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DEPARTMENT OF AGRICULTURE

Departmental Management, Office of Advocacy and Outreach

7 CFR Part 2502

RIN 0503-AA49

Agricultural Career and Employment Grants Program

AGENCY: Office of Advocacy and Outreach, Departmental Management, USDA

ACTION: Interim rule with request for comments.

SUMMARY: Section 14204 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill), authorizes the Secretary of Agriculture to make grants to assist agricultural employers and farmworkers by improving the supply, stability, safety, and training of the agricultural labor force. Such grants may be made to eligible entities for use in providing services to assist farmworkers who are citizens or otherwise legally present in the United States in securing, retaining, upgrading, or returning from agricultural jobs. The Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2010 (2010 Appropriations Act), included an appropriation of \$4 million to the U.S. Department of Agriculture's (USDA) Rural Housing Service (RHS) for this program. The delegation of authority and funding for the program has since been transferred to the Office of Advocacy and Outreach (OAO), within Departmental Management of USDA. The purpose of this rulemaking is to establish regulations governing the grants program, including eligibility, application for, evaluation, award and post-award administration of grants made pursuant to the authority granted to the Secretary under Section 14204.

DATES: Comments on the interim rule must be received by the agency on or before [insert date 30 days after publication in the Federal Register] to be assured of consideration.

Comments on the collection of information, Paperwork Reduction Act, must be received by the agency on or before [insert date 60 days after publication in the Federal Register] to be assured of consideration.

ADDRESSES: You may submit comments on the interim rule, identified by RIN 0503-AA49 by any of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: christine.chavez@osec.usda.gov. Include Regulatory Information Number (RIN) number 0503-AA49 in the subject line of the message.

Fax: 202-720-7136

Mail: Comments may be mailed to the Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue, Room 520-A, Stop 9801, Washington DC 20250-9821.

Hand Delivery/Courier: Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 520-A, Washington DC 20250.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Christine Chavez
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Office of Advocacy and Outreach

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Washington, D.C. 20250
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SUPPLEMENTARY INFORMATION:

Effective Date: The Administrative Procedure Act (APA, 5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. OAO finds that there is good cause to issue this policy as an interim rule. The hired agricultural labor force in the United States is characterized by considerable instability. The publication of this interim rule is necessary to assure the nation's ability to sustain the production and harvesting of agricultural products. Second, the Department has received several pieces of correspondence urging the Department to do everything possible to ensure that this important program is established properly and the funding is obligated to worthy recipients prior to a possible rescission. These letters, combined with other less formal interchanges with stakeholders, demonstrate a strong desire from external constituents to codify this grants program. OAO is concerned that any further administrative delays will negatively affect growers' ability to have access to a more skilled pool of farmworkers, and stability to this sector.

I. Background and Applicability of Regulations

Authority:

Section 14204 of the 2008 Farm Bill (Section 14204) authorizes the Secretary of Agriculture to make grants to assist agricultural employers and farmworkers by improving the

supply, stability, safety, and training of the agricultural labor force. Such grants may be made to eligible entities for use in providing services to assist farmworkers who are citizens or otherwise legally present in the United States in securing, retaining, upgrading, or returning from agricultural jobs. The purpose of this rulemaking is to establish regulations governing the grants program, including eligibility, application for, evaluation, award and post-award administration of grants made pursuant to the authority granted to the Secretary under Section 14204. The 2010 Appropriations Act included an appropriation of \$4 million to the U.S. Department of Agriculture's (USDA) Rural Housing Service (RHS) for this program, and the delegation of authority and funding for the program has since been transferred to the Office of Advocacy and Outreach (OAO), within Departmental Management of USDA. OAO has designated the program the Agricultural Career and Employment (ACE) Grants Program and it will be referred to as such hereafter.

