

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E.O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

Because the amendment affects only NIH OMA investigatory records, a small subset of Agency records, we do not believe this rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. The rule is not expected to have any significant impact on OMA operations and does not impose any new information collection requirements under the Paperwork Reduction Act. In addition, this rule is not inconsistent with the actions of any other agency.

For these same reasons, the Secretary certifies this rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act, is not required.

List of Subjects in 45 CFR Part 5b

Privacy.

Dated: December 27, 1999.

Harold Varmus,

Director, National Institutes of Health.

Approved: March 30, 2000.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, 45 CFR Part 5b is proposed to be amended as set forth below:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended in paragraph (b)(2)(vii) by designating the undesignated paragraph after the colon as paragraph (b)(2)(vii)(A) and republishing it and by adding paragraph (b)(2)(vii)(B) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act:

(A) Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI.

(B) Administration: Investigative Records, HHS/NIH/OM/OA/OMA.

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ENVIRONMENTAL PROTECTION AGENCY**48 CFR Parts 1501, 1509, 1532 and 1552**

[FRL-6712-2]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend Agency administrative procedures related to the: processing of individual FAR deviations, redelegation of Agency contract ratification authority, debarment, suspension and ineligibility of contractors, and reduction or suspension of contract payments upon finding of fraud.

DATES: This rule is effective on September 12, 2000 without further notice, unless EPA receives adverse comments by July 14, 2000. 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: Adverse comments may be submitted to Larry Wyborski, US Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or

electronically at:

wyborski.larry@epamail.epa.gov

FOR FURTHER INFORMATION CONTACT:

Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564-4369, wyborski.larry@epamail.epa.gov

SUPPLEMENTARY INFORMATION:**A. Background Information**

This rule revises Subpart 1501.4 to delete a requirement that the Head of the Contracting Activity (HCA) furnish copies of individual Federal Acquisition Regulation (FAR) deviations to the FAR Secretariat, consistent with a prior change to the FAR.

Subpart 1501.6 is revised to clarify how contract ratification authority is authorized in the absence of the duly authorized ratifying official.

Subpart 1509.4 is updated for consistency with: (1) The Federal Acquisition Regulation and (2) an Agency Memorandum of Understanding on the respective roles of the EPA offices involved in processing actions for debarment or suspension of contractors.

In addition, Federal Acquisition Regulation 32.006 references Agency procedures for reducing or suspending contractor payments based on a finding of fraud and EPAAR 1532.006 is being added to set forth Agency procedures for reducing or suspending contractor payments based on a finding of fraud.

B. Executive Order 12866

This is not a significant regulatory action for purposes of Executive Order 12866; therefore, no review is required at 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 rule does not contain information collection requirements for 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 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 this 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 *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. Sections 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 does not have a significant impact on a substantial number of small entities. The requirements under the rule impose no reporting, record-keeping, or compliance costs 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 any 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 (6 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 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 a significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks.

G. 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 for the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to 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 governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This 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.

H. National Technology Transfer and Advancement Act of 1995

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), 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 rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. 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" are 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 effect 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 amends the EPA Acquisition Regulation relating to internal agency procedures addressing: (1) Processing of individual FAR deviations, (2) redelegation of

agency contract ratification authority, (3) debarment, suspension and ineligibility of contractors, and (4) reduction or suspension of contract payments upon finding of fraud. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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 rule report, which includes a copy of the rule, to each House of 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; section 205(c), 63 Stat. 390, as amended 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1501, 1509, 1532 and 1552

Government procurement.

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

1. The authority citation for parts 1501, 1509, 1532 and 1552 continues to read as follows:

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

2. Section 1501.403 is revised to read as follows:

1501.403 Individual deviations.

Requests for individual deviations from the FAR and the EPAAR shall be submitted to the Head of the Contracting Activity (HCA) for approval. Requests submitted shall cite the specific part of the FAR or EPAAR from which it is desired to deviate, shall set forth the nature of the deviation(s), and shall give the reasons for the action requested.

3. Section 1501.602-3(b) is revised to read as follows:

1501.602-3 Ratifications of unauthorized commitments.

