

Secretary currently applies a formula similar to the one used to calculate the title IV-B allotments of the territories. This formula takes into consideration the Indian tribe's resident population under 21 and its per capita income.

The current formula for calculating an ITO's allotment results in an amount which bears the same ratio to the total State's title IV-B allotment as the product of 1.4 times the proportion of the Indian tribe's resident population under age 21 to the State's total population under age 21. The 1.4 multiplication factor has not resulted in grant amounts large enough to make it worthwhile for many tribes to apply for title IV-B. By June 1993, only 24 tribes were receiving direct title IV-B grants totaling \$549,340. The average grant available to specified ITOs was \$22,889, and grants ranged from a high of \$166,468 to a low of \$648.

The Department plans to change the multiplication factor to 3.0 for fiscal year 1996 in order to improve the quality of Indian child welfare nationally. For comparison purposes, using the fiscal year 1993 figures given above, this would have raised the average amount available to the specified ITO's to \$45,778, and grants would have ranged from a high of \$332,936 to a low of \$1,296.

Paragraph (g)(6) contains the Department's formula for the calculation of ITO allotments. The multiplication factor will be adjusted in future years based on the Department's experience, if necessary, in order to achieve the purposes of the Act. Any decision to change the multiplication factor will be promulgated through the issuance of an Information Memorandum under the ACYF policy issuance system.

Except for delaying the effective date to October 1, 1995, we have made no changes in the final rule as proposed in the Notice.

### III. Impact Analysis

#### *Executive Order 12866*

Executive Order 12866 requires that regulations be written to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the regulations are consistent with these priorities and principles. This final rule will not result in more costs because the increased funding to Indian tribes and ITOs will come from the change in the allotment formula.

#### *Regulatory Flexibility Act of 1980*

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 5), the Department tries to anticipate and

reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses and small non-profit organizations. This regulation would affect States and Indian tribes, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1980, Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. This final rule contains no reporting or recordkeeping requirements. Therefore no submission to OMB is required.

#### **List of Subjects in 45 CFR Part 1357**

Adoption and foster care, Child welfare, Child welfare services, State plan, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 93.645, Child Welfare Services—State Grants)

Dated: May 12, 1995.

**Mary Jo Bane,**

*Assistant Secretary for Children and Families.*

For the reasons set forth in the preamble, 45 CFR 1357.40 is amended as follows:

#### **PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B**

1. The authority statement for Part 1357 continues to read as follows:

**Authority:** 42 U.S.C. 620; 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

2. Section 1357.40 is amended by revising the heading and paragraph (a) and by adding paragraph (g)(6) to read as follows:

#### **§ 1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).**

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them, is eligible to apply for direct funding if the ITO, consortium or group has a plan

for child welfare services that is jointly developed by the ITO and the Department.

\* \* \* \* \*

(g) *Grants: General.*

\* \* \* \* \*

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV-B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the Act and revised as appropriate.

[FR Doc. 95-13507 Filed 6-1-95; 8:45 am]

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## **DEPARTMENT OF ENERGY**

### **48 CFR Parts 933 and 970**

RIN 1991-AB20

#### **Acquisition Regulation; Department of Energy Management and Operating Contracts**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) today amends the Department of Energy Acquisition Regulation (DEAR) to modify certain requirements for management and operating contractor purchasing systems. These requirements are revised to identify certain purchasing system objectives and standards; eliminate the application of the "Federal norm"; and place greater reliance on commercial practices.

**EFFECTIVE DATE:** June 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** James J. Cavanagh, Office of Contractor Management and Administration (HR-55), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; telephone 202-586-8257.

#### **SUPPLEMENTARY INFORMATION:**

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## I. Background

A proposed rule was published in the March 2, 1995, **Federal Register** at 60 FR 11646. It proposed to amend the Department of Energy Acquisition Regulation (DEAR) to revise the requirements for management and operating (M&O) contractor purchasing systems by eliminating the concept of the "Federal norm." In lieu of the detailed tenets contained in DEAR subpart 970.71, which have resulted in the inefficient layering of non-commercial systems and practices, the Department has identified certain purchasing system objectives and standards which it believes are common to superior purchasing activities, whether they be commercial or public. In this regard, the proposed rule proposed to amend, revise or remove §§ 933.170, 970.5204-22, 970.7101, 970.7102, and 970.7103 of the DEAR.

The March 2 publication also proposed the removal of DEAR 970.7106, which prescribed procedures for the handling of mistake in bid situations in purchasing by M&O contractors. Further, the Department proposed the removal of DEAR 970.7107 which, until today, provided guidelines for the consideration of subcontractor level protests. The removal of this section is consistent with the General Accounting Office proposed rule published in the **Federal Register** on January 31, 1995 at 60 FR 5871.

Subsequent to the March 2 notice of proposed rulemaking, the Department published an amendment to the proposed rule in the April 27, 1995, **Federal Register** at 60 FR 20663. The amendment dealt with administrative matters, mostly technical, that DOE reserved for further analysis during the comment period for the March 2 notice of proposed rulemaking. The comment period on the April 27 amendment to the proposed rulemaking ended on May 30, 1995. The Department wishes to effect the changes set forth in the March 2 proposed rulemaking and the April 27 amendment thereto as quickly as possible to enable the DOE contractor community to implement the changes to Subpart 970.71 of the DEAR without delay. Accordingly, the Department is finalizing the changes in the March 2 proposed rulemaking and the April 27 amendment in two stages. With two exceptions, today's rule finalizes the changes proposed in March 2 notice of proposed rulemaking. The two exceptions are the changes proposed to be made to the Contractor Purchasing System clause at § 970.5204-22 and § 970.7104. These proposed changes

were affected by the April 27 amendment and, therefore, are being held in abeyance pending consideration of comments on the April 27 amendment. It is the intention of the Department to incorporate the revised and new clauses provided for in the April 27 amendment into existing M&O contracts as soon as practicable after the effective date of the second final rule.

## II. Disposition of Comments

Comments on the March 2, 1995 notice of proposed rulemaking were received from a total of eleven commenters, nine of which are organizations and two of which are individuals. All of the organizations are contractors which have been awarded DOE M&O contracts. Nine of the commenters expressed support for the proposed rule and its intended effects upon the subcontracting processes of the Department of Energy's M&O contractors. Six commenters offered comments recommending revisions. Some of the recommendations were considered not significant, non-substantive, or editorial and are not discussed in the disposition of comments. Other recommendations were determined to be outside the scope of this rulemaking and, therefore, were not considered in formulating this final rule.

Comments related to DEAR Clause 970.5204-22 and DEAR § 970.7104 are reserved for resolution until the April 27, 1995 amendment to the March 2, 1995 notice of proposed rulemaking is finalized and are, therefore, not addressed in this final rule.

### 1. Policies and Procedures

One commenter suggests that DOE should clarify whether the proposed rule would apply to performance-based management contractors, DOE's so-called environmental remediation management contractors, and fixed price and cost contracts. This rule amends DEAR Part 970 and accordingly affects only M&O contracts which are the subject matter of the part. Performance-based contracts are a new form of M&O contract and are therefore affected. The rule also would affect M&O subcontracts which may be cost-type or fixed-price. This final rule does not apply to environmental restoration management contracts, or any other non-M&O contract.

The same commenter also recommends that we retitle Part 970 as "Prime Contractors." DEAR Part 970 is appropriately titled "DOE Management and Operating Contracts" as its scope is limited to this subject; therefore, no change has been made.

In addition, the same commenter requests that we define the "Federal norm." A definition will not be provided since the purpose of this rulemaking is, among other things, to delete the concept from Subpart 970.71.

Another commenter recommends that DOE remove Subpart 970.71 entirely and use the appropriate subcontracts clause from 52.244 of the Federal Acquisition Regulation (which would be the clause at 52.244-2). This commenter believes that this clause provides a sufficient framework for effective oversight of M&O subcontracting activities by DOE. The recommended change has not been adopted. The experience of this Department and its predecessors is that many unusual situations arise in subcontracting activities by DOE's M&O contractors that require treatment specific to the provisions of M&O contracts and DOE programs. Further, the amended DEAR Subpart 970.71 focuses more on outcome than processes and more clearly defines what the Department expects of its contractors by establishing performance objectives.

