

§ 90.669 Emission limits.

(a) On any frequency in an MTA licensee's spectrum block that is adjacent to a non-MTA frequency, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus $10 \log_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation.

Note: The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

11. A new § 90.671 is added to Subpart S to read as follows:

§ 90.671 Field strength limits.

The predicted or measured field strength at any location on the border of the MTA service area for MTA licensees shall not exceed 40 dBuV/m unless all bordering MTA licensees agree to a higher field strength. MTA licensees are also required to coordinate their frequency usage with so-channel adjacent MTA licensees and all other affected parties. To the extent that a single entity obtains licenses for adjacent MTAs on the same channel block, it will not be required to coordinate its operations in this manner. In the event that this standard conflicts with the MTA licensee's obligation to provide co-channel protection to incumbent licensees under Section 90.621(b), the requirements of Section 90.621(b) shall prevail.

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DEPARTMENT OF DEFENSE**Defense Logistics Agency****48 CFR Part 5452****DLA Acquisition Regulation; Fuel Allocation Procedures**

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency establishes a new 48 CFR Chapter 54 to contain Defense Logistics Agency acquisition regulations. New part 5452 is added to supplement Federal Acquisition Regulation 49.504(a)(1) and its requirement to use FAR Default clause 52.249-8. The Defense Fuel Supply Center (DFSC) proposed three nonstandard clauses for bulk, bunkers, into-plane, and posts, camps, and

stations petroleum solicitations and contracts concerning fuel allocation procedures. The three clauses have been incorporated into one clause for use by DFSC. This allocation clause permits DFSC contractors to supply less than the full amount of fuel contracted by the government, without being terminated for default, during periods of exceptional fuel shortages, provided that the shortage is beyond the control and without the fault or negligence of the contractor.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melody Reardon, (703) 274-6431.

SUPPLEMENTARY INFORMATION:**A. Background**

On April 28, 1994, DFSC published a proposed rule in the **Federal Register** to incorporate three nonstandard clauses into the DLAR. Public comments were requested, received, addressed, and resolved by DFSC. As a result, the three nonstandard clauses were consolidated into one clause by DFSC, to be used in domestic and overseas petroleum solicitations and contracts. DFSC has historically utilized deviations to FAR termination for default clauses in order to provide for contingencies in the case of fuel allocations by contractors. These deviations have been approved on an annual basis since 1974. DFSC incorporates the nonstandard fuel allocation clause in DLAR in order to eliminate the need for annual review and approval. The clause is necessary to protect potential contractors from default proceedings and ensure the continuance of a competitive procurement environment for government petroleum requirements. Allocation of fuel to customers on a pro rata basis during periods of extreme shortage is a standard practice in the petroleum industry.

B. Regulatory Flexibility Act

The final clause is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, since the previous clauses have been utilized for many years by Defense Fuel Supply Center as deviations to FAR. An initial regulatory flexibility analysis has, therefore, not been performed.

C. Paperwork Reduction Act

The final rule does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5452

Government procurement.

Accordingly, 48 CFR Chapter 54 is added to read:

CHAPTER 54—DEFENSE LOGISTICS AGENCY, DEPARTMENT OF DEFENSE**PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****Subpart 5452.2—Texts of Provisions and Clauses****5452.249 Allocation**

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

5452.249 Allocation

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

Allocation (DFSC 1995) (Deviation) (9F01)

(a) Reduced Supplies.

If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

(b) Additional Supplies.

If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a);

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.

(c) Reduced Deliveries.

If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with (a) above. In addition to the criteria in (a) above, the Contractor's request shall cite—

(1) The law, regulation or order, furnishing copies of the same;

(2) The authority under which is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure.

The Contracting Officer will promptly review the matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b), or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(e) Except as otherwise stated in (b) above, any volumes omitted pursuant to (a) or (b) above shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

(f) For Posts, Camps, and Stations contracts, Department of Energy priority orders and allocation regulations will take precedence over any conflicting provisions of this clause.

(g) For Bulk Fuels contracts, the provisions contained in (a) and (b) above shall be inoperative when the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Fuel Supply Center be provided contract volumes exceeding the pro rata amount of product to which it would otherwise be entitled. However, in no case will the Contractor be required, under this contract, to supply more than 100% of the quantity specified in the Schedule.

[end of clause]

Dated: April 24, 1995.

Margaret J. Janes,

Assistant Executive Director (Procurement Policy).

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ENVIRONMENTAL PROTECTION AGENCY**48 CFR Parts 1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552**

[FRL-5201-5]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to incorporate changes to the EPAAR which are generally administrative in nature.

EFFECTIVE DATE: May 4, 1995.

ADDRESSES: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, Telephone: (202) 260-6482.

SUPPLEMENTARY INFORMATION:**I. Background Information**

This rule raises the level of delegated authority and the dollar thresholds for several administrative review requirements. The rule also corrects terminology, FAR and EPAAR references and improves the consistency between the FAR and the EPAAR.

II. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

IV. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 48 CFR Parts

1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552. Government Procurement.

For the reasons set forth in the preamble, Chapter 15 of Title 48 Code of Federal Regulations 1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552 is amended as follows:

1. The authority citation for parts 1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

1503.203 [Amended]

2. Section 1503.203 is amended by removing the words "Head of the Contracting Activity" and adding in its place the words "Chief of the Contracting Office".

1505.270 [Amended]

3. Section 1505.270 is amended by removing the dollar figure "\$10,000" in paragraph (b) and adding in its place the dollar figure "\$25,000".

1505.271 [Removed and Reserved]

4. Section 1505.271 is removed and reserved.

1513.570 [Amended]

5. Section 1513.570 is amended by revising paragraph (c) to read as follows:

1513.570 Oral Purchase Orders

* * * * *

(c) Oral purchase orders shall not be used for—

(1) Acquisitions for construction over \$2,000.

(2) Acquisitions for services over \$2,500 which are subject to the Service Contract Act.

1514.406-3 [Amended]

6. Section 1514.406-3 is amended by removing the words "Head of Contracting Activity (HCA)" and adding in its place the words "Chief of the Contracting Office".

1515.506 [Amended]

7. Section 1515.506 is amended by removing "PM-216" and adding in its place "3903F".

1515.612 [Amended]

8. Section 1515.612 is amended by removing the dollar figure of "\$5,000,000" in paragraphs (a)(1) introductory text and (a)(2) introductory text and adding in its place the dollar figure "\$15,000,000."

1522.608-3 [Amended]

9. 1522.608-3 is amended by removing the words "Head of the Contracting Activity (HCA) for referral to the Department of Labor (DOL) or to the Administrator of SBA if the offeror is a small business" and adding in its place "Chief of the Contracting Office in accordance with FAR 22.608-3(b)(1)-(3)".

10. Section 1522.1003 is revised to read as follows: