumption that all applicants applying for USAID assistance awards are vetted, whereas only a portion of the Agency's awards are impacted by partner vetting. No start-up, capital, operation, maintenance, or recordkeeping costs to applicants are anticipated as a result of this collection.

We estimate USAID's direct labor cost to process assistance applications for the partner vetting pilot program to be \$391,810 annually. This estimate is based on labor costs for four GS-13 positions (\$147,680 annually for each position) in the Office of Security (SEC), five GS-13 vetting officials (\$147,680 annually for each position), and five foreign service nationals (\$74,880 annually for each position). USAID estimates that these positions will expend approximately 23 percent of their total annual hours on the assistance portion of the partner vetting pilot program. One of the goals of the partner vetting pilot program is to

further understand the actual costs of implementing partner vetting in various environments. While the figures above reflect USAID's best estimates of government costs to implement the pilot program for assistance, the actual figures may be different. The pilot program will be used to inform our estimates of the costs of partner vetting in various environments.

USAID has not quantified other costs associated with this rule, such as indirect costs to organizations participating in our vetting programs. We have invited implementing partners on an ongoing basis to provide feedback on issues related to partner vetting, and their perspectives will be included in our evaluation of the pilot program.

#### *Regulatory Flexibility Act*

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

The proposed regulations would add the requirement for partner vetting of key individuals for applicants of USAID-funded assistance awards into the existing partner vetting system. USAID estimates that completing an assistance application in response to a Request For Application takes 200 hours. USAID considers the additional 75 minute burden on applicants as de minimis and that this does not significantly increase the burden on grant applicants.

#### *Paperwork Reduction Act*

2 CFR 701 uses information collected via USAID Partner Information Form, USAID Form 500–13, which was approved in accordance with 44 U.S.C. 3501 by the Office of Management and Budget on July 25, 2012 (OMB Control Number 0412–0577).

#### **List of Subjects in 22 CFR 701**

Foreign aid, Federal assistance, Non-federal entity, Foreign organization, Subrecipient, Contractor.

#### *Regulatory Text*

For the reasons stated in the preamble, part 701 of title 2, chapter VII of the Code of Federal Regulations is added to read as follows:

### **PART 701—PARTNER VETTING IN USAID ASSISTANCE**

- Sec.  
701.1 Definitions.  
701.2 Applicability.  
701.3 Partner vetting.

Appendix B to Part 701—Partner Vetting Pre-Award Requirements and Award Term.

**Authority:** 22 U.S.C. 2251 *et seq.*; 22 U.S.C. 2151t, 22 U.S.C. 2151a, 2151b, 2151c, and 2151d; 22 U.S.C. 2395(b).

#### **§ 701.1 Definitions.**

This section contains the definitions for terms used in this part. Other terms used in the part are defined at 2 CFR part 200. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

*Key individual* means the principal officer of the organization's governing body (for example, chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees); the principal officer and deputy principal officer of the organization (for example, executive director, deputy director, president, vice president); the program manager or chief of party for the USG-financed program; and any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as identified in the solicitation or resulting cooperative agreement. Key personnel, whether or not they are employees of the prime recipient, must be vetted.

*Key personnel* means those individuals identified for approval as part of substantial involvement in a cooperative agreement whose positions are essential to the successful implementation of an award. *Vetting official* means the USAID employee identified in the application or award as having responsibility for receiving vetting information, responding to questions about information to be included on the Partner Information Form, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each applicant, potential subrecipients and contractors subject to vetting, and the agreement officer. The vetting official is not part of the office making the award selection and has no involvement in the selection process.

#### **§ 701.2 Applicability.**

The requirements established in this part apply to non-Federal entities, non-profit organizations, for-profit entities, and foreign organizations.

#### **§ 701.3 Partner vetting.**

(a) It is USAID policy that USAID may determine that a particular award is subject to vetting in the interest of national security. In that case, USAID may require vetting of the key individuals of applicants, including key personnel, whether or not they are

employees of the applicant, first tier subrecipients, contractors, and any other class of subawards and procurements as identified in the assistance solicitation and resulting award. When USAID conducts partner vetting, it will not award to any applicant who determined ineligible by the vetting process.

(b) When USAID determines an award to be subject to vetting, the agreement officer determines the appropriate stage of the award cycle to require applicants to submit the completed USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in the assistance solicitation. The agreement officer must specify in the assistance solicitation the stage at which the applicants will be required to submit the USAID Partner Information Form, USAID Form 500–13. As a general matter those applicants who will be vetted will be typically the applicants that have been determined to be apparently successful.

