

demonstrate that the following requirements are met:

(i) The license application may not propose to eliminate the authorized horizontally polarized ERP, if a horizontally polarized ERP is currently authorized;

(ii) The installed height of the antenna radiation center is not increased by more than two meters nor decreased by more than four meters from the authorized height for the antenna radiation center; and

(iii) The station is not presently authorized with separate horizontal and vertical antennas mounted at different heights. Use of separate horizontal and vertical antennas requires a construction permit before implementation or changes.

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## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1546 and 1552

[FRL-6917-2]

#### Acquisition Regulation: Remove Contract Quality Requirements; Miscellaneous Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amending the EPA Acquisition Regulation (EPAAR) to remove contract quality requirements which have been superseded by requirements in the Federal Acquisition Regulation (FAR) and to incorporate a minor miscellaneous technical amendment.

**EFFECTIVE DATE:** This rule is effective on March 20, 2001 without further notice, unless EPA receives adverse comments by January 19, 2001. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: [avellar.linda@epa.gov](mailto:avellar.linda@epa.gov). Electronic comments must be submitted

as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Corel WordPerfect format or ASCII file format. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

#### FOR FURTHER INFORMATION CONTACT:

Linda Avellar, U.S. EPA, Office of Acquisition Management, (3802R), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Telephone: (202) 564-4356.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

*Why is EPA utilizing a direct final rule to remove its contract quality requirements from the EPAAR?* This direct final rule is being published without prior proposal because we view this as a non-controversial removal of EPA contract quality requirements in the EPAAR. These EPAAR requirements have been superseded by regulations in the FAR. We do not anticipate any adverse comments. This rule will be effective on March 20, 2001 without further notice unless we receive adverse comments by January 19, 2001. If EPA receives adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We also will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. We will address the comments on the direct final rule as part of that proposed rulemaking.

*Why is EPA removing its contract quality requirements from the EPAAR?* Effective February 16, 1999, the FAR was amended to reflect a preference for voluntary consensus standards, rather than Federal or military specifications, in the specification of higher-level contract quality requirements. The new FAR clause at 52.246-11, Higher-Level Quality Requirement, allows Federal agencies to select a voluntary consensus standard as the basis for its higher-level quality requirements for contracts and allows tailoring of the standard to more effectively address specific needs or purposes. The final rule (published in the **Federal Register** at 63 FR 70289, December 18, 1998) revised FAR 46.202-4, 46.311, and 52.246-11. As a result of this rule, the EPAAR contract quality requirements described at 48 CFR 1546.2 are no longer needed, nor are the clauses at 1552.246-70, 1552.246-71, and 1552.246-72.

*How is EPA changing its contract quality requirements?* This direct final

rule is being issued to remove the current contents of 48 CFR 1546.2 and the corresponding clauses in 1552.246-70, 1552.246-71, and 1552.246-72.

When a contract requires compliance with higher-level quality standards, EPA will use the FAR clause at 52.246-11 and normally select ANSI/ASQC E4, Specifications and Guidelines for Environmental Data Collection and Environmental Technology Programs, as its contract quality standard. EPA may tailor the standard, as authorized by FAR 52.246-11, to ensure that contracts conform to appropriate contract quality standards. In addition, the EPA contracting officer, in consultation with quality assurance personnel, may determine that other voluntary consensus standards (e.g., ISO 9001:2000, Quality Management Systems—Requirements) apply to a specific contract.

*Will EPA hold itself and others to the same standard as it holds contractors?* Yes. The use of ANSI/ASQC E4 is consistent with internal EPA policy as defined in EPA Order 5360.1 CHG 1 (July 1998), Policy and Program Requirements for the Mandatory Agency-wide Quality System, which requires EPA organizations to develop, implement, and maintain a quality system that conforms to the minimum specifications of ANSI/ASQC E4. It is also consistent with EPA quality requirements for grantees and other recipients of financial assistance, which require these organizations to develop, implement and maintain a quality system that conforms to the minimum specifications of ANSI/ASQC E4.

*What is ANSI/ASQC E4 and what are its requirements?* ANSI/ASQC E4 is an American National Standard that describes the necessary management and technical elements for developing and implementing a quality system for environmental data operations and environmental technology. This standard is authorized by the American National Standards Institute (ANSI) and was developed under ANSI rules and procedures by the American Society for Quality. The standard is identified in the FAR at 46.202-4(b) as an acceptable higher-level contract quality standard, and FAR 52.246-11 authorizes the "tailoring" of the standard to adapt to particular situations and purposes. Copies of ANSI/ASQC E4 may be purchased from: ASQ Quality Press, P.O. Box 3005, Milwaukee, WI 53201-3005, Phone: (800) 248-1946, [www.asq.org](http://www.asq.org)

This standard recommends using a tiered approach to a quality system. It recommends first documenting each organization-wide quality system in a

Quality Management Plan or Quality Manual (to address requirements of Part A: Management Systems of the standard) and then documenting the applicability of the quality system to technical activity-specific efforts in a Quality Assurance Project Plan or similar document (to address the requirements of Part B: Collection and Evaluation of Environmental Data of the standard). EPA has adopted this tiered approach for its mandatory Agency-wide Quality System.

