

Guidance for Federal Register Notice
Required Under the America COMPETES Act of 2010
for the Requirements and Registration
of Challenges and Competitions

Provided below is guidance for HHS officials functioning as challenge managers to use in developing the required Federal Register notice for the announcement of a challenge under the America COMPETES Reauthorization Act of 2010, 15 U.S.C. 3719, (Pub. L. No. 111-358, Jan. 4, 2011) (the COMPETES Act). To the extent that challenge manager duties are performed by a contractor, a government contracting officer should review the statement of work set forth in the corresponding contract to ensure that only the government performs inherently governmental functions as required by the Federal Acquisition Regulation. 48 C.F.R. 7.503.

The COMPETES Act establishes mandatory requirements for the registration of prizes and challenges. The COMPETES Act mandates that for each prize competition, the head of an agency shall publish a notice in the Federal Register announcing: (1) the subject of the competition; (2) the rules for being eligible to participate in the competition; (3) the process for participants to register for the competition; (4) the amount of the prize; and (5) the basis on which a winner will be selected. 15. U.S.C. 3719(f).

The COMPETES Act does not require the treatment of Intellectual Property (IP) rights to be addressed in the Federal Register Notice unless either or both of the following conditions is/are met: 1) the treatment of IP rights is a condition of eligibility to participate in the competition or 2) the treatment of the IP rights amounts to a basis on which a winner would be selected (such as an evaluation factor). If it is known that the agency intends to negotiate IP rights at some later point, this may be noted under the "Additional Information" section of this notice. It is recommended that challenge managers review the guidance document titled "HHS Question and Answer Document on the COMPETES Act: Consideration of Intellectual Property Rights" on HHS's challenges and competitions website at <http://www.hhs.gov/open/initiatives/challenges> to ensure the proper treatment of IP rights in the Federal Register Notice.

The requirements for writing a notice for the Federal Register can be found in the Federal Register Document Drafting Handbook, the relevant portion of which is

available at
<http://www.archives.gov/federal-register/write/handbook/chapter-3.txt>. Challenge managers should utilize their operating or staff division's processes for submitting this document to their Executive Secretariats for publication in the Federal Register.

The notice announcing the requirements and registration of the challenge should be published in the Federal Register before the challenge is launched (i.e., advertised on Challenge.gov).

[Billing Code]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Subagency Name]

[Agency Docket Number]

Announcement of Requirements and Registration

for_____ [Insert Name of Challenge]

Authority: 15 U.S.C. 3719

AGENCY: _____ [Subagency Name], HHS

AWARD APPROVING OFFICIAL: Name, Title [Should be the OPDIV head or one of their direct reports. Please note, OPDIV heads may delegate approval to one of their direct reports.]

ACTION: Notice

SUMMARY: In summarizing the challenge that will be issued by your agency, please answer the following four questions:

- 1) What action is being taken?
- 2) Why is this action necessary?
- 3) What is the objective of the challenge?
- 4) What is the intended effect of this action?

The summary should be brief. Supporting information and details, including the mandatory information necessary to meet the requirements of the COMPETES Act, should be placed under the SUPPLEMENTARY INFORMATION caption below.

DATES: Effective on [list the effective dates of the challenge].

FOR FURTHER INFORMATION CONTACT: [List the name and telephone number of a person within your agency who can answer questions about the challenge.]

SUPPLEMENTARY INFORMATION:

The COMPETES Act requires the first five subheadings below to be announced and addressed in the Federal Register notice. 15 U.S.C. 3719(f).

Subject of Challenge Competition: The COMPETES Act requires the subject of the competition to be included in the Federal Register notice. 15 U.S.C. 3719(f)(1).

Eligibility Rules for Participating in the Competition:

The COMPETES Act requires the rules for being eligible to participate in the competition to be included in the Federal Register notice. Requirements 1-4 set forth immediately below are mandatory under the COMPETES Act, and thus shall

be included as part of the eligibility criteria. 15 U.S.C. 3719(f)(2),(g).

To satisfy the mandatory provisions of the Competes Act, use the following language:

"To be eligible to win a prize under this challenge, an individual or entity—

- (1) Shall have registered to participate in the competition under the rules promulgated by [the issuing agency];
- (2) Shall have complied with all the requirements under this section;
- (3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and
- (4) May not be a Federal entity or Federal employee acting within the scope of their employment."
- (5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

- (6) [If STAFFDIV, insert following sentence: "Shall not be an employee of _____(STAFFDIV name)."
If OPDIV, insert following sentence: "Shall not be in the reporting chain of _____ (Title of award approving official) in _____ (OPDIV name)."]
- (7) [Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award and specifically requested to do so due to the competition design. Therefore, unless specifically requesting Federal grantees to compete, include the following text in your Federal Register notice:
"Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award."]
- (8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

Challenge Managers should include the following statement regarding consultation with Federal employees:

"An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis."

Challenge managers should review the guidance document titled "Question and Answer Document on Liability Releases, Liability Insurance from Third Party Claims and Indemnification of the Federal Government Against Third Party Claims", which is posted on HHS's challenges and competitions website at <http://www.hhs.gov/open/initiatives/challenges> to properly address the liability and insurance provisions required for participation in the challenge.

Registration Process for Participants:

The COMPETES Act requires the process for participants to register for the competition to be included in the Federal Register notice. 15 U.S.C. 3719(f)(3).

Challenge managers should be aware that all challenges in which HHS is involved should be listed on the challenge.gov

website, even if the challenge is run on an outside platform.

Amount of the Prize:

The COMPETES Act requires the amount of the prize to be included in the Federal Register notice. 15 U.S.C. 3719(f) (4).

Challenge managers should be aware that the amount of a prize may be increased after an initial announcement is made in the Federal Register only if notice of the increase is provided in the same manner as the initial notice of the prize.

If no monetary prize is offered, the Federal Register notice should describe the planned recognition for the winner.

Payment of the Prize:

[If prize paid by contractor, this section is not needed. If prize directly paid by HHS, include the following statements: "Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. HHS will comply with the Internal Revenue Service withholding and reporting requirements, where applicable."]

Basis upon Which Winner Will Be Selected:

The COMPETES Act requires the basis on which a winner will be selected to be included in the Federal Register notice. 15 U.S.C. 3719(f)(5). The judges are required by the Act to select the winner or winners on this basis. 15 U.S.C. 3719(k)(1). Thus, to meet the requirements of the COMPETES Act, the Federal Register notice shall describe the basis on which a winner will be selected. The description should include the expected number of winners, if multiple winners are anticipated.

Additional Information: Challenge managers should include any additional information in this section that would be relevant for participants. For example, it could include background information about the data sources or materials that should be accessed for purposes of this challenge, treatment of intellectual property rights if it is an area the agency plans to negotiate at a later point in the challenge competition, or background information about related initiatives or challenges.

Date: _____.

_____ [signature] _____

Name of Agency Head,

Title of Agency Head.