

information are legitimate and that they are not sufficiently addressed by the approach described above in this NODA, then we could develop another approach to mitigate the ability to efficiently create customer lists from aggregated data. For instance, we could design the e-Manifest system to provide the aggregated data in a redacted form, protecting either the identity of the generator, transporter, or TSDF so that anyone who requests aggregated data could not generate customer business information from it. We therefore request comment on how EPA should design and implement an approach to protect the disclosure of aggregate data of competitive value, if such an approach were appropriate. For example, what are the indicators of aggregated requests (e.g., requests of 50 or more manifests involving a single transporter or TSDF) that would justify our handling aggregated data differently from individual manifests for FOIA disclosure purposes? What information should be redacted from the data that are released to mitigate any competitive harm from the data disclosure? How can this process be automated so that it can be effectively implemented in an electronic manifest system that must address potentially millions of manifest records annually, and their related FOIA requests, without significant human intervention?

### III. Request for Comments

EPA requests comments on the policy issues discussed in this notice regarding our preferred approach that final copies of paper manifest records be submitted by designated facilities to EPA's e-Manifest system operator for data processing, and our categorical determination that individual or aggregate manifest data may not be claimed as CBI. The Agency also requests comment on various aspects of our proposed policy of limiting access to incomplete and unverified manifest information to the waste handlers named on particular manifests (as well as regulators and emergency responders).

EPA will consider the comments received pursuant to this notice, along with comments on the April 18, 2006 public notice, on the e-Manifest proposal in the May 2001 proposed rule, and the May 2004 Stakeholder meeting, as it prepares a final rule on the e-Manifest system.

Dated: February 19, 2008.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. E8-3615 Filed 2-25-08; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

#### 45 CFR Part 404

**RIN 0970-AC28**

#### **Limitation on Use of Funds and Eligibility for Funds Made Available by the Office of Refugee Resettlement, Within the Administration for Children and Families, of the Department of Health and Human Services, To Monitor and Combat Trafficking in Persons**

**AGENCY:** Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement two provisions of the Trafficking Victims Protection Act (TVPA) (22 U.S.C. Chapter 78), as amended by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (Pub. L. 108-193), that provide limitations on the use of funds. The provisions at Title 22 of the U.S.C. 7110(g) prohibit programs from using trafficking funds to promote, support, or advocate the legalization or practice of prostitution. They make ineligible to receive funds any organization that promotes, supports, or advocates the legalization or the practice of prostitution if the organization operates a program that targets victims of severe forms of trafficking, unless the organization provides assistance to individuals solely after they are no longer engaged in activities that resulted from their being trafficked. This proposed rule applies to funds that Congress appropriates for the U.S. Department of Health and Human Services for anti-trafficking purposes under Title 22 of the United States Code.

**DATES:** *Comment Date:* HHS will consider comments received on or before April 28, 2008.

**ADDRESSES:** You may submit your comments in writing to the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human

Services, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., at the Department's offices at the above address. You may download a copy of this regulation at [www.regulations.gov](http://www.regulations.gov), or you may download a copy and transmit written comments electronically via the Internet at the following address: <http://www.regulations.acf.hhs.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Vanessa Garza, Associate Director for Trafficking Policy, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, (202) 401-2334, or by e-mail at [vanessa.garza@acf.hhs.gov](mailto:vanessa.garza@acf.hhs.gov). Do not e-mail comments on the Proposed Rule to this address.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Statutory Authority**

This proposed rule implements two provisions concerning restrictions on the use of funds that were added to the TVPA by the TVPRA of 2003 and codified at Title 22 of the U.S.C. 7110(g). These provisions: (1) Prohibit any Federal funds appropriated under the TVPA, Public Law 106-386, and the TVPRA of 2003, or any amendments thereto, from being used to promote, support, or advocate the legalization or the practice of prostitution (designated the "Restriction on Programs" in the statute); and (2) make ineligible to receive Federal funds appropriated under the TVPA or TVPRA, or any amendments thereto, any organization that promotes, supports, or advocates the legalization or the practice of prostitution if the organization operates a program that targets victims of severe forms of trafficking, unless the organization provides assistance to individuals solely after they are no longer engaged in the activities that resulted from such victims being trafficked (designated the "Restriction on Organizations" in the statute).

##### **II. Background**

This regulation implements these statutory provisions as part of the U.S. Government's vigorous and comprehensive campaign to eliminate trafficking in persons at home and around the world. Congress and the Executive Branch are especially concerned about the significant role sexual exploitation plays in fueling trafficking in persons. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing,

and which contribute to the phenomenon of trafficking in persons. Reducing the incidence of prostitution is therefore an inseparable part of the larger strategy of the United States to combat trafficking. In addition, prostitution is inherently harmful to society and degrading to the women and children involved in it, even if they allegedly choose prostitution as a form of "work," and even if authorities make prostitution legal or decriminalize it such that no person involved faces criminal prosecution. The U.S. Government does not accept the claim that the legalization of prostitution and/or societal acceptance of prostitution as a legitimate form of work would be effective strategies to reduce trafficking in persons. In sharp contrast, the U.S. Government has concluded that legalization and/or societal acceptance of prostitution would increase the sexual exploitation of women and children, particularly girls, and trafficking in persons specifically.

To pursue its comprehensive campaign to combat trafficking, the U.S. Government provides funds to domestic and foreign non-profit organizations (including, but not limited to, community action agencies, research institutes, educational associations, health centers, and hospitals), for-profit entities; U.S. State, local, and tribal governments and subdivisions thereof; Foreign Governments and subdivisions thereof; international organizations, such as agencies of the United Nations; international inter-governmental organizations; and other groups (hereinafter referred to collectively in this regulation as "organizations," or "organization" in the singular); and in some circumstances to individuals, for direct services to victims, public information campaigns, and other interventions.

Because of the connection between trafficking and prostitution, the U.S. Government cannot execute its comprehensive anti-trafficking campaign through programs or organizations that promote, support, or advocate the legalization of prostitution. Furthermore, the Executive Branch, as stated in the Trafficking in Persons National Security Presidential Directive 22 (NSPD-22), actively seeks to support efforts to develop civil-society institutions that promote the human rights of victims and populations vulnerable to trafficking, support law enforcement, and provide victims with assistance and protection. The goal of this policy is to provide incentives to rescue trafficking victims, rather than accept or validate the situations that result from their being trafficked.

The statute directs that Federal funds must not go to programs that promote, support, or advocate the legalization or practice of prostitution, and that organizations that operate programs to target victims of severe forms of trafficking must "state" that they do not promote, support, or advocate the legalization or the practice of prostitution. The Senior Policy Operating Group (SPOG), a statutorily established inter-agency, U.S. Government coordinating body, with membership determined pursuant to Executive Order No. 13257 of February 13, 2002 and including the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence, the Director of the Office of Management and Budget, the Administrator of the United States Agency for International Development, and any additional officers or employees of the United States as may be designated by the President, has decided that a statement in the form of a certification is the best means to ensure enforcement of these requirements.

This proposed rule applies to funds that Congress appropriates for the U.S. Department of Health and Human Services (HHS) for anti-trafficking purposes under Title 22 of the United States Code. Specifically, the rule proposes certification language that organizations must provide in applications for grants, cooperative agreements, contracts, grants under a contract, and other funding instruments made available by the HHS Administration for Children and Families (ACF) Office of Refugee Resettlement (ORR), the component carrying out the Victims of Human Trafficking program.

The statute requires the limitations to apply to a "grant application, a grant agreement, or both." The HHS/ACF/ORR interprets this reference to encompass all mechanisms for providing Federal assistance. Transfers of Federal funds occur through a diverse range of instruments in addition to grants. The policy against support, promotion, or advocacy of prostitution applies broadly to all such transfers, not merely those accomplished through grants. By applying the limitations to a diverse range of funding instruments, HHS/ACF/ORR reinforces the statutory purpose at 22 U.S.C. 7110(g)(1) that "*no funds* made available to carry out [the trafficking statute] may be used to promote, support, or advocate the legalization or practice of prostitution," (emphasis added) and ensures a more consistent implementation of the

limitations. In addition, application of the proposed rule to grants only would invite evasion of the policy. The proposed rule therefore applies to grants, cooperative agreements, contracts, grants under a contract, and other funding instruments.

The regulation is prospective and does not apply to funds already provided; the regulation does, however, apply to funds made available subject to a periodic renewal application or award.

There are two periods of time covered by restrictions in the statute and the regulation: (1) While victims are being trafficked and (2) after they are no longer engaged in the activities that resulted from their being trafficked. As specified by the statute, the proposed rule clarifies that prohibited "support" for prostitution does not prohibit assistance to victims to ameliorate their suffering, or health risks to them, both "while they are being trafficked," and "after they are out of the situation that resulted from their being trafficked." The regulation defines "ameliorative assistance" to include assistance intended to mitigate the suffering of, or health risks to, victims of trafficking caused by their being trafficked, or their engagement in the activities resulting from such victims being trafficked, including incidental or limited assistance deemed necessary to develop a relationship and rapport with the victim as part of a strategy to help the victim escape his or her trafficked condition, and cease those activities which result from their being trafficked.

The HHS/ACF/ORR is issuing this regulation in coordination with other U.S. Government Departments and agencies represented on the SPOG, all of which have developed their own proposed regulations or policy directives from a model regulation developed under the supervision of the SPOG. Each SPOG member Department or agency will implement its regulation in accordance with its standard grant-making and administrative procedures, which vary.

Nothing in the regulation is intended to lessen or relieve relevant prohibitions on Federal Government funding under other applicable Federal laws.

### III. Discussion of the Proposed Rule

These sections discuss the proposed rule by defining the terms relevant to this proposed rule; detailing the restriction on programs for use of Federal anti-trafficking funds; discussing the restriction on organizations that receive Federal anti-trafficking funds; describing the certifications required for the receipt of Federal anti-trafficking funds;

explaining how the proposed rule applies to consortia; setting forth a policy for recordkeeping and inspection; and discussing the process for termination of Federal funding in the case of a violation of the rule.

#### Section 401.1 Definitions

This section defines the terms that are pertinent to this rule. Specifically, we propose the following definitions:

*“Activities that resulted from the trafficking of such victims”* means commercial sex acts induced by force, fraud, or coercion, or any such act in which the person induced to perform such act has not attained 18 years of age; or labor or services in which the recruitment, harboring, transportation, provision, or obtaining of the person induced to perform such labor or services has been through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. It does not mean mere presence in the United States.

