

**ENVIRONMENTAL PROTECTION AGENCY****48 CFR Parts 1504 and 1552**

[FRL-6721-2]

**Acquisition Regulation: Business Ownership Representation****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add a new clause designed to provide the Agency with information regarding its contract awards. This new clause will request the successful awardee of an EPA contract to voluntarily identify the specific racial/ethnic category that best represents the ownership of its business. The information provided by the clause will not be used for the establishment of a set-aside or quota. The information will only be used for general statistical purposes or for the purpose of focusing future outreach initiatives to those businesses owned by racial/ethnic groups who are unaware of EPA contracting opportunities.

**DATES:** Comments should be submitted not later than August 22, 2000.

**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 will also be accepted on disks in WordPerfect format or by electronic mail (E-mail) to: smith.frances@epamail.epa.gov. E-mail comments must avoid the use of special characters and any form of encryption. No Confidential Business Information (CBI) should be submitted through E-mail.

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

**SUPPLEMENTARY INFORMATION:****A. Background Information**

A new Environmental Protection Agency Acquisition Regulation clause has been developed to provide statistical data concerning awards made by EPA to businesses owned by various racial/ethnic groups. The identification of these groups will help EPA target future outreach initiatives to those businesses owned by racial/ethnic

groups who are unaware of EPA contracting opportunities. In addition, these outreach initiatives would not be limited to small businesses. Large businesses would participate as well. Any outreach initiatives provided by EPA would be open to the general public and may include how to do business with EPA or understanding the Government contracting process.

The business ownership categories in this newly created clause are nearly identical to the categories listed in the Federal Acquisition Regulation clause at 52.219-1 (ALT II). In addition, the categories are consistent with the Office of Management and Budget Statistical Policy Directive No. 15, Race and Ethnic Standards of Federal Statistics and Administrative Reporting. It is necessary to establish this EPA acquisition clause because the Federal Acquisition Regulation clause at 52.219-1 (ALT) only pertains to offerors who represent themselves as small disadvantaged business concerns, as defined in Title 13 of the Code of Federal Regulations, part 124.1002. EPA's proposed clause would, however, apply to all Agency contractors regardless of size or disadvantaged status. This new clause will be incorporated into all EPA solicitations and contracts expected to exceed the simplified acquisition threshold (\$100,000).

The Civilian Agency Acquisition Council (CAAC) has been consulted concerning a class deviation to Federal Acquisition Regulation 19.307(a)(3) for this newly developed clause. The CAAC has not voiced any objections to the class deviation.

**B. Executive Order 12866**

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. Therefore, no review was 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 of 1980 (44 U.S.C. 3501 *et seq.*) applies to this proposed rule. The information collection request (ICR) in this proposed rule is currently being evaluated by the Office of Management and Budget (OMB). Comments regarding Paperwork Reduction Act concerns should be sent to OMB (Attn: EPA Desk Officer). OMB is required to make a decision concerning the collection of information contained in the proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best

assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to EPA on this proposed rule.

**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 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 proposed rule on small entities, the Agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The impact on small entities will not be significant. This proposed rule is voluntary and will have no effect on the evaluation criterion for award. EPA estimates that contractors will require only a minimal amount of time to complete the clause in the proposed rule. Therefore, to the extent that this does result in some contractor-incurred costs, EPA anticipates that these will be *de minimus*. Further, because the clause will only be applicable over the simplified acquisition threshold, this proposed rule will not have an impact on a substantial number of small entities. Small businesses do not receive a substantial percentage of those EPA contract awards which exceed the simplified acquisition threshold.

**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 proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in 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 UMRRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRRA.

#### 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 that have a disproportionate effect on children.

#### 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, 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 governments "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.

#### 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" 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 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 amends the EPA Acquisition Regulation relating to internal agency procedures addressing business ownership categories of contractors who receive EPA awards. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**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 1504 and 1552

Government procurement.

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

1. The authority citation for Parts 1504 and 1552 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); 41 U.S.C. 418b.

2. Revise Part 1504 to read as follows:

#### PART 1504—ADMINISTRATIVE MATTERS

##### Subpart 1504.6—Contract Reporting

###### 1504.670 Business Ownership Representation

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

##### Subpart 1504.6—Contract Reporting

###### 1504.670 Business Ownership Representation.

Contracting officers shall insert the clause at 1552.204-70, Business Ownership Representation, in solicitations and contracts with an estimated dollar value greater than the simplified acquisition threshold. Completion of the clause by the successful awardee is voluntary.

3. Amend subpart 1552.2 by adding 1552.204-70 to read as follows:

###### 1552.204-70 Business Ownership Representation.

As prescribed in 1504.670, insert the following clause in solicitations and contracts:

**Business Ownership Representation (NOV 20XX)**

The successful awardee should check one or more of the categories below that represents its business ownership and return this information to the contracting officer within ten (10) calendar days after award. Completion of this clause by the successful awardee is voluntary.

"Ownership," as used in this clause, means: (a) At least 51 percent of the concern is owned by one or more individuals from a category listed below; or, in the case of any publicly owned business, at least 51 percent of the stock of the concern is owned by one or more such individuals; and (b) The management and daily business operations of the concern are controlled by one or more such individuals.

- [ ] American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- [ ] Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- [ ] Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."
- [ ] Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."
- [ ] Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- [ ] White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

(End of clause)

Dated: June 1, 2000.

**Judy Davis,**

*Acting Director, Office of Acquisition Management.*

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**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

**RIN 1018-AF98**

**Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Draft Economic Analysis of Critical Habitat for the Alameda Whipsnake (*Masticophis lateralis euryxanthus*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice of the availability of the draft Economic Analysis for the proposal to designate critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) and the reopening of the public comment period for the proposal. The new comment period will allow all interested parties to submit comments on the draft Economic Analysis and proposed designation.

**DATES:** The comment period for this proposal closes on July 24, 2000. Comments on the draft Economic Analysis and proposed designation must be received by the closing date.

**ADDRESSES:** Written comments should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825. Copies of the draft Economic Analysis are available from the aforementioned address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

**FOR FURTHER INFORMATION CONTACT:** Jason Davis or Heather Bell, at the above address, phone 916-414-6600, facsimile 916-414-6710.

**SUPPLEMENTARY INFORMATION:****Background**

On March 8, 2000, the Service published a proposed rule to designate critical habitat for the Alameda whipsnake in the **Federal Register** (65 FR 12155). The original comment period closed on May 8, 2000. The comment period for the proposed designation was re-opened through June 12, 2000 (65 FR 30951, May 15, 2000). The comment period for the draft Economic Analysis is open until July 24, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

A total of approximately 164,663 hectares (406,708 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. If this proposal is made final, section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

The comment period on this proposal and the draft Economic Analysis closes on July 24, 2000. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

**Author**

The primary author of this notice is Stephanie Brady (see **ADDRESSES** section).

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 15, 2000.

**Don Weathers,**

*Acting Regional Director, Region 1.*

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**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

**RIN 1018-AF30**

**Endangered and Threatened Wildlife and Plants; Proposed Special Regulations for the Preble's Meadow Jumping Mouse; Availability for Comment of the Draft Record of Compliance and Reopening of Comment Period**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of availability; reopening of comment period.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of a draft Record of Compliance (ROC) for a previously proposed section 4(d) rule under the Endangered Species Act (ESA) for the Preble's meadow jumping mouse (Preble's). The proposed section 4(d) rule, published in the **Federal Register** on December 3, 1998 (63 FR 66777),