

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-19877 Filed 8-5-96; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 96-154, RM-8834]

Radio Broadcasting Services; Wynnwood, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bea Kimbrough seeking the allotment of Channel 291A to Wynnwood, OK, as the community's first local aural transmission service. Channel 291A can be allotted to Wynnwood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34-38-42 North Latitude and 97-10-00 West Longitude.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bea Kimbrough, 9400 Wonga, Midwest City, OK 73130 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-154, adopted July 19, 1996, and

released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-19875 Filed 8-5-96; 8:45 am]

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47 CFR Part 73

[MM Docket No. 96-155; RM-8828]

Radio Broadcasting Services; Keaau, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Deborah Takehiro Ombac seeking the allotment of FM Channel 286C2 to Keaau, Hawaii, as that community's first local aural transmission service. Coordinates utilized for this proposal are 19-37-30 and 155-02-24.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Deborah Takehiro Ombac, 620 Awa St., Hilo, HI 96720.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-155, adopted July 19, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-19878 Filed 8-5-96; 8:45 am]

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DEPARTMENT OF ENERGY

48 CFR Parts 909, 952, and 970

RIN 1991-AB26

Acquisition Regulation; Revisions to Organizational Conflicts of Interest

AGENCY: Office of Procurement and Assistance Management, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes today to amend its Acquisition Regulation to effect changes to its Organizational Conflicts of Interest policies as a result of the repeal of the two statutory provisions upon which DOE's system for treating organizational conflicts of interest was based.

DATES: Written comments (three copies) must be submitted no later than October 7, 1996.

ADDRESSES: Comments should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, Office of Policy, HR-51, Room 8H-023, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C., 20585, (202)586-8264.

Edward Lovett, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202)586-8614.

SUPPLEMENTARY INFORMATION:

I. Background.

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I. Background

Subsections (b)(2) and (5) of section 4304 of the Federal Acquisition Reform Act of 1996 (FARA), Pub. L. 104-106, repealed section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789) and section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918). These two statutory provisions provided the basis for the Department of Energy organizational conflict of interest (OCI) regulation that is codified at 48 CFR Subpart 909.5. As a result of the repeal of the underlying statutes, the Department has re-examined the OCI systems established in the Department of Energy Acquisition Regulation (DEAR) and the Federal Acquisition Regulation (FAR) and proposes to implement and supplement the current

FAR provisions in the manner described below. The OCI system refinements proposed in this regulation are intended to address concerns that the agency has identified based on more than a decade of experience under the OCI system described in the DEAR. To facilitate understanding of the revisions that the Department is proposing, the following text not only describes how the Department's regulation builds on the OCI system provided in the FAR, but also explains how it differs from the DOE OCI system currently found in the DEAR.

II. Discussion

A. Types of Contracts Subject to OCI Treatment

The FAR OCI system applies to advisory and assistance services and to consultants. This regulation proposes no change in the FAR provisions that define the scope of coverage of the OCI regulations. Although the OCI system currently described in the DEAR applies to evaluation services and technical consulting and management support services, the Department believes that the FAR definition of "advisory and assistance services" and the DOE definitions of "evaluation services" and "technical consulting and management support services" are essentially the same. The scope of coverage of the FAR regulation and the DOE supplement proposed in this rule, therefore, will be substantially the same as the OCI system currently found in the DEAR.

B. Dollar Threshold For Application

The OCI system described in the DEAR applies to covered contracts without regard to the dollar amount of the transaction. The FAR system applies to covered contracts in excess of the simplified acquisition threshold, currently \$100,000. The proposed DOE system also would apply to covered contracts and subcontracts in excess of the simplified acquisition threshold.

C. Disclosure of Interest

The solicitation provision currently found in DEAR section 952.209-70, Organizational Conflicts of Interest—Disclosure or Representation, requires all offerors to provide a concise statement of all relevant facts concerning past, present, or currently planned interests (financial, contractual, organizational, or otherwise) that relate to the work described in the statement of work. The DEAR provision extends this disclosure requirement to the offeror's affiliates, proposed consultants, and subcontractors of any tier. It also

places no time limit on the information that must be provided.

