

Federal Communications Commission.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR PART 1501 and 1502

[FRL-6920-7]

Acquisition Regulation

AGENCY: Environmental Protection Agency

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the Agency definition of "Chief of the Contracting Office" for the purpose of granting limited ratification approval authority for acquisitions of \$2,500 or less.

DATES: This rule is effective on March 22, 2001, without further notice, unless EPA receives adverse comments by January 22, 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: Comments may be submitted to Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, Ariel Rios Building, NW., Washington, DC 20460.

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

EPAAR 1502.100 currently defines Chief of the Contracting Office (CCO) as the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati. One of the two CCOs at Headquarters has overall management responsibility for the Superfund/RCRA Regional Procurement Operations Division. This CCO therefore has ratification authority for ten (10) nationwide Regional Contracting Offices. This one CCO is responsible for approval of a potentially substantial number of ratification actions. Also, EPA Service Center

Managers will be given similar authority to allow for more timely processing of small dollar ratification actions in the absence of the CCO. Therefore, EPA is broadening its definition of CCO for purposes of review of ratifications only. To avoid the need for ratification actions to the maximum extent practicable, EPA has an active training program both for contracting officials and program officials who use the purchase card. In addition, EPA reports ratification actions to the Chief Financial Officer. CCOs given ratification authority by this rule will also be required to provide notice of ratification actions to the CCO that would otherwise have reviewed the ratification action. This will ensure that the appropriate management level is kept informed of the volume and nature of agency ratification actions on an ongoing basis.

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. 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 to revise the Agency definition of "Chief of the Contracting Office" for purposes of delegation of ratification authority procedures specified in FAR 1.602-3(b)(2).

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); 41 U.S.C. 418b.

List of Subjects in 48 CFR Parts 1501 and 1502

Government procurement.

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

1. The authority citation for parts 1501 and 1502 continues to read as follows:

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

2. In section 1501.602-3, paragraph (b) is redesignated as paragraph (b)(1) and paragraph (b)(2) is added to read as follows:

1501.602-3 Ratification of unauthorized commitments.

* * * * *

(b) * * *

(2) The CCOs defined in 1502.100 for purposes of ratification authority of \$2,500 or less must meet the following criteria:

- (i) Must possess a contracting officer's warrant and be in the 1102 job series;
- (ii) Are prohibited from re-delegating their ratification authority;
- (iii) Must submit copies of ratification actions to the cognizant Office of Acquisition Management Division Director at Headquarters; and

(iv) As with other ratifying officials, must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602-3(c) and the EPAAR.

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3. Section 1502.100 is amended by revising the definition of Chief of the Contracting Office (CCO) to read as follows:

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park

and Cincinnati. For the purposes of ratification authority of \$2,500 or less, CCO is also defined as Regional Contracting Officer Supervisors and OAM Service Center Managers. See 1501.602-3(b)(2) for the limits of this ratification authority.

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Dated: December 13, 2000.

Judy S. Davis,

Acting Director, Office of Acquisition Management.

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