(c) Selection of the successful applicant proceeds separately from vetting. The agreement officer makes the selection determination separately from the vetting process and without knowledge of vetting-related information other than that, based on the vetting results, the apparently successful applicant is eligible or ineligible for an award. However, no applicants will be excluded from an award until after vetting has been completed.

(d) For those awards the agency has determined are subject to vetting, the agreement officer may only award to an applicant that has been determined to be eligible after completion of the vetting process.

(e)(1) For those awards the agency has determined are subject to vetting, the recipient must submit the completed USAID Partner Information Form any time it changes:

- (i) Key individuals; or
- (ii) Subrecipients and contractors for which vetting is required.

(2) The recipient must submit the completed Partner Information Form within 15 days of the change in either paragraph (e)(1)(i) or (ii) of this section.

(f) USAID may vet key individuals of the recipient, subrecipients and contractors periodically during program implementation using information already submitted on the Form.

(g) When the prime recipient is subject to vetting, vetting may be required for key individuals of subawards when the prime recipient requests prior approval in accordance with 2 CFR 200.308(c)(6) for the

subaward, transfer, or contracting out of any work.

(h) When the prime recipient is subject to vetting, vetting may be required for key individuals of contractors of certain services. The agreement officer must identify these services in the assistance solicitation and any resulting award.

(i) When vetting of subawards is required, the agreement officer must not approve the subaward, transfer, or contracting out, or the procurement of certain classes of items until the organization subject to vetting has been determined eligible. When vetting of contractors is required, the recipient may not procure the identified services until the contractor has been determined to be eligible.

(j) The recipient may instruct prospective subrecipients or, when applicable contractors who are subject to vetting to submit the USAID Partner Information Form to the vetting official as soon as the recipient submits the USAID Partner Information Form for its key individuals.

(k) Pre-award provision and award term.

(1) The agreement officer must insert the pre-award provision Partner Vetting Pre-Award Requirements in Appendix B of this part in all assistance solicitations USAID identifies as subject to vetting.

(2) The agreement officer must insert the award term Partner Vetting in Appendix B in all assistance solicitations and awards USAID identifies as subject to vetting.

### Appendix B to Part 701—Partner Vetting Pre-Award Requirements and Award Term

#### Partner Vetting Pre-Award Requirements

(a) USAID has determined that any award resulting from this assistance solicitation is subject to vetting. An applicant that has not passed vetting is ineligible for award.

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

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

(2) The agreement officer notifies the applicant when to submit the USAID Partner Information Form. For this solicitation, USAID will vet [insert in the provision the applicable stage of the selection process at which the Agreement Officer will notify the applicant(s) who must be vetted]. Within the timeframe set by the agreement officer in the notification, the applicant must complete and submit the USAID Partner Information Form to the vetting official. The designated vetting official is:

Vetting official: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

(for inquiries only).

(3) The applicants must notify proposed subrecipients and contractors of this requirement when the subrecipients or contractors are subject to vetting.

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

(c) Selection proceeds separately from vetting. Vetting is conducted independently from any discussions the agreement officer may have with an applicant. The applicant and any proposed subrecipient or contractor subject to vetting must not provide vetting information to anyone other than the vetting official. The applicant and any proposed subrecipient or contractor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the agreement officer or the agreement officer's representatives. The agreement officer designates the vetting official as the only individual authorized to clarify the applicant's and proposed subrecipient's and contractor's vetting information.

(d)(1) The vetting official notifies the applicant that it: (i) Is eligible based on the vetting results, (ii) is ineligible based on the vetting results, or (iii) must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(2) The vetting official will coordinate with the agency that provided the data being used for vetting prior to notifying the applicant or releasing any information. In any determination for release of information, the classification and sensitivity of the information, the need to protect sources and methods, and the status of ongoing law enforcement and intelligence community investigations or operations will be taken into consideration.

(e) Reconsideration: (1) Within 7 calendar days after the date of the vetting official's notification, an applicant that vetting has determined to be ineligible may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

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

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

(f) Revisions to vetting information: (1) Applicants who change key individuals, whether the applicant has previously been determined eligible or not, must submit a revised USAID Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical portion of the application.

(2) The vetting official will follow the vetting process of this provision for any revision of the applicant's Form.

(g) Award. At the time of award, the agreement officer will confirm with the vetting official that the apparently successful applicant is eligible after vetting. The agreement officer may award only to an apparently successful applicant that is eligible after vetting.

