

Station WMCD's community of license from Statesboro to Rincon, Georgia; downgrades Channel 260C, Station WGNE-FM, Palatka, Florida, to Channel 260C0 and changes WGNE-FM's community of license from Palatka to Middleburg, Florida; and allows the provision of first local aural transmission services to Rincon, Georgia, and Middleburg, Florida. The coordinates for Channel 261C1 at Rincon, Georgia, are 32-08-35 North Latitude and 81-42-14 West Longitude. The coordinates for Channel C0 at Middleburg, Florida are 29-59-40 North Latitude and 81-19-39 West Longitude.

DATES: Effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket Nos. 01-123 and 01-177, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Middleburg, Channel 260C0 and removing Palatka, Channel 260C.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Rincon, Channel 261C1 and removing Channel 261C2 at Statesboro. Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1509 and 1552

[FRL-7402-8]

Acquisition Regulation: Contractor Performance Evaluations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation to revise its policy and procedures regarding the evaluation of contractor performance. This action is necessary because EPA's current regulation eliminates the use of the National Institutes of Health (NIH) Contractor Performance System to record contractor performance histories for construction acquisitions. This revision will allow EPA contracting officers to utilize the NIH system for construction type acquisitions in lieu of the Federal Acquisition Regulation prescribed Standard Form 1420, Performance Evaluation (Construction Contracts). The NIH obtained approval from the Civilian Agency Acquisition Council regarding the use of its construction module in lieu of Standard Form 1420.

DATES: This final rule becomes effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564-4368.

SUPPLEMENTARY INFORMATION: Information on the regulation of contractor performance evaluations is organized as follows:

I. Background

This final rule amends the Environmental Protection Agency Acquisition Regulation Subpart 1509.170 and 1552.209-76 to allow EPA contracting officers to utilize the construction module in the National Institutes of Health's Contractor Performance System. EPA currently uses the services module in the NIH system to evaluate contractor performances of both large and small businesses who are awarded EPA contracts in excess of \$100,000.

A proposed rule was published in the **Federal Register** (67 FR 7657-7660) on February 20, 2002, providing for a 30 day comment period. There were no comments received regarding the proposed rule.

II. Final Action

This final rule will allow EPA contracting officers to use either the services module or the construction module in the National Institutes of Health's Contractor Performance System, depending on the type of acquisition.

III. Statutory and Executive Order Reviews

Executive Order 12866

This 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).

Paperwork Reduction Act

The Paperwork Reduction Act applies to this final rule, and the information collection request has been evaluated by the Office of Management and Budget. The Office of Information and Regulatory Affairs within the Office of Management and Budget has issued OMB Clearance No. 9000-0142 for the collection of contractor performance information. Comments regarding Paperwork Reduction Act concerns should be sent to the Office of Management and Budget (Attn: EPA Desk Officer).

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 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 final rule requires no reporting or record-keeping by small or large business contractors. Rather, it provides EPA contractors with a formal opportunity, generally once a year per contract, to review and comment on their specific performance evaluations as conducted by the cognizant EPA contracting officer. Therefore, this final rule will have no adverse or significant economic impact on small entities.

Unfunded Mandates Reform Act

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 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, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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 final 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.

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" as defined in the Executive Order 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 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 distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal

implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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. 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.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

Executive Order 13211 (Energy Effects)

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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).

List of Subjects in 48 CFR Parts 1509 and 1552.

Government procurement.

Dated: October 18, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

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

1. The authority citation for Parts 1509 and 1552 is revised to read as follows:

Authority: 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.

PART 1509—[AMENDED]

2. Section 1509.170-3 is amended by revising paragraphs (a), (c), and adding paragraph (d) to read as follows:

1509.170-3 Applicability.

(a) This subpart applies to all EPA acquisitions in excess of \$100,000, except for architect-engineer acquisitions, acquisitions awarded under the Federal Acquisition Regulation (FAR) Subpart 8.6, Acquisitions from Federal Prison Industries, Incorporated, FAR Subpart 8.7, Acquisitions from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled, and FAR 13.5, Test Program for Certain Commercial Items. FAR 36.604 provides detailed instructions for architect-engineer contractor performance evaluations.

(c) EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance, applies to all performance evaluations completed prior to May 26, 1999. Thereafter, EPA Forms 1900-26 and 1900-27 are obsolete, and contracting officers shall complete all contractor performance evaluations by use of the National Institutes of Health's Contractor Performance System in accordance with EPAAR paragraph (a) of this section.

(d) Construction acquisitions shall be completed by use of the NIH

construction module. Performance evaluations for construction acquisitions shall be completed in accordance with EPAAR 1509.170-5.

3. Section 1509.170-4 is amended by revising the last sentence in paragraph (f) to read as follows:

1509.170-4 Definitions.

(f) Performance categories include quality, cost control, timeliness of performance, business relations, compliance with labor standards, compliance with safety standards, and meeting Small Disadvantaged Business subcontracting requirements.

4. Section 1509.170-5 is amended by revising paragraph (b) to read as follows:

1509.170-5 Policy.

(b) For service type acquisitions, contracting officers shall use the National Institutes of Health (NIH) Contractor Performance System to record evaluations for all contract performance periods expiring after May 26, 1999. For construction type acquisitions, contracting officers shall use the NIH system to record evaluations for all contract performance periods expiring after December 2, 2002.

5. Section 1509.170-8 is amended by revising paragraph (b) to read as follows:

1509.170-8 Contractor Performance Report.

(b) The performance categories and ratings used in the evaluation of contractor performance are described in the clause at 1552.209-76. The NIH system provides instructions to assist contracting officers and project officers with completing evaluations.

PART 1552—[AMENDED]

6. Section 1552.209-76 is amended by revising the undesignated text between the section heading and paragraph (a), revising paragraphs (a)(2), (b)(2) and (b)(4) to read as follows:

1552.209-76 Contractor Performance Evaluations.

As prescribed in section 1509.170-1, insert the following clause in all applicable solicitations and contracts.

Contractor Performance Evaluations (October 2002)

The contracting officer shall complete a Contractor Performance Report (Report) within ninety (90) business days after the end of each 12 months of contract performance (interim Report) or

after the last 12 months (or less) of contract performance (final Report) in accordance with EPAAR 1509.170-5. The contractor shall be evaluated based on the following ratings: 0 = Unsatisfactory, 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent, 5 = Outstanding, N/A = Not Applicable.

The contractor may be evaluated based on the following performance categories: Quality, Cost Control, Timeliness of Performance, Business Relations, Compliance with Labor Standards, Compliance with Safety Standards, and Meeting Small Disadvantaged Business Subcontracting Requirements.

(2) Evaluate contractor performance and assign a rating for quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories (including a narrative for each rating);

(2) Assign a rating for the business relations and meeting small disadvantaged business subcontracting requirements performance categories (including a narrative for each rating).

(4) Provide any additional information concerning the quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories if deemed appropriate for the evaluation or future evaluations (if any), and provide any information regarding subcontracts, key personnel, and customer satisfaction; and

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH73

Endangered and Threatened Wildlife and Plants; Listing the Sacramento Splittail as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the