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Executive Editor, Defense Acquisition Regulations Council.

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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Part 442

[AGAR Case 99-02]

RIN 0599-AA09

Agriculture Acquisition Regulation; Designation and Mandatory Use of Contractor Performance System

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document invites written comments on a proposed amendment to the Department of Agriculture's (USDA) Agriculture Acquisition Regulation (AGAR). USDA proposes to amend the AGAR to establish the National Institutes of Health (NIH) Contractor Performance System as the single USDA-wide automated performance evaluation system. Regulations are being revised to identify that system and specify its mandatory use.

DATES: Comments are requested no later than November 13, 2000.

ADDRESSES: Submit written comments concerning this proposed rule to Patrice K. Honda, U.S. Department of Agriculture, Office of Procurement, Property and Emergency Preparedness, Procurement Policy Division, Stop 9303, 1400 Independence Avenue SW, Washington, DC 20250-9303. Submit electronic comments via electronic mail to: pat.honda@usda.gov. Submit comments via facsimile to: (202) 720-8972. See Supplementary Information section for detailed information about filing of comments.

FOR FURTHER INFORMATION CONTACT: Patrice K. Honda, (202) 720-8924.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Requirements

- A. Executive Order Nos. 12866 and 12988
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) where further implementation is needed, and supplements the FAR where coverage is needed for subject matter not covered by the FAR. AGAR section 442.1502 currently provides that the heads of the contracting activities are responsible for establishing past performance evaluation procedures and systems as required by FAR sections 42.1502 and 42.1503. USDA has identified a single automated performance evaluation system (the NIH Contractor Performance System) to be used USDA-wide and proposes to modify AGAR section 442.1502 to identify that system and specify its mandatory use by all USDA contracting activities. Information about the NIH Contractor Performance System is available on the internet at <http://ocm.od.nih.gov/cdmp/cps.htm>.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601-611, 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. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 99-02) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C.

3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. USDA has determined that the proposed rule, if promulgated, would not contain a Federal mandate. USDA has also determined that the proposed rule, if promulgated, would not significantly or uniquely affect small governments. Accordingly, the proposed rule is not subject to the requirements of Title II of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 4325, August 10, 1999), imposes requirements on USDA in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

USDA has determined that this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. Accordingly, this proposed rule is not subject to the requirements of Executive Order 13132.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, entitled, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 14, 1998), USDA may not issue a regulation that is not required by statute if that regulation significantly or uniquely affects the communities of Indian Tribal governments, and if it imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the costs of compliance incurred by the tribal governments or USDA consults with those tribal governments. USDA has determined

that this proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments and, therefore, the requirements of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 48 CFR Part 442

Acquisition regulations, Government contracts, Government procurement, Procurement.

For the reasons set out in the preamble, the Office of Procurement and Property Management proposes to amend 48 CFR Part 442 as set forth below:

PART 442—CONTRACT ADMINISTRATION

1. The authority citation for part 442 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. Revise section 442.1502 to read as follows:

442.1502 Policy.

The Contractor Performance System (CPS), developed by the National Institutes of Health, is designated as the single USDA-wide system for maintaining contractor performance/evaluation information. Use of the CPS is mandatory. As a minimum, the CPS shall be accessed for contractor past performance information as part of proposal evaluation in accordance with FAR 15.3, and information resulting from the evaluation of contractor performance in accordance with FAR 42.15 shall be entered into and maintained in this system. The CPS is a part of the USDA Acquisition Toolkit which can be accessed from the USDA Procurement Homepage at <http://www.usda.gov/da/procure.html>.

Done at Washington, D.C., this 5th day of September, 2000.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 090500A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on September 26, 27, and 28, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). During this timeframe, the Council's Herring Oversight Committee also will meet.

DATES: The Herring Oversight Committee will meet on Tuesday, September 26 at 8:30 a.m. Following the committee meeting, the full Council will meet on Tuesday, September 26 at 10:30 a.m., and on Wednesday, September 27, and Thursday, September 28, 2000, beginning at 8:30 a.m.

ADDRESSES: The meetings will be held at the Holiday Inn Express (formerly Seaport Inn Conference Center), 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997-1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Tuesday, September 26, 2000

The Herring Oversight Committee will meet to develop recommendations for consideration by the full Council on herring foreign fishing permit conditions and restrictions. Recommendations may be specific to a permit application already submitted by Lithuania, or may be applicable to any subsequent permit applications received for the 2001 fishing year (January 1, 2001-December 31, 2001). Following the Herring Committee meeting, the Council will swear in new and re-appointed members, and elect 2000-2001 officers. The Herring Committee will then provide its recommendations on herring

foreign fishing permit conditions and restrictions. The Capacity Committee will recommend for consideration by the Groundfish Committee proposals that will allow the transfer of fishing permits, address latent (unused) days-at-sea (DAS), and allow the transfer of groundfish DAS.

Wednesday, September 27, 2000

The Scallop Committee's report will be presented on the second day of the Council meeting and will include a presentation of the 2000 Stock Assessment and Fishery Evaluation (SAFE) Report on the sea scallop resource. The Council will also consider approval of initial action on the annual adjustment to the Atlantic Sea Scallop Fishery Management Plan (FMP). Discussion will focus on selection of management alternatives. Issues may include, but are not limited to, DAS allocations, access to the Hudson Canyon and Virginia/North Carolina closed areas, new area closures, and a prohibition on shell stocking.

Thursday, September 28, 2000

The third day of the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. There will also be a report on the Northwest Atlantic Fisheries Organization's most recent meeting. The Groundfish Overfishing Definition Committee will report on its review of the Council's overfishing definitions. The Groundfish Committee will then provide an update on development of management options for Amendment 13 to the Northeast Multispecies FMP, including a discussion of alternatives within the status quo management option, area management option(s), and a sector allocation option. The chairman also will report on committee discussions concerning rebuilding schedules of overfished groundfish stocks. Following the Groundfish Committee discussions, there will be a presentation of the available skate stock assessment and fishery information to be included in the Skate SAFE Report. The Skate Committee will provide its recommendation on issues to be included in a scoping document for a Skate FMP. The Enforcement Committee will provide the Council with its recommendations concerning a safe