One commenter states that the phrase "and further \* \* \* for review and acceptance" be removed from § 970.7102(b)(1), doing away with the requirement for submission of the M&O contractor's written purchasing system and methods to DOE upon award or extension of the contract. The suggested change has not been adopted because the opportunity to review the system at that point in time is critical to effective oversight by DOE.

Three commenters suggest additional language or changes to the revision to § 970.7102(b)(3) incorporating FAR 44.2 as the standard for review by DOE of proposed subcontract transactions. One commenter points out that the FAR provision requires review by the Government of substantially all proposed subcontracts even where the contractor has an approved system. The second suggests adding the phrase "for conformance with the procedural requirements of the contractor's written systems and methods" after the phrase "pursuant to FAR 44.2." The third would substitute "pursuant to the contractor's approved written description of its purchasing system and methods" for the phrase incorporating FAR 44.2. The change to § 970.7102(b)(3) was not intended to place more stringent requirements on contractors, but rather to establish review procedures which are consistent with FAR 44.2. The Department agrees that other review procedures may be approved consistent with the contractor's approved purchasing

system procedures, and accordingly has revised § 970.7102(b)(3) to clarify this intent in the final rule.

Another commenter stated that the proposed rule was unclear regarding what contracting purchasing system objectives, expectations and standards will replace the "Federal norm" and whether they will be negotiated items or mandated by the DOE. Section 970.7103(a) clearly states the objectives of M&O purchasing systems. Section 970.7103 (b) and (c) set forth the requirements and expectations of the Department as to acceptable purchasing systems. Those provisions state the purchasing system requirements in terms of principles and results which the contractor must attain, and are necessarily negotiable as to specific approaches and methods which may then be tailored to the specific circumstances of the contractor mission, operations and site. Therefore, no change has been made to proposed § 970.7103.

Two commenters recommended the deletion of the word "directly" from the first sentence of proposed § 970.7103(c). The recommendation has not been adopted. Certainly, the FAR does not directly apply to purchasing activities of an M&O contractor or any other type of Federal contractor. However, certain conditions found in the FAR do apply to subcontracting transactions through flowdown requirements, e.g., Truth in Negotiations submissions, Cost Accounting Standards, various labor provisions, or otherwise.

One commenter questioned the implicit assumption in the proposed § 970.7103(d) that there is a "best" in commercial purchasing practices and procedures. The comment further noted that it is unclear who is to decide what is "best," the contractor or the DOE. The purpose of the change in the Department's policy regarding contractor purchasing systems and methods is to allow M&O contractors to make maximum use of efficient and effective commercial business practices in their subcontracting. Although there is no established list of best commercial practices that generally fits all situations, there is a growing body of research into and knowledge of effective purchasing techniques. As stated in the proposed § 970.7103(a), contractors are expected to use their experience, expertise, and initiative consistent with Subpart 970.71. This approach provides these contractors with great discretion in designing their purchasing systems and methods. It is the intention of the Department, however, to work collegially with its contractor community to establish mechanisms by

which commercial purchasing trends and best practices may be periodically identified and assessed for inclusion in contractor purchasing systems. It is further the intention of the Department to perform its fiduciary responsibility by evaluating contractors' practices to ensure the appropriate expenditure of funds.

Another commenter recommended that all of § 970.7103(d) after the first sentence be deleted. The suggested deletion has not been accepted because such a statement of principles is necessary to assure agreement between the Department and its M&O contractors as to the foundation of the purchasing system that is to be developed and described.

Two commenters recommended the alteration of § 970.7103(d)(1) to substitute "best value" for "fair and reasonable prices." One commenter stated that this change would be consistent with the proposed changes in § 970.7103 (c) and (d). The Department does not believe that these terms are inconsistent. The discretion provided by the provisions of this revision to DEAR 970.71 allow for purchasing using a best value approach. The use of "fair and reasonable" in the context of 970.7103(d)(1) makes clear the standard against which the results of the purchase will be assessed.