(b) *Ratification Approval.* The Chief of the Contracting Office (CCO) is delegated authority to be the ratifying official. In order to act as the ratifying official, a CCO or an acting CCO must

have delegated contracting officer authority. A CCO or acting CCO cannot approve a ratification if he/she acted as the contracting officer in preparing the determination and findings required under paragraph (c)(3) of this section.

* * * * *

4. Subpart 1509.4 is revised to read as follows:

Subpart 1509.4—Debarment, Suspension and Ineligibility

1509.403 Definitions.
1509.406 Debarment.
1509.406-3 Procedures.
1509.407 Suspension.
1509.407-3 Procedures.

1509.403 Definitions.

The "Debarring Official" and the "Suspending Official" as defined in FAR 9.403 is a designated individual located in the Office of Grants and Debarment. This Agency official is authorized to make the determinations and provide the notifications required under FAR subpart 9.4 or this subpart, except for the determinations required by FAR 9.405-1(a) which are to be made by the Head of the Contracting Activity. All compelling reason determinations to be made by the Debarring or Suspending Official under FAR subpart 9.4 or this subpart will be made only after coordination and consultation with the Head of the Contracting Activity. See also 40 CFR part 32.

1509.406 Debarment.

1509.406-3 Procedures.

(a) *Investigation and referral.*—(1) Contracting officer responsibility. (i) When contracting personnel discover information which indicates that a cause for debarment may exist, they shall promptly report such information to the cognizant Chief of the Contracting Office (CCO). Purchasing agents in simplified acquisition activities which do not come under the direct cognizance of a CCO shall report such information by memorandum, through their immediate supervisor, and addressed to the cognizant CCO responsible for their office's contract acquisitions.

(ii) Contracting officers shall review "The List of Parties Excluded from Federal Procurement and Nonprocurement Programs" to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors.

(2) *Chief of the Contracting Office responsibility.* When the Chief of the Contracting Office determines that sufficient information is available to indicate that a cause for debarment may exist, such information shall be

promptly reported by memorandum to the HCA. The memorandum provides the Chief of the Contracting Office's assessment of the information, any investigative report or audit, and any additional information he/she has discovered.

(3) *HCA responsibility.* Upon receipt of a report of a suspected debarment situation, the HCA shall take the following actions:

(i) Notify the Director, Suspension and Debarment Division, that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information.

(iv) Refer the matter through the Suspension and Debarment Division to the Debarring Official for consideration of debarment; request that the Suspension and Debarment Division evaluate the information and, if appropriate, refer the matter to the Debarring Official for consideration of debarment; or recommend to the Suspension and Debarment Division that the matter be closed without further action because the facts do not warrant debarment.

(v) Obtain legal counsel's opinion on referrals or recommendations made to the Debarring Official.

(vi) Notify EPA Contracting Officers of those Contractors who are ineligible for solicitation, award, or subcontracting but who do not appear on the GSA Consolidated List; e.g., those who are ineligible based on a settlement reached by the Debarring Official under which the Contractor has agreed to voluntarily exclude itself from participation in Government contracting/subcontracting for a specified period or because of a Notice of Proposal to Debar.

(4) *Any official.* When information is discovered which may indicate potential criminal or civil fraud activity, such information must be referred promptly to the EPA Office of Inspector General.

(5) *Debarring Official's responsibility.* The Debarring Official shall:

(i) Review referrals from the HCA together with the HCA's recommendations, if any, and determine whether further consideration by the Debarring Official is warranted and take such actions as are required by FAR subpart 9.4;

(ii) Obtain the HCA's recommendation prior to reaching a voluntary exclusion settlement with a Contractor in lieu of debarment;

(iii) Promptly notify the HCA of Contractors with whom a settlement in lieu of debarment has been reached

under which the Contractor voluntarily excludes itself from or restricts its participation in Government contracting/subcontracting for a specified period; and of Contractors who have received a Notice of Proposal to Debar.

(b) [Reserved]

1509.407 Suspension.

1509.407-3 Procedures.

The procedures prescribed in 1509.406-3(a) shall be followed under conditions which appear to warrant suspension of a Contractor.

5. Section 1532.006 is added preceding subpart 1532.1 is added to read as follows:

1532.006 Reduction or suspension of contract payments upon finding of fraud.

1532.006-1 General.