In contrast, the FAR, in solicitation provision 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, requires that the apparent successful offeror submit a certificate that, among other things, describes services rendered to the Government or other clients, during the 12 months preceding the date of the certification, with respect, or directly related, to the same subject matter as the solicitation in question. The FAR provision allows the head of the contracting activity to extend the period subject to the reporting requirement to up to 36 months. The offeror's affiliates, proposed consultants, and subcontractors are not subject to the reporting requirement.

The approach to disclosure of information proposed in this rule is based on the approach provided in section 52.209-8 of the FAR. Like the FAR, the proposed rule would require that only the apparent successful offeror disclose information related to organizational conflicts of interest and would not require disclosure from affiliates. The proposed rule provides, however, that any consultants or subcontractors identified as part of the team proposed by the offeror also would be subject to the disclosure requirement. The proposed rule also adopts the twelve to thirty-six month time period of the FAR for disclosure of information. Finally, the proposed rule clarifies and somewhat expands the categories of information that would be subject to disclosure to include all relevant information concerning any past, present, or currently planned interest (financial, contractual, organizational, or other information) related to the work described in the statement of work. These refinements of the language provided in the FAR will help ensure that all information relevant to an organizational conflict of interest review is available to the Department when it conducts its evaluation of the apparent successful offeror and any identified subcontractors and consultants.

The proposed solicitation provision also eliminates the certification requirement. The Department believes that this approach is consistent with section 4301 of the FARA which requires agencies to eliminate certification requirements that are not required by statute. The new provision will require only a disclosure by the apparent successful offeror. This approach is predicated on anticipated changes to the FAR solicitation provision. The Department, however, will review the certification issue if the

FAR adopts a different approach to addressing this matter.

D. Contract Clause

In section 9.507-2, Contract Clause, the FAR recognizes that there may be instances where, as a condition of award, the contractor's eligibility for future prime contracts should be restricted or the contractor must agree to some other restraint. The FAR further provides that the solicitation is to contain a proposed clause that specifies both the nature and duration of the proposed restraint and that the contracting officer is to include this clause in the contract. The FAR provides no model for this clause, but does recognize that, when appropriate, the contracting officer may negotiate the final terms of this clause with the successful offeror. The FAR also states that the restraint imposed by the clause is to be limited to a fixed term of reasonable duration. The duration of the restraint must be specified in the clause and may vary from one contract to another.

This rule proposes to address this issue by providing a contract clause for inclusion in solicitations for advisory and assistance services and, ultimately, in the resulting contracts. This clause is modeled in many important respects on the organizational conflict of interest clause currently found in section 952.209-72 of the DEAR. The proposed clause differs, however, in a number of respects from the approaches found currently in the FAR and DEAR.

1. Coverage of Affiliates

While the FAR does not provide that affiliates of the successful contractor would be subject to any restraints on future activities, the clause currently found in the DEAR extends the restrictions described in that clause to affiliates of the contractors and their successors in interest. The proposed DEAR clause would continue to extend restraints on future activities to affiliates of the successful contractor.

Based on our experience in addressing organizational conflict of interest issues, the Department believes that this restriction on activities of affiliates is necessary for two reasons. First, it reduces the potential for bias in the contractor's work, by eliminating the possibility that a contractor's objectivity might be affected by the knowledge that a particular outcome might improve an affiliate's position in a competition stemming directly from performance of the contract. Second, it reduces the potential for an affiliate to obtain an unfair competitive advantage in future competitions, by ensuring that they are

unable to benefit from information obtained by the contractor during the course of performance and not otherwise available to the public.

2. Application to Subcontractors

The FAR does not require the restraints imposed on the successful contractor extend to subcontractors. The clause currently found in the DEAR provides that the restraints imposed by this clause are to flow down to subcontractors of any tier. The current DEAR clause further provides that the contracting officer must review the subcontractor's disclosure statement and may preclude award to a subcontractor if organizational conflict of interest issues cannot be resolved.

Under the proposed rule, all subcontracts for advisory and assistance services whose value exceeds the simplified acquisition threshold would be subject to the proposed contract clause. This is necessary because prime contractors may subcontract crucial areas of contract performance. However, in contrast to the system currently described in the DEAR, the contracting officer would no longer be responsible for reviewing and evaluating the organizational conflict of interest information. In the future, the prime contractor would be responsible for conducting the organizational conflict of interest review of the subcontractors that were not identified in, and evaluated as part of, the proposal submitted in response to the solicitation. These subcontractors, in turn, would be responsible for evaluating subcontractors that they propose to use. In the event that the prime contractor or any of the subcontractors identify an actual or significant potential organizational conflict of interest that cannot be avoided or neutralized, they would be required to obtain the approval of the contracting officer prior to entering into the subcontract.

3. Other Issues

The proposed clause would limit restrictions on future contracting to five years. This is in contrast to the clause currently found in the DEAR that places no time limit on the restrictions against future contracting. Also, the proposed rule permits the contracting officer to tailor the provisions of the clause to address the circumstances of each acquisition.

E. The OCI Determination

The OCI system described in the DEAR explicitly requires the DOE contracting officer to evaluate all relevant information concerning

possible organizational conflicts of interest prior to any award and to make a finding as to whether a possible organizational conflict of interest may exist with respect to a particular offeror. Consistent with applicable statutory requirements, the OCI regulation currently found in the DEAR provides that the contracting officer must determine whether the interests disclosed and information otherwise available present "little or no likelihood" of an organizational conflict of interest. If, by application of this standard, an organizational conflict of interest is found, then the contracting officer may take steps to avoid the conflict, disqualify the offeror from award, or, after another statutorily directed determination, award the contract in the face of the conflict.

The FAR does not explicitly require the contracting officer to evaluate the information submitted in the OCI certificate nor, to make a written determination regarding the potential for an organizational conflict of interest in all instances.

To clarify the responsibilities of the contracting officer, the proposed rule would require the contracting officer to make a written determination regarding the existence of an actual or significant potential organizational conflict of interest for each procurement subject to OCI requirements. If an actual or significant potential conflict exists, the contracting officer would be required to "avoid, neutralize, or mitigate" the conflict. If the conflict cannot be avoided, neutralized, or mitigated, the contracting officer may disqualify the offeror from award and begin the disclosure and evaluation process with the firm next in line for award.

F. Waiver

The OCI regulations currently contained in the DEAR do not provide for waiver of any portion of the OCI requirements. In order to award a contract in the face of an organizational conflict of interest, the Secretary or the Secretary's designee must determine that the award is in the best interests of the United States. The regulations further require that an appropriate written finding and determination be published in the Federal Register.

The FAR provides that "any general rule or procedure" of Subpart 9.5 may be waived by an official not lower than the Head of the Contracting Activity. Consistent with the FAR, the proposed rule delegates the FAR waiver authority to DOE Heads of Contracting Activities.

III. Public Comments

A. Consideration and Availability of Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

B. Public Hearing Determination

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule. However, should a sufficient number of people request a public hearing, the Department will reconsider its determination.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of

Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, that requires preparation of an initial regulatory flexibility analysis for any proposed rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule would likely ease any burden on small businesses associated with the organizational conflicts of interest system currently found in the DEAR. The proposal would limit application to contracts and subcontracts in excess of \$100,000, thereby not applying to transactions dominated by small businesses. The proposed system requires no special expertise and the disclosure requirements are limited to the apparently successful or those firms in the competitive range, as opposed to applying to all offerors. The obligation to disclose past interests, which the system currently found in the DEAR does not limit, has been limited from generally to the past twelve (12) months. On the basis of the foregoing, DOE

certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and, therefore, no initial regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the proposed amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this proposed rule. However, DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

List of Subjects in 48 CFR Parts 909, 952, and 970.