*“Ameliorative assistance”* means assistance intended to relieve the suffering of, or health risks to, victims of trafficking caused by their being trafficked, or their engagement in activities resulting from such victims being trafficked, including incidental or limited assistance deemed necessary to develop a relationship and rapport with the victim as part of a strategy to help the victim escape his or her trafficked condition and cease those activities which result from their being trafficked. It does not mean assistance that supports the trafficker or that is not intended to facilitate the eventual rescue of the trafficking victim.

*“Being trafficked”* means the subject is the victim of a severe form of trafficking.

*“Commercial sex act”*, defined in Title 22 of the U.S.C. 7102(3), means any sex act on account of which anything of value is given to or received by any person.

*“Emergency medical care”* means examination or other care appropriate to address an existing emergency medical condition, including transport for further care.

*“Emergency medical condition”* means a medical condition that manifests itself by acute symptoms of sufficient severity (including severe pain), such that the absence of immediate medical attention could reasonably be expected to result in a physical disorder, physical illness, or physical injury that:

(a) Is life-threatening;

(b) results in permanent impairment of a body function or permanent damage to a body structure; or

(c) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

*“Funds made available for the purpose of monitoring or combating the trafficking of persons”* means any U.S. Government funds appropriated by the U.S. Congress to the U.S. Department of Health and Human Services for anti-trafficking purposes under Title 22 of the United States Code, whether distributed through grants, cooperative agreements, contracts, grants under a contract, and other funding instruments. *“Legalization of prostitution”* means a state of affairs in which prostitution is legal, decriminalized such that no person involved faces criminal prosecution, or regulated as a legitimate form of work.

*“Organization”* means a non-profit organization (including, but not limited to, a community action agency, research institute, educational association, health center, or hospital), a for-profit entity; U.S. State, local, or tribal government; or a contractor, including a personal services contractor.

*“Program”* means the method or procedures used to deliver assistance. The term includes activities conducted by a single individual or organization, by consortia of individuals or organizations, or by collaborations between or among individuals or organizations.

*“Program that targets victims of severe forms of trafficking in persons”* means a program that is designed to, or does, monitor or provide assistance to or is aimed at assisting victims of severe forms of trafficking in persons, including but not limited to, the Victims of Human Trafficking Program administered by the HHS/ACF/ORR.

*“Prostitution”* and *“the practice of prostitution”* means procuring or providing any commercial sex act as defined in Section 103(3) of the TVPA of 2000 (22 U.S.C. 7102(3)).

*“Recipient”* means an organization or individual that receives U.S. Government funds made available for the purpose of monitoring or combating the trafficking of persons.

*“Severe forms of trafficking in persons”* means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or any such act in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for

the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*“Sex trafficking”* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

*“Situation that resulted from such victims being trafficked”* means a situation caused by or characterized by a victim engaging in activities that resulted from his or her being trafficked. It does not mean mere presence in the United States.

*“Sub-recipient”* means any entity to which a recipient of Federal funds makes some or all of those funds available, and which is accountable to the recipient for the use of the funds provided, including, without limitation, sub-sub grantees and sub-sub contractors.

*“To support the legalization or the practice of prostitution”* means to knowingly provide financial support, including the transfer of funds, services, or goods, to any individual or organization that engages in the practice of prostitution, or that promotes or advocates the legalization or the practice of prostitution, or that supports the legalization of prostitution; or to endorse or sponsor or support a document or conference that supports the legalization of prostitution; or to provide assistance to trafficking victims that is not ameliorative assistance, as defined in this regulation. An organization or recipient shall not be deemed to have knowingly provided such support if that organization or recipient did not know, and by the exercise of reasonable diligence would not have known, that its financial or organizational support was being used for, or would be used for, such purposes. Further, providing trafficking victims with emergency medical care for an emergency medical condition does not constitute such support.

*“To promote or to advocate the legalization or the practice of prostitution”* means to use financial, personal, in-kind, or other resources to further the legalization or the practice of prostitution, including by sponsoring or supporting conferences or publications that further the legalization or the practice of prostitution. This includes, but is not limited to, engaging in lobbying activities or public information or advocacy campaigns to further the legalization or the practice of prostitution.

#### Section 404.2 Restriction on Programs

This section of the proposed rule relates to the use of anti-trafficking funds provided by the HHS/ACF/ORR.

Under the proposed rule, Paragraph (a) would provide that no organization may use funds made available by the HHS/ACF/ORR for the purpose of monitoring or combating trafficking in persons to promote, support, or advocate the legalization or practice of prostitution.

Paragraph (b) would stipulate that nothing in paragraph (a) of this subsection shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked, or after they are out of the situation that resulted from their being trafficked.

The proposed rule does not prohibit the provision of emergency medical care for an emergency medical condition, whenever provided. The HHS/ACF/ORR has determined the statutory prohibition on "support" for prostitution does not prohibit the provision of emergency medical care for an emergency medical condition, and thus that recipients of funds may provide emergency medical care for an emergency medical condition to victims during the two time periods described above. The HHS/ACF/ORR has defined "emergency medical condition" under Section 401.1. The statute, however, does not give authorization for assistance that supports the trafficker, or that is not intended to facilitate the eventual rescue of the trafficking victim. The HHS/ACF/ORR understands that Congress intended anti-trafficking funds to focus on activities designed to end trafficking and rescue victims, not on activities that would effectively facilitate, encourage, expand, condone, or subsidize prostitution activities.

