

ENVIRONMENTAL PROTECTION AGENCY**48 CFR Parts 1523 and 1552**

[EPA-HQ-OARM-2007-0102; FRL-8297-8]

EPAAR Prescription and Solicitation Provision—EPA Green Meetings and Conferences**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is revising the EPA Acquisition Regulation (EPAAR) to establish policy and procedures for acquiring environmentally preferable meeting and conference services. This EPAAR revision adds a prescription and solicitation provision that Agency employees are required to use when soliciting quotes or offers for meeting and conference space and services. The solicitation provision requires meeting and conference venues to provide EPA with information about environmentally preferable features and practices in use at their facilities. As stated in the Federal Acquisition Regulation (FAR), environmentally preferable products and services are those “that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.” The intent of this rule is to ensure that environmental preferability is considered in each purchase of commercial meeting and conference services, which furthers the EPA mission to protect human health and the environment. This action revises the EPAAR, but does not impose any new requirements on Agency contractors. The procedure requires Agency employees to request information from prospective meeting venues about their environmentally preferable (green) practices for consideration in the award decision, thus encouraging the industry to adopt more of these practices so that we will be more likely to do business with them. This rule imposes no requirement or standard that a facility must meet in order to do business with us.

DATES: This final rule is effective on May 1, 2007.**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OARM-2007-0102. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Tiffany Schermerhorn, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: schermerhorn.tiffany@epa.gov, telephone (202) 564-9902.**SUPPLEMENTARY INFORMATION:****I. General Information**

The EPAAR additions are necessary so that the Agency can ensure that environmental preferability is considered in all purchases of commercial meeting and conference services. The new solicitation provision will not impose a substantial additional burden on meeting venues since they currently submit quotes or offers to the Agency in response to solicitations for meeting and conference services, and the rule will allow the information to be obtained electronically or orally when appropriate to the acquisition. The EPAAR changes are consistent with the FAR.

II. Statutory and Executive Order Reviews*A. Executive Order 12866*

This action is not a “significant regulatory action” under the terms of Executive Order (EO 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not impose any new information collection or other requirements on Agency contractors. Collection of information from prospective contractors via Agency solicitation is covered under existing active clearances OMB 9000-0136, Commercial Item Acquisitions—FAR Sections Affected:

Part 12; 52.212-1 and 52.212-3, a Federal Acquisition Regulation clearance, in the case of commercial item simplified acquisitions; and OMB 2030-0006, Invitations for Bids and Request for Proposals (IFBs and RFPs), an EPA clearance, in the case of sealed bid or negotiated procurements. These clearances allow information to be collected from a quoter or offeror with the purpose of evaluating its capabilities for performing the contract requirements. In the case of this regulation, one of EPA’s requirements is to purchase environmentally preferable meeting and conference services to the greatest extent practicable, so we will need to solicit from each facility a technical description of environmentally preferable measures it has in place.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations 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, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132 (Federalism)

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."

This final 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. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 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." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The final rule amends acquisition regulations that are administrative and procedural in nature. Thus, Executive Order 13175 does not apply to this rule.

G. 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 risk.

H. Executive Order 13211 (Energy Effects)

This 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.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 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 rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. While this rule establishes a procedure that will require Agency employees to request information from prospective meeting venues about their environmentally preferable (green) practices for consideration in the award decision, it imposes no requirement or standard that a facility must meet in order to do business with us, so it does not directly affect the level of protection

provided to human health or the environment.

K. 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 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). This rule will be effective on May 1, 2007.

III. Response to Comments

We received comments from three commenters during the official comment period for the February 23, 2007 proposal. Minor revisions to the proposed language were made in response to these comments. The comments are summarized below in the order we received them along with EPA's responses.

Comment. The first commenter stated that meetings should be held on netmeeting software or by teleconference because travel for face-to-face meetings is costly and creates unnecessary pollution.

Response. Noted. The comment makes valid points as to the direction the Agency should go in minimizing travel through the use of telecommunication technology where feasible. EPA is keenly aware of its own environmental impact, and over time continues to seek new ways to minimize this impact, as well as reduce its burden on appropriated taxpayer funds. However, this rulemaking action revises Agency acquisition guidance, so any change to our travel policies are beyond the scope of this particular rule.