### 2. Protest Procedures

Two commenters question what process for protests against award of subcontracts by DOE M&O contractors will replace that which is being deleted by this final rule at § 970.7107. One commenter stated that DOE should identify any circumstances where it will request GAO jurisdiction. Consistent with the preamble of the proposed rule on March 2, 1995, this final rule deletes the guidelines in DEAR 970.7107 for consideration of subcontractor protests. This result is consistent with the GAO proposed rule of January 31, 1995 (60 FR 5871). The Department has advised the GAO of our decision. At the present time, we do not foresee any particular circumstances where DOE will request GAO subcontractor protest resolution assistance.

The second commenter questions "whether DOE will continue to accept and rule on [subcontractor] protests." The Department will not continue to accept or rule on subcontractor protests on a subcontract awarded after the effective date of this rule. As noted in the preamble to the proposed rule and this final rule, DEAR § 933.170 and § 970.7107 have been deleted in recognition of the elimination of the "Federal norm." The Department

believes that disagreements over the award of individual subcontracts should be resolved in the same manner used by non-Federal entities and their suppliers. The Department has endorsed the contractors' use of alternative disputes resolution where appropriate.

### 3. DOE Oversight

The remaining comments received deal with the question of controls on M&O contractor purchasing systems and the process by which the controls will be enforced. This rule does not obviate the need for effective contract administration. In fact, initially the Department's participation in the development of an M&O purchasing system based upon "best commercial practices" may actually increase. We expect that the nature of DOE's oversight activity will change coincident with the identification, adoption, and systemic reflections of effective commercial practices consistent with the overriding expectations for contractor purchasing systems. The Department intends to focus its oversight on results, as opposed to process, and is working with its contractor base to establish meaningful outcome oriented performance indicators.

Another commenter recommended that DOE clarify whether M&O contractors are required to seek competition in subcontracting. The final rule at 970.7103(d)(4) establishes the use of effective competition as a system standard. This term, however, is not intended to equate to the Federal concept of full and open competition.

Other comments requested clarification of the application of certain statutory and regulatory requirements on the award of subcontracts (e.g., socioeconomic and Buy American requirements). The current rulemaking does not effect the requirements of public law, applicable regulations, or the terms and conditions of the M&O contracts. For example, the requirement is for M&O contractors to put forth their best efforts to achieve agreed upon goals negotiated in their small business subcontracting plan. This rule neither defines, nor limits, the approaches that the contractor may utilize to achieve the results sought. Issues relating to specific statutory and regulatory requirements previously identified in § 970.7104 will be addressed in the final rule based upon the April 27, 1995 amendment.

One commenter stated that it is unclear whether the contractor can unilaterally implement the changes that it believes are necessary as a result of the proposed rule or whether DOE will require that such changes be submitted

to it for review and approval. As stated in § 970.7103(b)(1), the contractor's purchasing systems and methods shall be submitted to the contracting officer for review and acceptance. Changes to existing systems, such as those required to implement this rule, are substantive and will require review and approval by the contracting officer. The Department is currently working with its contractor community to identify effective commercial purchasing practices and intends to be a constructive participant in the re-engineering of contractor purchasing systems.

Another commenter asks whether costs resulting from the implementation of this rule will be allowable costs. Costs associated with implementation of this rule are reimbursable expenses, so long as they are reasonable, allowable and allocable as set forth in the contract's cost principles.

The same commenter also recommends that a periodic review of the effectiveness of the changes resulting from this final rule be made, including the potential effects on small, small disadvantaged, and small women-owned businesses. The comment goes on to recommend that DOE engage an outside consultant. The Department, as part of ongoing contract administration as well as when periodically assessing the continued approval of a contractor's purchasing system, will perform an evaluation of the impact of the changes effected by this rule. The Department does not believe that outside consultative services are required for such assessments.

Finally, that commenter questions whether existing contracts will be modified to reflect the effects of this rule. The last paragraph of the Background section of the notice of proposed rule stated, "It is the intention of the Department to incorporate the changes made by this proposed rule into existing management and operating contracts as soon as practicable after the effective date of a final rule."