Purpose of the "ACE" Grants Program:

As the title of Section 14204 of the 2008 Farm Bill suggests – “Grants to Improve the Supply, Stability, Safety, and Training of Agricultural Labor Force”—the grants program authorized by this section is designed to address the needs of both agricultural employers and farmworkers with respect to the supply of skilled labor in American agriculture and the stability of employment in that sector. About 800,000 hired farmworkers are employed in U.S. agriculture, with hired workers making up an estimated one-third of the total agricultural labor force. Particularly critical for labor-intensive sectors of agriculture, such as fruits and vegetables, the hired agricultural labor force in the United States is characterized by considerable instability. Among the hired workforce are large numbers of migrant and seasonal farmworkers, many of whom travel long distances to obtain employment, and often move from crop to crop as

conditions warrant. See, *A Profile of Hired Farmworkers, A 2008 Update*, by William Kandel, U.S. Department of Agriculture, Economic Research Service available at http://www.ers.usda.gov/Publications/ERR60/err60_report_summary.pdf.

Despite this regular flow of workers, regional differences in crops, variations in harvest times, and unpredictable weather conditions mean that many growers complain of chronic labor shortages, while farmworkers frequently report it is difficult to locate employment or obtain sufficient hours of work to earn a living. Unemployment rates among farmworkers generally are double those of other wage and salaried workers and those working in field crops have twice the unemployment rate of livestock workers. Historically, the uncertainty farmworkers have faced as to the availability or duration of work, along with the low wages generally earned by hired farm laborers, has led to many employed in the agricultural labor sector to leave agriculture for employment in other industries. Because of high turnover rates in agricultural employment, it is estimated that 2.0 to 2.5 individual farmworkers fill each job slot in the course of a year. This phenomenon has led to chronic instability in the labor market and a shortage of skilled and experienced workers.

The ACE grants program is intended to improve the supply of skilled agricultural workers and bring greater stability to the workforce in this sector. This stability will be realized through services specifically designed to assist farmworkers in *securing, retaining, upgrading or returning from an agricultural job*. Such services include the following:

- agricultural labor skills development;
- the provision of agricultural labor market information;
- transportation;
- short-term housing while in transit to an agricultural worksite;

- workplace literacy and assistance with English as a second language;
- health and safety instruction, including ways of safeguarding the food supply of the United States; and
- other such services the Secretary deems appropriate.

The training and services offered through the ACE grants program will benefit growers by contributing to the establishment of a more skilled pool of workers. Farmworkers who avail themselves of the training and the other services under the program should have enhanced employment opportunities, with the prospect of obtaining additional hours of work and pay or better paying positions on the farm and expanded promotional opportunities as a result of upgraded skills. Moreover, to the extent greater opportunities exist for farmworkers within the agricultural industry, hired farm laborers will have greater incentives to remain in agriculture and will be less likely to leave farm work for other occupations. Finally, training farmworkers in ways to safeguard the food supply of the United States is intended to benefit not only consumers, but to benefit growers and farmworkers alike by minimizing disruptions in the agricultural sector due to product contamination. Taken together, the listed services and program goals are intended to promote stability in the workforce and thereby improve the supply of skilled labor across U.S. agriculture.

II. Administrative Requirements for the Interim Final Rulemaking

A. Executive Orders 12866, 13563, and the Regulatory Flexibility Act

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Orders 12866 and 13563 and, therefore, it has not been reviewed by OMB.

We have prepared an economic analysis for this rule which is summarized below. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, and an initial regulatory flexibility analysis that examines the potential economic effects of this interim rule on small entities, as required by the Regulatory Flexibility Act. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The economic analysis outlines several benefits of this program. The program would provide agricultural employers with access to a more stable and skilled pool of farmworkers and would provide farmworkers with enhanced employment opportunities, such as additional hours of work, better terms and conditions of employment, training, an increase in wages, and more opportunity for advancement. Training farmworkers in ways to safeguard the food supply will benefit not only agricultural employers and farmworkers, but also consumers.

The total cost of this program would be \$4 million to taxpayers, most of which would be awarded as grants with a 15 percent maximum that could be used to administer the program.

The initial Regulatory Flexibility Analysis addresses the expected impact of this program on small entities. It is expected that the majority of the entities eligible for grants will be small. However, OAO does not expect this rule to have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act (PRA)

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this interim rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Departmental Management, Washington, DC 20503. Please state that your comments refer to Docket No. (Insert docket No.). Please send a copy of your comments to: (1) Christine Chavez, Program Leader, Farmworker Coordination, Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 9801, Washington, D.C. 20250, Fax: 202-720-7136 Email: christine.chavez@osec.usda.gov. (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this interim rule.

