

contributes property with a basis of \$10 and a fair market value of \$10,000 in exchange for an interest in a partnership (ABC). On September 30, 2000, when A's interest in ABC is worth \$12,000 (and the basis of A's partnership interest is still \$10), A contributes \$12,000 cash in exchange for an additional interest in ABC. A is allocated a loss equal to \$10,000 by ABC for the taxable year ending December 31, 2000, thereby reducing the basis of A's partnership interest to \$2,010. On February 1, 2001, ABC makes a cash distribution to A of \$10,000. ABC holds no inventory or unrealized receivables. (assume that A is allocated no gain or loss for the taxable year ending December 31, 2001, so that the basis of A's partnership interest does not increase or decrease as a result of such allocations.)

(ii) The netting rule contained in paragraph (b)(2) of this section provides that, in determining the holding period of A's interest in ABC, the cash contribution made on September 30, 2000, must be reduced by the distribution made on February 1, 2001. Accordingly, for purposes of determining the holding period of A's interest in ABC, A is treated as having made a cash contribution of \$2,000 (\$12,000-\$10,000) to ABC on September 30, 2000. A's holding period in one-seventh of A's interest in ABC (\$2,000 cash contributed over the \$14,000 value of the entire interest (determined as if only \$2,000 were contributed rather than \$12,000)) begins on the day after the cash contribution. A recognizes \$7,990 of capital gain as a result of the distribution. See section 731(a)(1). One-seventh of the capital gain recognized as a result of the distribution is short-term capital gain, and six-sevenths of the capital gain is long-term capital gain. After the distribution, A's basis in the interest in PRS is \$0, and the holding period for the interest in PRS continues to be divided in the same proportions as before the distribution.

(g) *Effective date.* This section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after September 21, 2000.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| 1.1(h)-1(e) | 1545-1654 |
| * * * * * | * * * * * |

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 29, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1503 and 1552

[FRL-6874-7]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to add a contract clause to Agency contracts whereby contractors, under contracts exceeding \$1,000,000, display EPA Office of the Inspector General Hotline posters within contractor work areas, unless the Contractor has its own internal reporting mechanism and program, such as a hotline.

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Background Information

The proposed rule was published in the **Federal Register** (65 FR 25899-25900) on May 4, 2000, providing for a 60 day comment period.

Interested parties were afforded the opportunity to participate in the making of this rule. The following is a summary of the comments received and the Agency disposition of those comments.

1. *Comment:* The Defense Acquisition Regulation Supplement regulations for hotline posters promote contractor self-governance and ethical behavior by allowing contractor hotlines and corresponding contractor hotline posters to be used in lieu of Government hotlines and posters.

1. *Response:* EPA believes this comment has merit and is beneficial to the proposed rule. We will add language similar to the DoD regulations to our final rule which will allow contractor hotlines to be promoted in lieu of the

Office of Inspector General hotlines, as long as a contractor has its own internal reporting mechanism and program, such as a hotline. If a contractor lacks its own internal reporting mechanism and program, posting of the EPA Office of Inspector General Hotline will be required. EPA will retain a lower reporting requirement threshold than DoD (contracts valued at \$1,000,000 or more, rather than \$5,000,000 or more), since analysis of EPA contract awards revealed that only a small percentage of EPA contracts would be subject to the hotline poster requirement if the \$5,000,000 threshold was used by EPA.

2. *Comment:* We believe the posting of multiple agency hotline posters would be confusing to contractor staff.

2. *Response:* In an attempt to avoid having multiple agency hotline posters, representatives responsible for drafting the Federal Acquisition Regulation recently met but were unable to reach a consensus on the contents of a Government-wide Office of Inspector General Hotline clause. Different agencies have different requirements for such a clause. EPA will pattern its clause after the DoD (and Department of Veterans Affairs) clause. This will give contractors flexibility by allowing them to defer to their own established business ethics hotlines and internal processes, if an internal hotline process is available.

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 this proposed 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, recordkeeping, or compliance costs on small entities.

E. 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 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, which would be 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 Executive Order 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, Executive Order 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 proposed 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 add a contract clause to agency contracts whereby contractors, under contracts exceeding \$1,000,000, and under certain circumstances, are required to display EPA Office of the Inspector General Hotline posters within contractor work areas. 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 1503 and 1552

Government procurement.

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

1. The authority citation for parts 1503 and 1552 continues to read as follows:

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

2. Subpart 1503.5, Contractor Responsibility to Avoid Improper Business Practices, is added as follows:

Subpart 1503.5—Contractor Responsibility to Avoid Improper Business Practices.

Sec.

1503.500–70 Policy.

1503.500–71 Procedures.

1503.500–72 Contract clause.

1503.500–70 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that:

(a) Are suitable to the size of the company and the extent of their involvement in Government contracting.

(b) Promote such standards.

(c) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

(d) Ensure corrective measures are promptly instituted and carried out.

1503.500–71 Procedures.

(a) A contractor's system of management controls should provide for:

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may support suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate.

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded an EPA contract of \$1 million or more must

display EPA Office of Inspector General Hotline Posters unless the contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

1503.500–72 Contract clause.

As required by EPAAR 1503.500–71(b), the contracting officer shall insert the clause at 1552.203–71, Display of EPA Office of Inspector General Hotline Poster, in all contracts valued at \$1,000,000 or more, including all contract options.

4. Part 1552 is amended by adding section 1552.203–71 to read as follows:

1552.203–71 Display of EPA Office of Inspector General Hotline Poster

As prescribed in 1503.500–72, insert the following clause in all contracts valued at \$1,000,000 or more including all contract options.

DISPLAY OF EPA OFFICE OF INSPECTOR GENERAL HOTLINE POSTER (AUG 2000)

(a) For EPA contracts valued at \$1,000,000 or more including all contract options, the contractor shall prominently display EPA Office of Inspector General Hotline posters in contractor facilities where the work is performed under the contract.

(b) Office of Inspector General hotline posters may be obtained from the EPA Office of Inspector General, ATTN: OIG Hotline (2443), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or by calling (202) 260–5113.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and provided instructions that encourage employees to make such reports.

Dated: September 7, 2000.

Judy S. Davis,

Acting Director, Office of Acquisition Management.

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