Comment. The second commenter expressed support for the proposed rule, but suggested that it could be stronger if environmentally preferable features were taken into account when deciding on a vendor for micropurchases.

Response. Partially concur. The rule requires that environmentally preferable features are considered in all purchases, including micropurchases. However, requiring at micropurchase level that environmental preferability must be

used as an evaluation factor in selecting among competing venues would be inconsistent with the FAR. The procedure for micropurchases in paragraph (c) of 1523.703-1 requires use of the solicitation provision so that information on a meeting venue's environmental preferability may be considered, but no competition among vendors or best value determination is required. The procedure is consistent with micropurchase guidelines established in the FAR (13.202) in that it states that environmentally preferable meeting facilities must be purchased to the greatest extent practicable, but does not require solicitation of competitive quotations for micropurchases.

Comment. The second commenter also suggests revising the rule to include a question on the sourcing of food in the solicitation provision. For example, does the vendor make an effort to source food from local growers, thereby reducing the environmental impact of shipping large quantities of food long distances?

Response. Concur. EPA agrees that this is an important point to consider in evaluating vendor environmental performance, and has revised the language in the 1552.223-71 solicitation provision questions to incorporate this principle.

Comment. The third commenter expressed support for EPA's leadership and innovation in establishing a green meetings and conferences contracting program, but suggests that EPA add the following question to the solicitation provision in order to promote the use of biobased products under the Farm Security and Rural Investment Act: Do you use biobased or biodegradable products, including biobased cafeteriaware? Please describe.

Response. Concur. EPA agrees that this is an important point to consider in evaluating vendor environmental performance, and has revised the language in the 1552.223-71 solicitation provision questions to incorporate this principle.

Dated: April 5, 2007.

John C. Gherardini, III,
Acting Director, Office of Acquisition Management.

List of Subjects in 48 CFR Parts 1523 and 1552

Environmental protection,
Government procurement.

■ For the reasons set forth in the preamble, chapter 15 of title 48 Code of Federal Regulations, parts 1523 and 1552 are amended as follows:

PART 1523—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for 48 CFR part 1523 continues to read as follows:

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

■ 2. Add Subpart 1523.7 to read as follows.

Subpart 1523.7—Contracting for Environmentally Preferable Products and Services

Sec.

1523.703 Policies and procedures.

1523.703-1 Acquisition of environmentally preferable meeting and conference services.

§ 1523.703 Policies and procedures.

§ 1523.703-1 Acquisition of environmentally preferable meeting and conference services.

(a) *Scope.* This section establishes policy and procedures for acquiring environmentally preferable meeting and conference services. For purposes of this section, the term "contracting officer" refers to any EPA employee with purchasing authority. For the purposes of this section, the term "meeting and conference services" refers to any purchase by an EPA employee of the use of off-site commercial facilities for an EPA event, whether the event is a meeting, conference, training session, or other purpose.

(b) *Policy.* Contracting officers must purchase environmentally preferable meeting and conference services to the greatest extent practicable. Environmental preferability is defined at FAR 2.101. Environmental preferability shall be considered in all purchases of meeting and conference services.

(c) *Procedures for micropurchases.* The contracting officer shall request information on environmentally preferable features and practices from each meeting and conference services vendor solicited using the provision or language substantially the same as the provision at 1552.223-71.

(d) *Procedures for purchases exceeding micropurchase threshold.* The contracting officer shall request information on environmentally preferable features and practices from each meeting and conference services vendor using the provision or language substantially the same as the provision at 1552.223-71, and shall notify vendors that basis for award will be best value with price and other factors considered. Environmental preferability must be

considered among the other factors. The contracting officer shall determine the relative importance of price and other factors as appropriate to the acquisition.

(e) *Contractor support for meetings and conferences.* A contract, order, work assignment or purchasing agreement that includes contractor support for meeting and conference planning and logistics must include a green meeting and conference requirement. The contracting officer shall ensure language is included in the tasking document work statement that requires the contractor to use the provision at 1552.223-71, or language approved by the contracting officer that is substantially the same as the provision, when soliciting quotes or offers for meeting and conference services on behalf of the EPA.