(a)-(b) [Reserved]

(c) Agency responsibilities and determinations under FAR 32.006 are, consistent with FAR 32.006-1(c), delegated to the Head of the Contracting Activity, if that individual is not below Level IV of the Executive Schedule. If the Head of the Contracting Activity is below Level IV of the Executive Schedule, then Agency responsibilities and determinations under FAR 32.006 are delegated to the Assistant Administrator for Administration and Resources Management.

1532.006-2 Definitions.

The Remedy Coordination Official for EPA is the Assistant Inspector General for Investigations.

1532.006-3 Responsibilities.

(a) EPA shall use the procedures in FAR 32.006-4 when determining whether to reduce or suspend further payments to a contractor when there is a report from the Remedy Coordination Official finding substantial evidence that the contractor's request for advance, partial or progress payments is based on fraud and recommending that the Agency reduce or suspend such payments to the contractor.

(b) [Reserved]

6. Section 1552.209-74 is amended as follows:

- a. In paragraph (h) of the clause, remove "(g)" and add in its place "(h)";
- b. In Alternate I paragraph (h), remove "(g)" and add in its place "(h)";
- c. In Alternate II paragraph (h), remove "(g)" and add in its place "(h)";
- d. In Alternate III paragraph (e), remove "(d)" and add in its place "(e)".
- e. In Alternate IV paragraph (h), remove "(g)" and add in its place "(h)".
- f. In Alternate VI paragraph (i) remove "(h)" and add in its place "(i)".

Dated: May 12, 2000.

Betty L. Bailey,

Director, Office of Acquisition Management.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622 and 640

[Docket No. 990621165-0151-02; I.D. 022599A]

RIN 0648-AL43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP)

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Coral FMP. This final rule increases the size of the Oculina Bank Habitat Area of Particular Concern (HAPC) and incorporates two adjacent areas within the Oculina Bank HAPC. Within these areas, fishing with bottom longline, bottom trawl, dredge, pot, or trap is prohibited. Furthermore, fishing vessels may not anchor, use an anchor and chain, or use a grapple and chain in these areas. This final rule also implements regulatory changes to reflect the South Atlantic Fishery Management Council's (Council's) proposed framework procedure for all its fishery management plans (FMPs) that allows for timely modification of definitions of essential fish habitat (EFH) and establishment or modification of EFH-HAPCs and Coral HAPCs. The intended effect is to protect, conserve, and enhance EFH.

DATES: This final rule is effective July 14, 2000.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) prepared by NMFS may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5305, fax 727-570-5583, e-mail Michael.Barnette@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for shrimp, red drum, snapper-grouper, coastal migratory pelagics, golden crab, spiny lobster, and coral, coral reefs, and live/hard bottom habitat of the South Atlantic are managed under the Council's FMPs, as approved and implemented by NMFS. These FMPs were prepared solely by the Council, except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the Council and the Gulf of Mexico Fishery Management Council. These FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622, except for the FMP for spiny lobster that is implemented by regulations at 50 CFR part 640.

On March 5, 1999, NMFS announced the availability of the Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans of the South Atlantic Region (EFH Amendment) and requested comments on the EFH Amendment (64 FR 10612). Amendment 4 to the Coral FMP was included within the EFH Amendment. On June 3, 1999, NMFS approved the EFH Amendment. On July 9, 1999, NMFS published a proposed rule to implement the measures in Amendment 4 and requested comments on the rule (64 FR 37082). On November 2, 1999, NMFS published a supplement to the proposed rule due to the inadvertent omission of information from the initial regulatory flexibility analysis (IRFA) summary in the proposed rule classification section, and requested comments on this supplemental information (64 FR 59152). The background and rationale for the measures in the EFH Amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

Thirteen comments and one group comment were received on the EFH Amendment, the proposed rule, and the supplement to the proposed rule. A summary of public comments and NMFS' responses follows.

Comment 1: One commenter and a group comment asserted that the Council's economic assessment in the EFH Amendment failed to evaluate the impacts on the bottom longline fishery for shark, golden tilefish, and grouper, a necessary exercise when implementing the EFH Amendment's management measures (Actions 3A (expanded Oculina HAPC) and 3B (two satellite Oculina HAPCs)). Therefore, they believe these actions are in