#### *Section 404.3 Restriction on Organizations*

This section of the proposed rule describes the restrictions on the organizations that receive anti-trafficking funds from the HHS/ACF/ORR. The Federal Government finds that organizations that promote, support, or advocate the legalization or the practice of prostitution are not appropriate to conduct programs that serve victims of human trafficking.

Under Paragraph (a), no organization may use Federal funds made available for the purpose of monitoring or combating trafficking in persons to implement any program that targets victims of severe forms of trafficking in persons through any organization that has not certified it does not promote, support, or advocate the legalization or practice of prostitution. However, this would not apply to organizations that provide assistance to individuals solely

after they are no longer engaged in activities that resulted from such victims being trafficked.

Under Paragraph (b) of this section, an organization is ineligible to receive any Federal funds made available for the purpose of monitoring or combating trafficking in persons, unless it has provided the certifications required by Section 404.4.

#### *Section 404.4 Certifications*

This section of the proposed rule describes the certifications required to receive anti-trafficking funding from the HHS/ACF/ORR. The required certification has three basic parts, each of which organizations must complete as a part of their application for funding.

The first part implements the statutory Restriction on Programs through a Use of Funds Certification, located at Section 404.4(d)(1), in which an applicant or a recipient that is seeking or receiving Federal anti-trafficking funds administered by the HHS/ACF/ORR certifies it will not use those funds to promote, support, or advocate the legalization or the practice of prostitution.

The second part implements the Restriction on Organizations through three alternative certifications, of which organizations must sign at least one. Organizations that are implementing a program to target victims of severe forms of trafficking must provide the Primary Eligibility Certification, located at Section 404.4(d)(2)(i), unless they serve only individuals who are no longer engaged in the activities that resulted from their being trafficked. In that case, they must provide Secondary Eligibility Certification A at Section 404.4(d)(2)(ii), stating that they serve or provide services only to victims who are no longer engaged in the activities that resulted from their being trafficked. Other organizations that provide assistance to victims of non-severe forms of trafficking, or otherwise do not meet the criteria for organizations that must provide the other certifications, must provide Secondary Eligibility Certification B, located at Section 404.4(d)(2)(iii), to state that the organization does not implement a program that targets victims of severe forms of trafficking.

The third part of the certification contains Acknowledgement and Sub-recipient Certifications at Section 404.4(d)(3). These require each applicant to acknowledge that its provision of the certifications is a prerequisite to receiving Federal funds; that the Federal Government can stop or withdraw those funds if the HHS/ACF/ORR finds a certification to have been,

or becomes, inaccurate; and that the applicant will ensure that all its sub-applicants also provide the required certifications. As detailed in the certifications section, a sub-applicant must, at a minimum, provide the same certification as that provided by the original applicant.

To remain consistent with the policies for contracts in other HHS programs, the HHS/ACF/ORR is considering providing an exemption from the second part of the certification requirements, "Restrictions on Organizations," for "specified types of commercial contracts." "Specified types of commercial contracts" would be defined as contracts awarded for commercial items and services as defined in FAR 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding. Despite the preceding definition, "specified types of commercial contracts" would not include contracts awarded to carry out the trafficking program by:

- (a) Providing supplies or services directly to victims of trafficking
- (b) providing technical assistance and training to individuals or entities that provide supplies or services directly to victims of trafficking;
- (c) providing the types of services listed in FAR 37.203(b)(1)–(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (a) and (b) above, or making decisions or functioning in a recipient's chain of command (e.g., providing managerial or supervisory services approving financial transactions, personnel actions, etc.).

In October 2007, HHS' Office of Acquisition Management and Policy issued a policy to exempt such contracts/subcontracts for recipients of HHS funds in connection with the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, or "Leadership Act" (<http://www.hhs.gov/oamp/policies/leadershipactclause.doc>). The HHS/ACF/ORR is interested in receiving comments about whether this exemption should also be contained in the rule.

Paragraph (e) of this section would define violations of this regulation by individuals who are employees, directors, or otherwise under the control of the recipient. This part also provides for exceptions in which the recipient does not provide reimbursement for such actions or the recipient takes reasonable steps necessary to clearly show that the recipient does not support, promote, or advocate the individual's position.

Paragraph (f) contains information regarding requirements for the renewal of certification. These require each recipient to file renewed certifications upon any extension, amendment, or modification of the funding instrument that extends the term of such instrument or adds additional funds to it.

Additionally, the requirements state that current funding recipients, as of the effective date of the regulation, must file a certification upon any extension, amendment, or modification of the funding instrument that extends the term of such instrument or adds additional funds to it.

Under Paragraph (g), recipients must submit certifications from each sub-recipient in writing, signed by the sub-recipient's officer or other person authorized to bind the sub-recipient.

#### *Section 404.5 Restriction on Programs Operated with or through Consortia*

No funds made available for the purpose of monitoring or combating the trafficking of persons may be made available through, or expended by, programs operated with, or through, a consortium of organizations that includes any organization that has not provided the HHS/ACF/ORR with a certification, as set out in Section 404.4.