(f) *Solicitation Provision.* The contracting officer shall insert the provision or language substantially the same as the provision at 1552.223-71, EPA Green Meetings and Conferences, in solicitations for meeting and conference services. Contracting officers issuing an oral solicitation must also use the provision, though it may be provided to the vendor orally or electronically. Contractors soliciting quotes or offers for meeting and conference services on behalf of EPA shall use the provision, or language approved by the contracting officer that is substantially the same as the provision.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for 48 CFR part 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); and 41 U.S.C. 418b.

■ 4. Add § 1552.223-71 to read as follows.

§ 1552.223-71 EPA Green Meetings and Conferences.

As prescribed in 1523.703-1, insert the following provision or language substantially the same as the provision in solicitations for meetings and conference services.

EPA GREEN MEETINGS AND CONFERENCES (May 2007)

(a) The mission of the EPA is to protect human health and the environment. We expect that all Agency meetings and conferences will be staged using as many environmentally preferable measures as possible. Environmentally preferable means products or services that have a lesser or reduced effect on the environment when compared with competing products or services that serve the same purpose.

(b) As a potential meeting or conference provider for EPA, we require information about environmentally preferable features and practices your facility will have in place for the EPA event described in the solicitation.

(c) The following list is provided to assist you in identifying environmentally preferable measures and practices used by your facility. More information about EPA's Green Meetings initiative may be found on the Internet at <http://www.epa.gov/oppt/greenmeetings/>. Information about EPA voluntary partnerships may be found at <http://www.epa.gov/partners/index.htm>.

(1) Do you have a recycling program? If so, please describe.

(2) Do you have a linen/towel reuse option that is communicated to guests?

(3) Do guests have easy access to public transportation or shuttle services at your facility?

(4) Are lights and air conditioning turned off when rooms are not in use? If so, how do you ensure this?

(5) Do you provide bulk dispensers or reusable containers for beverages, food and condiments?

(6) Do you provide reusable serving utensils, napkins and tablecloths when food and beverages are served?

(7) Do you have an energy efficiency program? Please describe.

(8) Do you have a water conservation program? Please describe.

(9) Does your facility provide guests with paperless check-in & check-out?

(10) Does your facility use recycled or recyclable products? Please describe.

(11) Do you source food from local growers or take into account the growing practices of farmers that provide the food? Please describe.

(12) Do you use biobased or biodegradable products, including biobased cafeteriaware? Please describe.

(13) Do you provide training to your employees on these green initiatives? Please describe.

(14) What other environmental initiatives have you undertaken, including any environment-related certifications you possess, EPA voluntary partnerships in which you participate, support of a green suppliers network, or other initiatives? Include "Green Meeting" information in your quotation so that we may consider environmental preferability in selection of our meeting venue.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070402076-7076-01; I.D. 022007B]

RIN 0648-AV23

Illegal, Unreported, or Unregulated Fishing

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to satisfy the requirement in section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) to publish a definition of the term "illegal, unreported, or unregulated (IUU)" fishing for purposes of the MSRA.

DATES: This final rule is effective April 12, 2007.

ADDRESSES: Dean Swanson, Chief, International Fisheries Affairs Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Swanson at 301-713-2276, fax 301-713-2313.

SUPPLEMENTARY INFORMATION: Section 403 of the MSRA amends the High Seas Driftnet Fishing Moratorium Protection Act (Driftnet Moratorium Protection Act), 16 U.S.C. 1826d *et seq.*, by adding, among other things, a new section 609 that addresses illegal, unreported, or unregulated fishing. Section 609 requires the Secretary of Commerce (Secretary) to identify, and list in a biennial report to Congress, a nation if its fishing vessels are engaged, or have been engaged during the preceding 2 years, in illegal, unreported, or unregulated fishing. Section 609 also provides for notification to and consultation with nations and an "IUU Certification Procedure" for determining if a nation or relevant international fishery management organization has taken specified action to address the IUU fishing activities. As an initial step, section 609(e)(2) requires the Secretary to "publish a definition of the term 'illegal, unreported, or unregulated fishing,' for purposes of this Act," within 3 months after the date of enactment of MSRA, i.e., by April 12, 2007. Publication of this definition is the focus of this rulemaking. NMFS intends to conduct separate rulemaking,