Government procurement.

Issued in Washington, D.C. on July 22, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486(c).

2. Subpart 909.5 is revised to read as set forth below:

Subpart 909.5—Organizational and Consultant Conflicts of Interest

909.503 Waiver.

909.504 Contracting officer's responsibility.

909.507 Solicitation provisions and contract clause.

909.507-1 Solicitation provisions.

909.507-2 Contract clause.

909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR (FAR) 9.503 regarding waiver of OCI requirements.

909.504 Contracting officer's responsibility. (DOE coverage—paragraphs (d) and (e))

(d) The contracting officer shall evaluate the statement by the apparent successful offeror or, where individual contracts are negotiated with all firms in the competitive range, all such firms for interests relating to a potential organizational conflict of interest in the performance of the proposed contract. Using that information and any other credible information, the contracting officer shall make a written determination of whether those interests create an actual or significant potential organizational conflict of interest and identify any actions that may be taken to avoid, neutralize, or mitigate such conflict. In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on organizational conflict of interest considerations, the contracting

officer shall notify the offeror, provide the reasons therefor, and allow the offeror a reasonable opportunity to respond. If the conflict cannot be avoided, neutralized, or mitigated to the contracting officer's satisfaction, the contracting officer may disqualify the offeror from award and undertake the disclosure and evaluation process with the firm next in line for award. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 48 CFR 909.503. The waiver request and decision shall be included in the contract file.

909.507 Solicitation provisions and contract clause.

909.507-1 Solicitation provisions. (DOE coverage—paragraph (c))

(c) The contracting officer shall insert the provision at 48 CFR 952.209-8, Organizational Conflicts of Interest Disclosure—Advisory and Assistance Services, in solicitations for advisory and assistance services expected to exceed the simplified acquisition threshold. In individual procurements, the Head of the Contracting Activity may increase the period subject to disclosure in paragraph (c)(4) up to 36 months.

909.507-2 Contract Clause.

Contracting Officers shall insert the clause at 48 CFR 952.209-72, Organizational Conflicts of Interest, in each contract for advisory and assistance services expected to exceed the simplified acquisition threshold. Contracting officers may make appropriate modifications where necessary to address the potential for organizational conflicts of interest in individual contracts.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. Subsection 952.209-8 is added as follows:

952.209-8 Organizational conflicts of interest—disclosure.

As prescribed in 48 CFR 909.507-1(c), insert the following provision:

Organizational Conflicts of Interest Disclosure—Advisory and Assistance Services (XXX 1996)

(a) Organizational conflict of interest means that because of other activities or

relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms. The requirements of this provision apply individually to any of the proposer's identified consultants or subcontractors that will also furnish advisory and assistance services in performance of this contract.

(c) The statement must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(5) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact

may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation. (End of provision)

952.209-70 [Removed]

5. Subsection 952.209-70 is removed.

6. Subsection 952.209-72 is revised to read as follows:

952.209-72 Organizational conflicts of interest.

As prescribed at 48 CFR 909.507-2, the contracting officer shall insert the following clause:

Organizational Conflicts of Interest (XXX 1996)

(a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Use of Contractor's Work Product. (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports,

studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) Compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) Submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) Release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) Subcontracts. (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph, in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and

assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate to the satisfaction of the contractor the organizational conflict. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

(e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(f) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(End of clause)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

8. Section 970.0905 is revised to read as follows:

970.0905 Organizational conflicts of interest.

Management and operating contracts shall contain an organizational conflict of interest clause substantially similar to the clause at 48 CFR 952.209-72 and appropriate to the statement of work of the individual contract. In addition, the contracting officer shall assure that the clause contains appropriate restraints on intra-corporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates, including personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The Contracting Officer is responsible for ensuring that M&O contractors adopt policies and procedures in the award of subcontracts

that will meet the Department's need to safeguard against a biased work product and an unfair competitive advantage. To this end, the organizational conflicts of interest clause in the management and operating contract shall require a disclosure of interests substantially similar to the one at 48 CFR 952.209-8 and inclusion of a clause substantially similar to the one at 48 CFR 952.209-72 in each subcontract for advisory and assistance services expected to exceed the simplified acquisition threshold, determined in accordance with FAR part 13.