*How will EPA ensure that contractors conform to the Standard?* To demonstrate conformance with the standard, contractors, as required by the terms of a solicitation and contract, will generally provide two forms of documentation:

1. Documentation of the organization quality system (usually called a Quality Management Plan) which should be approved prior to the contractor initiating environmental work, and

2. Documentation of the application of quality assurance and quality control activities to technical activity-specific efforts (usually called a Quality Assurance Project Plan) which should be approved prior to the contractor initiating environmental data collection. Quality Assurance Project Plans may be generic (for contracts covering multiple projects with similar activities) or project/contract-specific.

*What work will be covered by the ANSI/ASQC E4 standard?* This standard may be tailored to apply to all work involving the generation and use of environmental data in environmental programs. Environmental data are any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. Environmental data also include information collected directly from measurements, produced from models, or compiled from other sources such as data bases or the literature, and used for decision making purposes.

This standard as tailored will also apply to the design, construction, and operation of environmental technology used for pollution or effluent control and abatement, waste treatment and remediation, the collection of environmental research data, and other related applications.

*How does the use of this contract quality standard differ from the current EPA contract quality requirements in the EPAAR?* This standard is not a significant change to the contract quality requirements currently contained in the EPAAR at 48 CFR

1546.2. The changes can be summarized as follows:

- The EPAAR requirement for a Quality Assurance Program Plan will be replaced by the requirement for a Quality Management Plan (or equivalent) as described in a solicitation and contract. Both document an organization's quality system.

- The EPAAR requirement for a Quality Assurance Project Plan will remain the same but its application (whether generic, project-specific, or contract-wide) will be defined in a solicitation and contract.

The content requirements for these plans, which were previously defined in 48 CFR 1552.246-70 and 48 CFR 1552.246-71, have been revised to be consistent with ANSI/ASQC E4.

*Where are the content requirements for Quality Management Plans and Quality Assurance Project Plans defined?* EPA identifies the elements of a Quality Management Plan to demonstrate conformance to ANSI/ASQC E4 in the document, EPA Requirements for Quality Management Plans (EPA QA/R-2). EPA defines the elements of a Quality Assurance Project Plan to demonstrate conformance to ANSI/ASQC E4 in the document, EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5). Both of these documents tailor, as permitted by the FAR clause at 52.246-11, the ANSI/ASQC E4 standard to conform to EPA-specific needs and purposes. The use of these documents is consistent with the tiered approach recommended by the ANSI/ASQC E4 standard.

Both of the above documents were released for peer review in October 1998 and are now available in a "Interim Final" version from the Quality Staff of the EPA Office of Environmental Information. These documents will be finalized on the effective date of this rule.

Copies of these documents can be obtained by calling (202) 564-6830, by requesting via E-mail to [quality@epa.gov](mailto:quality@epa.gov), or by downloading them from the Quality Staff website [es.epa.gov/ncercqa/qa/qa\\_docs.html](http://es.epa.gov/ncercqa/qa/qa_docs.html).

*What clause will be contained in EPA solicitations and contracts?* The FAR clause at 52.246-11, and any specific tailoring, will be included in all applicable solicitations and contracts. This clause will be incorporated into applicable solicitations and contracts by the EPA contracting officer, after consultation with quality assurance personnel, based on the prescriptions at FAR 42.202-4 and FAR 46.311.

## B. Executive Order 12866

This direct final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this direct final rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

## D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or

otherwise has a positive economic effect on all of the small entities subject to the rule. This direct final rule removes EPA quality assurance regulations and therefore will have no adverse impact on small entities.

Although this direct final rule will not have a significant economic impact on small entities, EPA has still tried to reduce the impact of its quality requirements on small entities by applying a graded approach to the implementation of these quality requirements. This means that managerial quality controls are applied according to the scope of the contract and/or the intended use of the outputs from the contract. While large contracts may require a contractor to develop comprehensive quality system documentation, smaller contracts with relatively less significant impacts generally only require limited documentation. Thus, small entities will normally only provide limited quality-related documentation to EPA. We have therefore concluded that this direct final rule and EPA's quality contract requirements will not have a significant economic impact on small entities.