### III. Procedural Requirements

#### A. Review Under Executive Order 12866

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

#### B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department of Energy has determined that this final rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

#### C. Review Under the Paperwork Reduction Act

To the extent that new information collection or record keeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910-0300. No new information collection is proposed by this rule.

#### D. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE concluded that the rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. Accordingly, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared. DOE did not receive any comments on this certification.

#### E. Review Under Executive Order 12612

Executive Order 12612 entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in

promulgating and implementing a policy action. The Department of Energy has determined that this final rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

#### F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

#### List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, DC, on May 26, 1995.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

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

#### PART 933—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for Part 933 continues to read as follows:

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

##### § 933.170 [Removed]

2. Section 933.170, Subcontract level protests, is removed.

#### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

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

**§ 970.7101 [Amended]**

4. Section 970.7101, General, is amended by removing paragraphs (c) and (d).

**§ 970.7102 [Amended]**

5. Section 970.7102, DOE responsibility, is amended at: Paragraph (a) to remove the parenthetical last two sentences at the end of the paragraph; paragraph (b)(3) by removing the words "to assure that management and operating contractors implement DOE policies and requirements as defined in this subpart, in accordance with the contractor's accepted system and methods" and adding in its place the words "pursuant to 48 CFR (FAR) 44.2 or as set forth in the contractor's approved system and methods"; and paragraph (b)(4) by revising the last parenthetical "(See Subpart 944.3 and 970.7108)" to read "(See 970.7103)".

6. Section 970.7103, Policies, is revised to read as follows:

**§ 970.7103 Contractor purchasing system.**

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be well-defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulations in 48 CFR. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall

provide for appropriate measures to ensure the:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition lead-time and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures;

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards; and

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid.

**§ 970.7106, 970.7107 [Removed]**

7. Sections 970.7106, Procedures for handling mistakes relating to management and operating contractor purchases, and 970.7107, Protest of management and operating contractor procurements, are removed.

[FR Doc. 95-13432 Filed 6-1-95; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 227**

[Docket No.950201033-5136-02; I.D. 040395C]

RIN 0648-AG37

**Sea Turtle Conservation; Shrimp Trawling Requirements; Turtle Excluder Device Exemption**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS temporarily amends the regulations protecting sea turtles to allow compliance with tow-time limits as an alternative to the use of turtle

excluder devices (TEDs) by shrimp trawlers in a 30-square mile (48.3-square km) area off the coast of North Carolina (North Carolina restricted area) through November 30, 1995. This area seasonally exhibits high concentrations of red and brown algae that make trawling with TEDs impracticable. Specific tow-time limits are required as follows: A 30-minute tow limit through August 15, 1995; a 55-minute tow limit from August 16 through October 31, 1995; and a 75-minute tow limit from November 1 through November 30, 1995. The purpose of this temporary rule is to allow shrimp trawlers to harvest shrimp efficiently during their traditional shrimping season (March through November) and maintain adequate protection for sea turtles in this area.

**EFFECTIVE DATE:** Effective from May 30, 1995 through November 30, 1995.

**ADDRESSES:** Copies of the environmental assessment (EA) prepared for this temporary rule may be obtained from the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; and to the Office of Information and Regulatory Affairs of Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for NOAA.

**FOR FURTHER INFORMATION CONTACT:** Russell J. Bellmer, (301) 713-1401, or Charles A. Oravetz, (813) 570-5312.

**SUPPLEMENTARY INFORMATION:****Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.* Incidental capture by trawlers has been documented for five species of sea turtles that occur in offshore waters of North Carolina. Sea turtle conservation regulations at 50 CFR parts 217 and 227 require all shrimp trawlers, regardless of length, in inshore and offshore waters of the Atlantic area, including off North Carolina, to have an approved TED installed year-round in each net rigged for fishing, unless specifically exempted.

Pursuant to the regulations at 50 CFR 227.72(e)(3)(ii), NMFS has promulgated 30-day exemptions to allow shrimpers in a certain area off North Carolina,