9. Subsection 970.5204-44 is amended by revising clause paragraph (b)(15) to read as follows:

970.5204-44 Flowdown of contract requirements to subcontracts.

* * * * *

Flowdown of Contract Requirements to Subcontracts (Oct 1995)

* * * * *

(b) * * *

(15) Organizational Conflicts of Interest. Clause at DEAR 952.209-72 in accordance with DEAR 970.0905.

* * * * *

[FR Doc. 96-19797 Filed 8-5-96; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 361, 362, 363, 364, 385, 386 and 391

[FHWA Docket No. MC-96-18]

RIN 2125-AD64

Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The FHWA announces the extension of the comment period for its April 29, 1996, notice of proposed rulemaking (NPRM) in which the agency proposed changes to our procedural rules governing investigations of motor carrier compliance with agency regulations, penalty assessments and adjudications, safety ratings, and driver qualifications. The FHWA has determined this extension is necessary in response to requests from members of the affected public for additional time to review and

comment on this broad rulemaking proposal. The comment period is extended to September 13, 1996.

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-96-18, FHWA, Office of the Chief Counsel, HCC-10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On April 29, 1996 (61 FR 18866), the FHWA published a NPRM (Docket MC-96-18) that requested comments on its proposal to revise and amend procedural rules relating to the exercise of the agency's authority to investigate compliance with the various regulations subject to its jurisdiction; to assess penalties and to adjudicate claims for violations of these regulations; to assign safety ratings to carriers; to determine driver qualifications and other matters involving formal and informal proceedings. The FHWA proposed the creation of four new parts in chapter III of Title 49 of the Code of Federal Regulations, replacing 49 CFR Part 385, 386 and a portion of Part 391. The FHWA heard reports from the affected public that because of the broad scope of the proposal, more time was needed to file meaningful comments.

On December 29, 1995, the Interstate Commerce Commission Termination Act was enacted, which transferred certain residual functions of the ICC to the Department of Transportation, some of which were delegated to the FHWA. The FHWA will be proposing to supplement its April 29, 1996 NPRM to integrate procedural aspects of its inherited ICC function into the proposed procedural rule. The extension of time should be sufficient to accommodate consideration of the supplemental NPRM, which will be issued in the near future.

The FHWA is mindful of the need for all interested parties to have enough time to prepare relevant and useful comments. The FHWA therefore is extending the deadline for submitting

comments on Docket MC-96-18 an additional 45 days. As indicated in the Rulemaking Analyses and Notices section of the NPRM, all comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after the comment closing date, and interested parties should continue to examine the docket for new materials.

Authority: 49 U.S.C. chapters 5, 51, 59, 311, 313, 315; and 49 CFR 1.48.

Issued on: July 26, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96-19916 Filed 8-1-96; 2:58 pm]

BILLING CODE 4910-22-P

49 CFR PART 393

[FHWA Docket No. MC-94-1]

RIN 2125-AD27

Parts and Accessories Necessary for Safe Operation; Lighting Devices, Reflectors, and Electrical Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: This document announces the FHWA's intent to issue a notice of proposed rulemaking to establish requirements for the use of retroreflective sheeting or reflex reflectors for certain trailers manufactured prior to December 1, 1993, the effective date of the National Highway Traffic Safety Administration's final rule on conspicuity for newly manufactured trailers.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor or Mr. Richard H. Singer, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1994 (59 FR 2811), the FHWA published an advance notice of