In order to maintain the integrity of the funding limitations provided by Title 22 of the U.S.C. 7110(g), the HHS/ACF/ORR is considering adding a section to the final rule which would describe the factors used to determine whether an applicant, recipient, or sub-recipient of funds made available for the purpose of monitoring or combating trafficking in persons is appropriately separate from an affiliated organization that has not provided the certifications required by Section 404.4. These factors could be similar to those contained in 45 CFR 1610.8, which describe the extent of separation and independence that recipients of funds from the Legal Services Corporation must maintain from organizations that are ineligible to receive such funds because they do not make required certifications. These factors could also be similar to those contained in a July 2007 guidance issued by HHS pertaining to the "Leadership Act" (<http://www.globalhealth.gov/reports/index.html#guidance>). For example, a recipient could be found to be separate and independent from an affiliate organization if: (1) The affiliate organization is a legally separate entity; (2) the affiliate organization receives no transfer of HHS/ACF/ORR funds, and HHS/ACF/ORR funds do not subsidize restricted activities; and (3) the recipient is physically and financially separate

from the other organization. The HHS/ACF/ORR is interested in receiving comments about whether such factors should be contained in the rule and their content.

#### *Section 404.6 Record-keeping and Inspection*

This section of the proposed rule sets forth policy on record-keeping and inspection. Under Paragraph (a), recipients and sub-recipients shall maintain press and public relations material, Internet content, and other broadly disseminated documents (such as training manuals, curricula, and other educational matter) pertinent to establishing the validity of the certifications, provided for a period of three years after the end of the term of the grant, cooperative agreement, contract, grant under a contract, or other funding instrument through which the HHS/ACF/ORR or a recipient provided the Federal funds. If a recipient or sub-recipient starts any litigation, claim or audit before the expiration of the three-year period, parties must retain the records until all litigation, claims or audit findings involving the materials have been resolved and final action taken.

Paragraph (b) as proposed provides that authorized employees of the HHS/ACF/ORR have the right to timely and unrestricted access to the materials described in paragraph (a). This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents.

#### *Section 404.7 Termination of Funding*

This section of the proposed rule relates to the process for termination of funding for failure to comply with this regulation. Under paragraph (a) of this section, the HHS/ACF/ORR may terminate the transfer of funds to a recipient if the HHS/ACF/ORR determines that the recipient or a sub-recipient of the funds has failed to comply with the requirements of this part.

Paragraph (b) provides that a recipient whose funding the HHS/ACF/ORR has terminated shall reimburse the HHS/ACF/ORR for all funds expended after the violation occurred, or, in the case of a grant, cooperative agreement, contract, grant under a contract, or other funding instrument, the funds in their entirety, if the HHS/ACF/ORR determines that an organization's certification was or has become false.

Paragraph (c) provides that, in addition to termination of funding, the HHS/ACF/ORR may suspend or debar a recipient in violation of this part from

receiving any further Federal Government funds if the HHS/ACF/ORR determines that the violation of this part was willful.

Finally, paragraph (d) stipulates that terminations will be in accordance with the Federal Acquisitions Regulations, Part 49 for contracts; 45 CFR Part 74 or Part 92 for grants, cooperative agreements, and grants under a contract.

### **IV. Impact Analysis**

#### *Regulatory Flexibility Act*

The Secretary certifies under Title 5 of the U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. The number of contracts affected by this rule is minimal. Since enactment of the anti-prostitution provision in the TVPRA of 2003, the HHS/ACF/ORR has required its program announcements for discretionary trafficking funding grants to include a "Certification Regarding Prostitution and Related Activities," which can take any form, including a written statement. The statute explicitly requires certifications.

#### *Executive Order 12866—Regulatory Planning and Review*

The HHS has drafted and reviewed this regulation in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. The HHS/ACF/ORR has determined this rule is a "significant regulatory action" under Executive Order 12866, Section 3(f)(4), Regulatory Planning and Review, because it raises novel legal or policy issues, that arise out of legal mandates and the President's priorities, and accordingly the Office of Management and Budget has reviewed it.

The benefits of this rule are that the limitations on supporting, promoting, or advocating the legalization or the practice of prostitution will (1) help further the U.S. Government's strategy to reduce sexual exploitation that fuels trafficking in persons and (2) demonstrate the U.S. Government's opposition to prostitution. In addition, a potential benefit of the regulation could be that the incidence of prostitution and trafficking in the United States could decline.

#### *Executive Order 13132—Federalism*

Executive Order 13132 on Federalism requires Federal Departments and agencies to consult with State and local Government officials in the development of regulatory policies with implications for Federalism. This rule does not have Federalism implications

for State or local Governments, as defined in the Executive Order.

#### *Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered Federal department or agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that could result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The HHS has determined this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

#### *Assessment of Federal Regulation and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal Departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an

impact assessment to address criteria specified in the law. These regulations will not have an impact on family well-being, as defined in this legislation.

#### *Paperwork Reduction Act of 1995*

Section 404.4 and 404.6 of this proposed rule contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

The title of the information collection is "Certification Regarding Use of Funds and Eligibility for Funds, as required by the Trafficking Victims Protection Reauthorization Act." The HHS/ACF/ORR sponsors the information collection. To obtain or retain Federal funding for anti-trafficking activities, the HHS/ACF/ORR requires the information of all applicants and recipients and all sub-applicants and sub-recipients of ORR anti-trafficking funding. The certification and associated documents are necessary to ensure organizations are not using

Federal anti-trafficking funds to promote, support or advocate the legalization or practice of prostitution, and that organizations that receive Federal funds to monitor and combat severe forms of trafficking in persons do not support, promote, or advocate the legalization or the practice of prostitution.