#### Partner Vetting

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

(b) Definitions: As used in this provision, "key individual," "key personnel," and "vetting official" have the meaning contained in 22 CFR 701.1.

(c) The Recipient must submit within 15 days a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified below when the Recipient replaces key individuals with individuals who have not been previously vetted for this award. Note: USAID will not approve any key personnel who are not eligible for approval after vetting. The designated vetting official is:

Vetting official: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

(for inquiries only).

(d)(1) The vetting official will notify the Recipient that it—

(i) Is eligible based on the vetting results, (ii) Is ineligible based on the vetting results, or

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

(2) The vetting official will include information that USAID determines releasable. USAID will determine what information may be released consistent with applicable law and Executive Orders, and with the concurrence of relevant agencies.

(e) The inability to be deemed eligible as described in this award term may be determined to be a material failure to comply with the terms and conditions of the award and may subject the recipient to suspension or termination as specified in the subpart "Remedies for Noncompliance" at 2 CFR part 200.

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

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

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

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

Alternate I. When subrecipients will be subject to vetting, add the following paragraphs to the basic award term:

(h) When the prime recipient anticipates that it will require prior approval for a subaward in accordance with 2 CFR 200.308(c)(6) the subaward is subject to vetting. The prospective subrecipient must submit a USAID Partner Information Form, USAID Form 500-13, to the vetting official identified in paragraph (c) of this provision. The agreement officer must not approve a subaward to any organization that has not passed vetting when required.

(i) The recipient agrees to incorporate the substance of paragraphs (a) through (i) of this award term in all first tier subawards under this award.

Alternate II. When specific classes of services are subject to vetting, add the following paragraph:

(j) Prospective contractors at any tier providing the following classes of services

---

must pass vetting. Recipients must not procure these services until they receive confirmation from the vetting official that the prospective contractor has passed vetting. (End of award term)

**Angelique M. Crumbly,**

*Assistant Administrator, Bureau for Management.*

[FR Doc. 2015-15017 Filed 6-25-15; 8:45 am]

**BILLING CODE 6116-02-P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-1986; Directorate Identifier 2012-NM-100-AD; Amendment 39-18188; AD 2015-13-01]

RIN 2120-AA64

#### **Airworthiness Directives; ATR-GIE Avions de Transport Régional Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain ATR-GIE Avions de Transport Régional Model ATR42-500 and ATR72-212A airplanes. This AD requires inspection of the affected control systems rods and, depending on findings, a replacement of the affected rods. This AD was prompted by reports of non-conformity of certain control rods, which could

result in failure of the control rods. We are issuing this AD to detect and correct failure of an affected control rod, which, under certain circumstances, could result in reduced control of the airplane.

**DATES:** This AD becomes effective July 13, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 13, 2015.

We must receive comments on this AD by August 10, 2015.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact ATR-GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email [continued.airworthiness@atr.fr](mailto:continued.airworthiness@atr.fr); Internet <http://www.aerochain.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1986.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1986; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2012-0064, dated April 20, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for Model ATR42-500 and ATR72-212A airplanes. The MCAI states:

Prompted by the findings that led to publication of EASA AD 2010-0063-E, additional quality investigation showed that the non-conformity of certain control rods, which was due to incorrect polishing during the rod manufacturing process, could also affect other flight control rods [and could result in failure of the control rods].

These other potentially non-conforming control rods are installed on elevator controls, rudder pedal assemblies and rudder tab controls of certain ATR aeroplanes.

This condition, if not detected and corrected, could lead to failure of an affected control rod which, under certain circumstances, could result in reduced control of the aeroplane.

As a result of further investigations, other batches have been incriminated, in addition to the ones identified by EASA AD 2010-0063-E, and new safety analyses also indicate the need for replacement of the rods (within an adapted compliance time), which had passed the check required by EASA AD 2010-0063-E. Consequently, EASA AD 2010-0063-E is superseded by this new AD.

For the reasons described above, this [EASA] AD requires a one-time inspection of the affected control systems rods and, depending on findings, replacement of the affected rods.

You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1986.

#### **Related Service Information Under 14 CFR Part 51**

ATR-GIE Avions de Transport Régional (ATR) has issued the following service information.

- ATR Service Bulletin ATR42-27-0104, Revision 01, dated August 30, 2011.
- ATR Service Bulletin ATR42-27-0105, Revision 01, dated August 30, 2011.
- ATR Service Bulletin ATR72-27-1065, Revision 02, dated August 30, 2011.