This interim rule would allow USDA to make grants to assist agricultural employers and farmworkers by improving the supply, stability, safety, and training of the agricultural labor force.

OAO is asking OMB to approve its use of this information collection activity to ensure that it will maximize the utility of information which is created, collected and maintained and minimize both the burden imposed on entities seeking to participate in the program as well as costs to the federal government.

OAO is soliciting comments from the public concerning OAO's proposed information collection and recordkeeping requirements. These comments will help OAO:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of OAO's estimate of the burden on the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2.8 hours per response.

- 1) Respondents: Not-for-profit institutions or a consortium which includes a non-profit organization(s) and one or more of the following: agribusinesses, State and local governments, agricultural labor organizations,

Estimated annual number of respondents: 20

Estimated annual number of responses per respondent: 3 (average]

Estimated annual number of responses: [65]

Estimated total annual burden on respondents: 2 hours (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Christine Chavez, Program Leader, Farmworker Coordination, Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 9801, Washington, D.C. 20250, Email: *christine.chavez@osec.usda.gov*.

E-Government Act Compliance

The Office of Advocacy and Outreach is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim final rule, please contact Christine Chavez, Program Leader, Farmworker Coordination, Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 9801, Washington, D.C. 20250, Email: *christine.chavez@osec.usda.gov*.

D. Catalog of Federal Domestic Assistance

This interim rule applies to the following Federal assistance program administered by the Office of Advocacy and Outreach: 10.465, Farmworker Training Grants.

E. The National Environmental Policy Act of 1969

The Department concludes that the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq (NEPA) do not apply to this rulemaking because this rule includes no provisions impacting the maintenance, preservation or enhancement of a healthful environment.

F. Federal Regulations and Policies on Families

Pursuant to the requirements of Section 654 of the Treasury and general Government Appropriations Act of 1999, 5 U.S.C. 601 note, the Department concludes this regulation has no potential negative effect on family well-being as defined there under.

G. Executive Order 13045: Protection of Children from Environmental and Safety Risk

The Department concludes that this interim rule has no negative effect on the health and safety of children.

H. Unfunded Mandates Reform Act of 1995 and Executive Order 13132

Pursuant to Executive Order No. 13132, 64 FR 43225 (August 10, 1999) and the Unfunded Mandates Act of 1995, 2 U.S.C. 1501 *et seq.*, the Department concludes there is no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, Local, and tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

I. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), the Department concludes this rule, as proposed, does not have "tribal implications" nor substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

J. Executive Order 12988: Civil Justice Reform

This interim rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would not preempt State or local laws, is not intended to have retroactive effect, and would not involve administrative appeals.

K. Executive Order 13132: Federalism

This interim rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

L. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

List of Subjects in 7 CFR Part 2502:

Agricultural labor, Agricultural employers, Farmworkers, Grants, Training

For the reasons discussed in the preamble, the Office of Advocacy and Outreach, Departmental Management, amends chapter XXV of title 7 of the Code of Federal Regulations by adding part 2502 to read as follows:

PART 2502—Agricultural Career and Employment (ACE) Grants Program

Subpart A--General Information

Sec.

- 2502.1 Applicability of regulations.
- 2502.2 Definitions.
- 2502.3 Deviations.

Subpart B--Program Eligibility, Services and Delivery

- 2502.4. Program eligibility.
- 2502.5 Program benefits and services.
- 2502.6. Recipients of program benefits or services.
- 2502.7 Responsibilities of grantees.

Subpart C--Grant Applications and Administration

- 2502.8 Pre-award, award, and post-award procedures and administration of grants.

Authority: 7 U.S.C. 2008q-1.

Subpart A: General Information

2502.1 Applicability of regulations.

- (a) This part contains program-specific definitions for the ACE Grants Program.
- (b) Subpart B establishes the criteria to be used in determining eligibility for an ACE grant award and the requirements for the delivery of program benefits and services, including who is considered eligible to receive such benefits and services and what the responsibilities are of ACE grantees.
- (c) Subpart C establishes that, unless otherwise provided herein, the procedures for applying for ACE grants, the processes to be followed by OAO in evaluating grant proposals and awarding program funds, and the procedures for post-award administration of ACE grants are those set forth in a rule proposed ON DATE to codify provisions at 7 CFR part 2500, subparts A, B, C, D, and E.

2502.2 Definitions.

As used in this part (unless otherwise indicated):

Agency means the Office of Advocacy and Outreach (OAO), an agency of the United States Department of Agriculture (USDA) or a successor agency.

Agricultural Employer means any person or entity which employs, as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. Sec. 1802, individuals engaged in agricultural employment and may include farmers, ranchers, dairy operators, agricultural cooperatives, and farm labor contractors.

Agricultural Employment means any service or activity as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802, including any activity defined as "agriculture" in Section 3(f) or the Fair Labor Standards Act of 1938, 29 U.S.C. 203(f), any activity defined as "agricultural labor" in 26 U.S.C. sec. 3121(g) (the Internal Revenue Code); as well as the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

Authorized Departmental Officer (ADO) means the individual, acting within the scope of delegated authority, who is responsible for executing and administering awards on behalf of the U.S. Department of Agriculture.

Community-based organization means a non-governmental organization with a well-defined constituency that includes all or part of a particular community.

Consortium means a group formed by entities with similar goals and objectives for the purpose of pooling resources to undertake a project that would otherwise be reasonably beyond the capabilities of any one member.

Eligible entity, as described in section 379C(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008q(a)), means a non-profit organization, or a consortium of nonprofit organizations, agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

Farmworker means an individual hired to perform agricultural employment, including migrant, seasonal, and hired family farm workers. The term farmworker includes individuals who are not currently employed as a farmworker but who are actively seeking work as such. The term does not include agricultural employers or individuals who are self-employed.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Legally present in the United States shall have the same meaning as the term “lawfully present” in the United States as defined at 8 CFR 103.12(a) (addressing eligibility for Title II Social Security benefits under Public Law 104–193).

Notice of Funding Availability (NOFA) means a notice published in the Federal Register announcing the availability of money for the grants program which lists the application deadlines, eligibility requirements and locations where interested parties can get help in applying.

Office of Advocacy and Outreach (OAO) means the Office of Advocacy and Outreach, an office within the USDA’s Departmental Management.

Request for Proposal (RFP) refers to a grant competition and is used interchangeably with the phrase grant application notice and solicitation for grant applications (SFA).

Retaining an agricultural job means continuing agricultural employment, including upgraded employment.

Returning from an agricultural job means returning to a home area from a position in agricultural employment.

Secretary means the Secretary of Agriculture and any other officer or employee of the United States Department of Agriculture to whom the authority involved is delegated.

Securing an agricultural job means obtaining agricultural employment.

State means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

United States worker (U.S. worker) shall have the same meaning as the term U.S. worker defined by the Department of Labor at 20 CFR 655.4.

Upgrading an agricultural job means advancement to a position in agricultural employment which offers more hours of work and/or better terms and conditions of employment and/or an increase in wages.

2502.3 Deviations.

Any request by the applicant or grantee for a waiver or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. OAO shall review the request and notify the applicant/grantee whether the request to deviate has been approved within 30 calendar days from the date of receipt of the deviation request. If the deviation request is still under consideration at the end of 30 calendar days, OAO shall inform the applicant/grantee in writing of the date when the applicant/grantee may expect the decision.

Subpart B--Program Eligibility, Services and Delivery

2502.4. Program eligibility.

(a) Entities eligible to apply for and receive a grant under this part include:

(1) A non-profit organization;

(2) A consortium of nonprofit organizations; or

(3) A consortium which includes a non-profit organization(s) and one or more of the following: agribusinesses, State and local governments, agricultural labor organizations, farmer or rancher cooperatives, and community-based organizations with the capacity to train farm workers.

(b) Additional information about eligible entities may be included in the RFP. In addition, the RFP will specify the criteria by which an entity's capacity to train farm workers will be evaluated, but at a minimum, the entity shall be required to demonstrate that it has:

(1) An understanding of the issues facing hired farmworkers and conditions under which they work;

(2) Familiarity with the agricultural industry in the geographic area to be served, including agricultural labor needs and existing services for farmworkers; and

(3) The capacity to effectively administer a program of services and benefits authorized by the ACE program.

(c) An applicant will be required to submit information to OAO, as specified in the RFP and/or FOA as part of the grant application.

2502.5 Program benefits and services.

(a) The ACE grants program will be centrally administered by the USDA in a manner consistent with these regulations, as well as the pertinent requirements of 7 CFR part 3015, 7 CFR part 3016, 7 CFR part 3018, 7 CFR part 3019 and 7 CFR part 3052.

(b) The Office of Advocacy and Outreach (OAO) has been designated as the organizational unit responsible for administering the ACE program, including, among other things, determining the number and amount of grants to be awarded, the purposes for the grants to be awarded, as well as the criteria for the evaluation and award of grants.

(c) Services and benefits provided under the ACE grants program are limited to those which will assist eligible farmworkers in *securing, retaining, upgrading or returning from agricultural jobs*.

(d) Such services will include the following:

- (1) Agricultural labor skills development
- (2) Provision of agricultural labor market information:
- (3) Transportation:
- (4) Short-term housing while in transit to an agricultural worksite;
- (5) Workplace literacy and assistance with English as a second language;
- (6) Health and safety instruction, including ways of safeguarding the food supply of the United States;
- (7) Such other services as the Secretary deems appropriate.

(e) Grant funds shall not be used to deliver or replace any services or benefits which an agricultural employer, association, contractor, or any other entity is legally obliged to provide.

2502.6 Recipients of program benefits or services.

(a) Those eligible to receive program services or benefits under the ACE program are farmworkers who meet the definition of “United States Workers” as set forth in § 2502.2 of this part.

(b) Grantees shall be responsible for verifying the employment of farmworkers who are actively employed and are seeking to participate in program services or benefits. Unemployed farmworkers seeking to participate shall be required to certify to grantees that they are eligible for program services and benefits as provided herein. Additional eligibility requirements may be included in the RFP.

2502.7 Responsibilities of grantees

Each grantee is responsible for providing services and/or benefits authorized by this program in accord with a service delivery strategy described in its approved grant plan. The services must reflect the needs of the relevant farmworker population in the area to be served and be consistent with the goals of assisting farmworkers in securing, retaining, upgrading, or returning from agricultural jobs. The necessary components of a service delivery strategy and grant plan will be fully set forth in an RFP but the plan shall include, at a minimum, the following:

- (a) The employment and education needs of the farmworker population to be served;
- (b) The manner in which the proposed services to be delivered will assist agricultural employers and farmworkers in securing, retaining, upgrading or returning from agricultural jobs;
- (c) The manner in which the proposed services will be coordinated with other available services;
- (d) The number of participants the grantee expects to serve for each service provided, the results expected and the anticipated expenditures for each category of service.

Subpart C--Grant Applications and Administration

2502.8 Pre-award, award, and post-award procedures and administration of grants.

(a) Unless otherwise provided in this rule, the requirements governing pre-award solicitation and submission of proposals and/or applications, the review and evaluation of such, the award of grant funds, and post-award and close-out procedures are those set forth at 7 CFR part 2500, subparts A, B, C, D, and E.

(b) For purposes of the ACE Grants Program, the provisions of Subpart E, at 7 CFR 2500.49, "Prior Approvals," shall not apply. In lieu of that provision, the following requirements shall apply: Awardees may not may not subcontract more than 20 percent of the award to other parties without prior written approval of the ADO. To request approval a justification for the proposed subcontract, a performance statement, and a detailed budget for the subcontract must be submitted in writing to the ADO.

Signed in Washington, D.C. on November 3, 2011

Pearlie Reed/s/

Pearlie Reed

Assistant Secretary for Administration for the Office of the Secretary

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