Likely respondents to this information collection include non-profit organizations (including, but not limited to, community action agencies, research institutes, educational associations, health centers, and hospitals); for-profit entities; U.S. State, local, and tribal governments and subdivisions thereof; and other groups and individuals.

The HHS/ACF/ORR estimates that 36 respondents will complete the certification within five minutes, and prepare documents to validate the certification within 25 minutes. Additionally, the HHS/ACF/ORR estimates a limited burden for record keeping of supporting documentation pertinent to establishing the validity of the certifications. The HHS therefore estimates annual aggregate burden to collect the information as follows:

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Certification Regarding Prostitution .....	36	1	.5	18
Recordkeeping and inspection .....	36	1	.5	18

Estimated Total Annual Burden Hours: 36.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas: Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility; evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhancing the quality, usefulness, and clarity of the information to be collected; and minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses. To ensure that public comments have maximum effect in developing the final regulations, the ACF urges that each comment clearly

identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent to the Office of Management and Budget either by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or by fax to 202-395-6974. Please mark all comments "Attention: Desk Officer for the Administration for Children and Families."

#### List of Subjects in 45 CFR Part 404

Administrative practice and procedure, Aliens, Civil rights, Human

trafficking, Immigration, Federal aid programs, Grant programs, Grants administration, Refugees, Victims.

Dated: February 9, 2007.

**Martha E. Newton,**

*Director, Office of Refugee Resettlement,*

Dated: February 11, 2007.

**Wade F. Horn,**

*Assistant Secretary for Children and Families.*

Approved: November 9, 2007.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

For the reasons stated in the preamble, the Administration for Children and Families amends 45 CFR chapter IV to add part 404 to read as follows:

**PART 404—LIMITATIONS ON ELIGIBILITY FOR AND USE OF FUNDS MADE AVAILABLE BY THE OFFICE OF REFUGEE RESETTLEMENT (ORR), WITHIN THE ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF) OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS), FOR MONITORING AND COMBATING TRAFFICKING IN PERSONS**

Sec.

- 404.1 Definitions.
- 404.2 Restriction on programs.
- 404.3 Restriction on organizations.
- 404.4 Certifications.
- 404.5 Restriction on programs operated with or through consortia.
- 404.6 Record-keeping and inspection.
- 404.7 Termination of funding.

**Authority:** 22 U.S.C. 7110(g).

**§ 404.1 Definitions.**

For the purposes of this part:

*Activities that resulted from such victims being trafficked* means commercial sex acts induced by force, fraud, or coercion, or any such act in which the person induced to perform such act has not attained 18 years of age; or labor or services in which the recruitment, harboring, transportation, provision, or obtaining of the person induced to perform such labor or services has been through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. It does not mean mere presence in the United States.

*Ameliorative assistance* means assistance intended to relieve the suffering of, or health risks to, victims of trafficking caused by their being trafficked or their engagement in activities resulting from such victims being trafficked, including incidental or limited assistance deemed necessary to develop a relationship and rapport with the victim as part of a strategy to help the victim escape his or her trafficked condition and cease those activities which result from their being trafficked. It does not mean assistance that supports the trafficker or is not intended to facilitate the eventual rescue of the trafficking victim.

*Being trafficked* means the subject is the victim of a severe form of trafficking.

*Commercial sex act*, defined in Title 22 of the U.S.C. 7102(3), means any sex act on account of which anything of value is given to or received by any person.

*Emergency medical care* means examination or other care appropriate to address an existing emergency medical condition, including transport for further care.

*Emergency medical condition* means a medical condition that manifests itself by acute symptoms of sufficient severity (including severe pain), such that the absence of immediate medical attention could reasonably be expected to result in a physical disorder, physical illness, or physical injury that:

- (1) Is life threatening,
- (2) Results in permanent impairment of a body function or permanent damage to a body structure, or
- (3) Necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

*Funds made available for the purpose of monitoring or combating the trafficking of persons* means any U.S. Government funds appropriated by the U.S. Congress to the U.S. Department of Health and Human Services for anti-trafficking purposes under Title 22 of the United States Code, whether distributed through grants, cooperative agreements, contracts, grants under a contract, or other funding instruments.

*Legalization of prostitution* means a state of affairs in which prostitution is legal, decriminalized such that no person involved faces criminal prosecution, or regulated as a legitimate form of work.

*Organization* means a non-profit organization (including, but not limited to, a community action agency, research institute, educational association, health center, or hospital), a for-profit entity; U.S. State, local, or tribal Government; or a contractor, including a personal services contractor.

*Program* means the method or procedures used to deliver assistance. The term includes activities conducted by a single individual or organization, by consortia of individuals or organizations, or by collaborations between or among individuals or organizations.

*Program that targets victims of severe forms of trafficking in persons* means a program that is designed to, or does, monitor or provide assistance to or is aimed at assisting victims of severe forms of trafficking in persons, including but not limited to, the Victims of Human Trafficking Program administered by the HHS/ACF/ORR.