#### **E. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This direct final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **F. Executive Order 13045**

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

#### **G. Executive Order 13132**

Executive Order 13132 entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials 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."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This direct final 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. This direct final rule removes contract quality requirements and clauses from the EPAAR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### **H. Executive Order 13084**

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance

costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### **I. National Technology Transfer and Advancement Act of 1995**

EPA will use voluntary consensus standards, as directed by section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), in its procurement activities when it specifies higher-level contract quality requirements. The specification of contract quality requirements involves technical standards. As permitted by FAR 46.202-4, 46.311, and 52.246-11, EPA generally plans to use the most current version of ANSI/ASQC E4, a voluntary consensus standard, for this purpose. (See instructions above about how to obtain copies of ANSI/ASQC E4). However, as also authorized by the relevant FAR sections, EPA may decide that other voluntary consensus standards apply to specific contracts. Either way, EPA will be complying with the NTTAA. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

**J. Submission to Congress and the General Accounting Office**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**Authority:** The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

**List of Subjects in 48 CFR Parts 1546 and 1552**

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

**PARTS 1546 AND 1552—[AMENDED]**

1. The authority citations for part 1546 and for part 1552 will read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

**1546.2 [Removed].**

2. Subpart 1546.2 is removed.

**1552.203–70 [Amended].**

3. Section 1552.203–70 is amended by removing the text "As prescribed in 1503.603" and adding in its place the text "As prescribed in 1503.670."

**1552.246–70 [Removed].**

4. Section 1552.246–70 is removed.

**1552.246–71 [Removed].**

5. Section 1552.246–71 is removed.

**1552.246.72 [Removed].**

6. Section 1552.246–72 is removed.

Dated: November 30, 2000.

**Judy S. Davis,**

*Acting Director, Office of Acquisition Management.*

[FR Doc. 00–32030 Filed 12–19–00; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 001213348-0348-01; I.D. 121100A]

**RIN 0648-AO44**

**Fisheries of the Exclusive Economic Zone Off Alaska; Removal of Groundfish Closure**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS removes an existing closure to commercial groundfish fishing with trawl gear within critical habitat designated for Steller sea lions in the exclusive economic zone (EEZ) off Alaska west of 144° W. long. and closes this area to commercial fishing for Pacific cod through December 31, 2000. The removal of the existing closure is consistent with the December 5, 2000, Order of the United States District Court for the Western District of Washington. The new closure is intended to ensure that Steller sea lions are adequately protected based on conclusions in a biological opinion issued November 30, 2000.

**DATES:** Effective December 14, 2000 except that § 679.22(k) is effective December 14, 2000 through December 31, 2000.

**ADDRESSES:** Copies of the Endangered Species Act—Section 7 Consultation Biological Opinion and Incidental Take Statement on Authorization of the Bering Sea and Aleutian Islands groundfish fisheries based on the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Authorization of the Gulf of Alaska groundfish fisheries based on the Fishery Management Plan for Groundfish of the Gulf of Alaska, including the reasonable and prudent alternative (BiOp), may be obtained by contacting the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, or Room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. The 2000 BiOp is also available on the Alaska Region home page at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228 or [john.lepore@noaa.gov](mailto:john.lepore@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries in

the EEZ of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries appear at 50 CFR part 600.

NMFS also has statutory authority to promulgate regulations governing the groundfish fisheries under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* The ESA requires that each Federal agency ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or to result in the destruction or adverse modification of critical habitat of such species.

On August 7, 2000, the United States District Court for the Western District of Washington issued an order that granted a motion for a partial injunction on the North Pacific groundfish fisheries. *Greenpeace v. NMFS*, No. C98–4922 (W.D. Wash.). This motion, filed by Greenpeace, American Oceans Campaign, and the Sierra Club requested injunctive relief until NMFS issues a legally adequate BiOp addressing the combined, overall effects of the North Pacific groundfish fisheries on Steller sea lions and their critical habitat pursuant to the ESA. The population of Steller sea lions west of 144° W. long. (hereafter western population) is listed under the ESA as endangered, while the population of Steller sea lions east of 144° W. long. is listed as threatened.

To comply with the Court's August 7, 2000, Order, NMFS, pursuant to the ESA, issued an interim rule prohibiting fishing for groundfish with trawl gear in Steller sea lion critical habitat (65 FR 49766, August 15, 2000). The critical habitat areas closed by the interim rule were defined in regulations codified at 50 CFR 226.202, and in Tables 1 and 2 to 50 CFR part 226.

On November 30, 2000, NMFS issued a BiOp that is comprehensive in scope and considers the fisheries and the overall management framework established by the BSAI and GOA FMPs. After analyzing the cumulative, direct and indirect effects of the groundfish fisheries authorized by the BSAI and GOA FMPs on listed species, NMFS concluded in the BiOp that the fisheries