*Prostitution and the practice of prostitution* means procuring or providing any commercial sex act as defined in Section 103(3) of the Trafficking Victims Protection Act (TVPA) of 2000 (22 U.S.C. 7102(3)).

*Recipient* means an organization or individual receiving U.S. Government funds made available for the purpose of monitoring or combating the trafficking of persons.

*Severe forms of trafficking in persons* means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or any such act in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

*Situation that resulted from such victims being trafficked* means a situation caused by or characterized by a victim's engaging in activities that resulted from his or her being trafficked. It does not mean mere presence in the United States.

*Sub-recipient* means any entity to which a recipient of Federal funds makes some or all of those funds available, and which is accountable to the recipient for the use of the funds provided, including, without limitation, sub-sub grantees and sub-sub contractors.

*To support the legalization or the practice of prostitution* means to knowingly provide financial support, including the transfer of funds, services, or goods, to any individual or organization that engages in the practice of prostitution or that promotes or advocates the legalization or the practice of prostitution, or that supports the legalization of prostitution; or to endorse or sponsor or support a document or conference that supports the legalization of prostitution; or to provide assistance to trafficking victims that is not ameliorative assistance, as defined in this regulation. An organization or recipient shall not be deemed to have knowingly provided such support if that organization or recipient did not know, and by the exercise of reasonable diligence would not have known, that its financial or organizational support was being used for, or would be used for, such purposes. Further, providing trafficking victims with emergency medical care for an emergency medical condition does not constitute such support.

*To promote or to advocate the legalization or the practice of prostitution* means to use financial, personal, in-kind, or other resources to further the legalization or the practice of prostitution, including by sponsoring or supporting conferences or publications that further the legalization or the practice of prostitution. This includes,



but is not limited to, engaging in lobbying activities or public information or advocacy campaigns to further the legalization or practice of prostitution.

#### **§ 404.2 Restriction on programs.**

(a) No funds made available by the HHS/ACF/ORR for the purpose of monitoring or combating trafficking in persons may be used to promote, support, or advocate the legalization or practice of prostitution.

(b) Nothing in paragraph (a) of this section shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from their being trafficked.

#### **§ 404.3 Restriction on organizations.**

(a) No funds made available for the purpose of monitoring or combating trafficking in persons may be used to implement any program that targets victims of severe forms of trafficking in persons through any organization that has not certified that it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from their being trafficked.

(b) An organization is ineligible to receive any funds made available for the purpose of monitoring or combating trafficking in persons, unless it has provided the certifications required by § 404.4.

#### **§ 404.4 Certifications.**

(a) Applicants shall include certifications in the application for the grant, cooperative agreement, contract, grant under a contract, or other funding instrument, made by an officer or other person authorized to bind the applicant.

(b) The HHS/ACF/ORR shall notify applicants for any grant, cooperative agreement, contract, grant under a contract, or other funding instrument of the certification requirement through public announcement of the availability of the grant, cooperative agreement, contract, grant under a contract, or other funding instrument.

(c) All applicants must provide the certifications in paragraph (d)(1) of this section (the Use of Funds Certification) and paragraph (d)(3) of this section (Acknowledgement and Sub-Applicant Certifications), and organizations that are applicants must provide at least one of the certifications in paragraph (d)(2) of this section (by choosing among the Primary Eligibility certification and the two Secondary Eligibility

Certifications). Organizations that are sub-applicants of an organization that provides the Primary Eligibility Certification must themselves provide the Primary Eligibility Certification. Likewise, organizations that are sub-applicants of an organization that provides Secondary Eligibility Certification A must themselves provide Secondary Eligibility Certification A, and organizations that are sub-recipients of an organization that provides Secondary Eligibility Certification B must provide Secondary Eligibility Certification B.

(d) The certifications shall state as follows:

(1) Use of Funds Certification: "I hereby certify that the recipient of the funds made available through this [grant, cooperative agreement, contract, grant under a contract, or other funding instrument] will not use such funds to promote, support, or advocate the legalization or the practice of prostitution."

(2) Eligibility Certifications.

(i) Primary Eligibility Certification: "I certify that the organization does not promote, support, or advocate the legalization or the practice of prostitution, and will not promote, support, or advocate the legalization or the practice of prostitution during the term of this [grant, cooperative agreement, contract, grant under a contract, or other funding instrument]. I further certify that the organization does not operate through any other organization or individual that supports, promotes, or advocates the legalization or the practice of prostitution."

(ii) Secondary Eligibility Certification A: "I certify that the organization provides assistance to individuals only after they are no longer engaged in activities that resulted from their being trafficked, and that the organization does not operate through any organization that provides assistance to victims other than after those victims are no longer engaged in the activities that resulted from their being trafficked. I further certify that if, during the funding period, the organization or any sub-recipient begins to provide assistance to other victims, the organization and all its sub-recipients, prior to the time such assistance is provided, will provide the Primary Eligibility Certification in 45 CFR 404.4(d)(2)(i)."

(iii) Secondary Eligibility Certification B: "I certify that the organization does not implement a program that serves victims of severe forms of trafficking, and that the applicant does not operate through any organization or individual that implements a program that serves

victims of severe forms of trafficking. I further certify that if, during the funding period, the organization or any sub-recipient begins to implement such a program, the organization and all its sub-recipients, prior to implementation of such a program, will provide the Primary Eligibility Certification in 45 CFR 404.4(d)(2)(i)."

(3) Acknowledgement and Sub-applicant Certifications: "I further certify that the applicant acknowledges that these certifications are a prerequisite to receipt of U.S. Government funds in connection with this [grant, cooperative agreement, contract, grant under a contract, or other funding instrument], and that any violation of these certifications shall be grounds for unilateral termination by the HHS/ACF/ORR of any grant, cooperative agreement, contract, grant under a contract, or other funding instrument prior to the end of its term and recovery of appropriated funds expended prior to termination. I further certify that the applicant will include this identical certification requirement in any [grant, cooperative agreement, contract, grant under a contract, or other funding instrument] to a sub-applicant of funds made available under this [grant, cooperative agreement, contract, grant under a contract, or other funding instrument], and will require such sub-applicant to provide the same certification that the organization provided."

(e) The HHS/ACF/ORR shall consider an recipient in violation of its certifications if an individual who is an employee, director, or otherwise under the control of the recipient supports, promotes, or advocates the legalization or the practice of prostitution, unless:

(1) The recipient does not endorse or provide financial support for the action by the individual and prohibits the individual from accepting reimbursement from other organizations for such action insofar as such reimbursement occurs because of the individual's position with the recipient.

(2) The applicant takes reasonable steps necessary to ensure that a reasonable observer would understand the individual is not representing the applicant, and that the applicant does not endorse the individual's promotion, support, or advocacy of prostitution or its legalization.

(f) Recipient, sub-recipients, applicants and sub-applicants of funds must file a renewed certification upon any extension, amendment, or modification of the grant, cooperative agreement, contract, grant under a contract, or other funding instrument that extends the term of such instrument



or adds additional funds to it.

Recipients and sub-recipients that are already recipients, sub-recipients, applicants and sub-applicants as of the effective date of this regulation must file a certification upon any extension, amendment, or modification of the grant, cooperative agreement, contract, grant under a contract, or other funding instrument that extends the term of such instrument or adds additional funds to it.

(g) Sub-applicants of funds must provide the HHS/ACF/ORR with a certification as set out in Paragraph (c) of this section, or in a separate writing signed by the sub-applicant officer or other person authorized to bind the applicant, submitted as part of the application for award of the grant, cooperative agreement, contract, grant under a contract, or other funding instrument.

#### **§ 404.5 Restriction on programs operated with or through consortia.**

The HHS/ACF/ORR may not make available any funds appropriated for the purpose of monitoring or combating the trafficking of persons through, or expended by, programs operated with, or through, a consortium of organizations that includes any organization that has not provided the HHS/ACF/ORR with a certification as set out in § 404.4.

#### **§ 404.6 Record-keeping and inspection.**

(a) Recipients and sub-recipients shall maintain press and public relations material, Internet content, and other broadly disseminated documents (such as training manuals, curricula, and other educational matter) pertinent to establishing the validity of the certifications for a period of three years after the end of the term of the grant, cooperative agreement, contract, grant under a contract, or other funding instrument through which the HHS/ACF/ORR provided the funds. If any litigation, claim or audit is started before the expiration of the three year period, the records must be retained until all litigation, claims or audit findings involving the materials have been resolved and final action taken.

(b) Authorized HHS/ACF/ORR employees have the right to timely and unrestricted access to the materials described in paragraph (a) of this section. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents.

#### **§ 404.7 Termination of funding.**

(a) The HHS/ACF/ORR may terminate transfer of funds to a recipient, including by terminating a grant, cooperative agreement, contract, grant under a contract, or other funding instrument, if the HHS/ACF/ORR determines that the recipient or a sub-recipient of the funds has failed to comply with the requirements of this part.

(b) A recipient whose HHS/ACF/ORR funding has been terminated shall reimburse the HHS/ACF/ORR for all funds expended after the violation occurred, or, in the case of a grant, cooperative agreement, contract, grant under a contract, or other funding instrument, the funds in their entirety if the HHS/ACF/ORR determines that an organization's statement was or has become false.

(c) In addition to termination of funding, the HHS/ACF/ORR may suspend or debar a recipient in violation of this part from receiving any further Federal government funds if the HHS/ACF/ORR determines that the violation of this part was willful.

(d) Terminations will be in accordance with the Federal Acquisition Regulations, Part 49 for contracts; 45 CFR Part 74 or Part 92 for grants, cooperative agreements, and grants under a contract.

[FR Doc. E8-3489 Filed 2-25-08; 8:45 am]

BILLING CODE 4184-01-P

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[FWS-R6-ES-2008-0022; 1111 FY07 MO-B2]

#### **Endangered and Threatened Wildlife and Plants; Initiation of Status Review for the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; initiation of status review and solicitation of new information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the initiation of a status review for the greater sage-grouse (*Centrocercus urophasianus*). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the greater sage-grouse.

**DATES:** To be considered in our determination whether listing is warranted, data, comments, and information should be submitted to us on or before May 27, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R6-ES-2008-0022; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** The U.S. Fish and Wildlife Service's Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009; telephone 307-772-2374. People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Information Solicited**

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the greater sage-grouse. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties on the status of the greater sage-grouse throughout its range, including:

(1) Information regarding the species' historical and current population status, distribution, and trends; its biology and ecology; and habitat selection;

(2) Information on the effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act, which are:

(a) present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence.