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40 CFR Parts 52 and 81

[FRL-3621-8]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Missouri—Approval of Missouri's PM₁₀ State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking takes final action to approve Missouri's PM₁₀ SIP. Missouri developed a PM₁₀ SIP in response to EPA's 1987 promulgation of a new ambient air quality standard for particulate matter. The new standard includes only those particles nominally smaller than 10 micrometers (PM₁₀). The particulate emission control regulations presently contained in Missouri's approved SIP are not altered by this action because there is a high probability that all areas of the state are presently attaining the PM₁₀ air quality standard without additional particulate matter controls.

This rulemaking also redesignates certain areas of Missouri from nonattainment for total suspended particulates (TSP) to unclassifiable.

EFFECTIVE DATE: This action will become effective on September 29, 1989 unless notice is received by August 30, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Environmental Protection Agency, Region VII, Air Branch, 728 Minnesota Avenue, Kansas City, Kansas 66101
Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101
Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987 (52 FR 24634), EPA promulgated a new National Ambient Air Quality Standard (NAAQS) for particulate matter. The new standard applies only to particles with a nominal aerodynamic diameter of 10 micrometers or less (PM₁₀). The new standard replaces total suspended particulates (TSP) as an ambient air quality standard.

In order for states to regulate PM₁₀, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must ensure that the PM₁₀ NAAQS are attained and maintained; that new and modified sources which emit PM₁₀ are reviewed; that PM₁₀ is one of the pollutants to trigger alert, warning, and emergency actions; and that the state's monitoring network be designed to include PM₁₀ monitors. These changes must be made regardless of the existing levels of PM₁₀ in any area of the state.

Where existing TSP and PM₁₀ monitoring data indicate there is a high probability that PM₁₀ standards are being exceeded in an area, a control strategy is required to show how PM₁₀ emissions will be reduced to provide for attainment and maintenance of the PM₁₀ NAAQS. This is called a group I area. If the existing data show there is a lower probability that PM₁₀ standards are being exceeded in an area, the states are required to commit to perform additional PM₁₀ monitoring in that area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. This is called a group II area. The commitments must be submitted in the form of a SIP revision and are termed a "committal" SIP.

If available particulate matter data indicate the PM₁₀ air quality is better than the standards, EPA presumes that the existing SIP is adequate to demonstrate attainment and maintenance of the PM₁₀ standards. This is termed a group III area.

The regulations call for the PM₁₀ SIPs to be submitted nine months after the federal PM₁₀ regulations went into effect on July 31, 1987. However, because of the burdensome administrative requirements for adoption of rules in some states, they were given some flexibility in the scheduling of their PM₁₀ SIP submissions.

PM₁₀ Attainment Status in Missouri

Based upon existing TSP and PM₁₀ air quality data, there are no areas in Missouri where the PM₁₀ standards are likely to be exceeded. Thus, the entire state of Missouri has been placed in the group III PM₁₀ category. Therefore, based on available data and in accordance with the Clean Air Act and EPA regulations, Missouri must meet the following requirements in order for EPA to approve its SIP for PM₁₀: (1) Adopt acceptable revisions to its preconstruction review rules, (2) revise the emergency episode rules to incorporate PM₁₀, and (3) revise the air quality monitoring plan to provide for sampling of PM₁₀ in ambient air.

Missouri's PM₁₀ SIP Submittal

Missouri developed its PM₁₀ SIP in three separate parts. These were: (1) Revisions to the air quality monitoring plan, (2) revisions to the Missouri rules to incorporate PM₁₀ in the following provisions: air quality standards, definitions, reference methods for ambient sampling, permit rules, and emergency episode plans, and (3) a separate narrative SIP revision which explains the entire process for regulating PM₁₀ in Missouri. Separate hearings were held for each of the three parts described above. The hearing on the air monitoring plan was held March 17, 1988, and the plan was submitted to EPA on March 29, 1988. The hearing on the amendments to the Missouri administrative rules was held February 18, 1988; the rules became effective April 28, 1988; and they were submitted to EPA on May 12, 1988. The hearing on the narrative plan was held May 19, 1988, and it was submitted to EPA on June 15, 1988.

Review of the Missouri PM₁₀ Submittal

The Missouri submittal has been reviewed to determine if it meets the requirements of the Clean Air Act, EPA regulations, and applicable policies. The regulations most pertinent to this rulemaking are found in the July 1, 1987, Federal Register (52 FR 24672). The July 1, 1987, regulation is supplemented with EPA policy contained in a PM₁₀ SIP Development Guideline (EPA-450/2-86-

001) dated July 1987 with a supplement dated June 1988.

The state of Missouri held three public hearings as described above on the various portions of its PM₁₀ SIP submittal. Comments on the proposed rules are summarized and state responses provided in the Missouri Register of April 18, 1988, where the final rule is printed. Certifications that the hearings took place were submitted with each portion of the PM₁₀ SIP.

The state resources needed to implement the PM₁₀ SIP for Missouri are contained in the annual State/EPA Agreement (SEA) signed by the Director of the Missouri Department of Natural Resources and the Regional Administrator of EPA Region VII. Because there are no group I areas in Missouri, implementation of the PM₁₀ SIP will not involve a new control strategy for particulate matter in the state. Rather, it will involve continued enforcement of existing particulate matter emission regulations, review of new sources for PM₁₀ and TSP, and operation of air monitoring network composed of both TSP and PM₁₀ monitors. All of these activities are covered in the SEA.

Missouri followed legal notice requirements when announcing the public hearings on various portions of the PM₁₀ SIP. Local control agencies, adjoining states, EPA, local planning agencies, elected officials, and the public were officially notified of the PM₁₀ hearing. No significant new planning requirements are involved in the PM₁₀ SIP development or in its implementation in Missouri and, therefore, this revision imposed no new requirements under subpart M of 40 CFR Part 51, Intergovernmental consultation.

Missouri rule 10 CSR 10-6.110 provides the authority to require sources to record and submit information on emissions of air contaminants in order to determine if the sources are in compliance with applicable emission regulations. This rule is presently approved as part of the Missouri SIP. This same rule also requires that emission data collected by the state must be made available to the public. The state also has authority to require installation and maintenance of continuous emission monitoring devices and to require reporting the data it collects in a specified format.

As a basis for implementing the PM₁₀ requirements in Missouri, the state adopted PM₁₀ as an ambient air quality standard in its rule 10 CSR 10-6.010. The state also adopted by reference EPA regulation 40 CFR Part 50, Appendix J, Reference Method for the Determination as PM₁₀ in the Atmosphere, and 40 CFR

Part 50, Appendix K, Interpretation of the National Ambient Air Quality Standards for Particulate Matter. State adoption of air quality standards is not a requirement of the Clean Air Act. However, EPA is approving the state's adoption of a PM₁₀ ambient air quality standard because it is an integral part of the state's plan to maintain the federal standard.

Missouri revised its definition of particulate matter by adding two subsections, one being TSP and the other particulate matter—10 micron (PM₁₀). The subsection for TSP references 40 CFR Part 50, Appendix B, Reference Method for the Determination of Suspended Particulates in the Atmosphere. The subsection for PM₁₀ references 40 CFR Appendix J. Thus, the state has adopted rules which are consistent with EPA's definitions of particulate matter, TSP, and PM₁₀.

Missouri did not adopt definitions for particulate matter emissions or PM₁₀ emissions. It contends that its rules make a clear distinction between particulate matter and PM₁₀ in the ambient air and emissions of these pollutants. After reviewing Missouri rule 10 CSR 10-6.060, Permits Required, and more specifically subsections (1)(A) and (7)(A), and Table 1 of this rule, EPA agrees that major new and modified sources in Missouri must be reviewed for particulate matter emissions and PM₁₀ emissions.

The Missouri SIP is presently approved as meeting the requirements of 40 CFR Part 51 for review of new and modified sources. This includes all the requirements of 40 CFR Subpart 51.165, Permit Requirements, and 40 CFR Subpart 51.166, Prevention of Significant Deterioration of Air Quality (PSD).

Missouri revised its rule 10 CSR 10-6.060, Permits Required, by adding TSP emissions and PM₁₀ emissions to the list of pollutants which trigger PSD review of major new and modified sources. Missouri requested that all areas of the state which are presently designated nonattainment for TSP be redesignated to unclassified. That redesignation is part of this rulemaking. Therefore, all areas of the state will either be designated as attainment or unclassified for TSP, and the PSD regulations will apply for TSP throughout the state.

The state has exempted sources from preapplication monitoring of PM₁₀ and TSP if the projected or existing ambient concentration of those pollutants are less than 10 µg/m³, 24-hour average.

Missouri rule 10 CSR 10-6.060(5)(B) requires the installation of best available control technology for particulate matter emissions and PM₁₀ emissions on each major source, if the

source has the potential to emit significant amounts of those pollutants. The same requirements apply to major modifications if there would be a significant net emission increase at the sources. The significance levels for TSP and PM₁₀ are identified in Missouri rule 10 CSR 10-6.060, Subsection (7)(A), Table 1.

Missouri's rule 10 CSR 10-6.060(3)(A)2. allows a permit to be issued to a new or modified source only if the source will not interfere with attainment or maintenance of ambient air quality standards. This provision satisfies the requirements of 40 CFR Part 51.165(b).

Missouri rule 10 CSR 10-6.060(5)(C)3. prohibits major proposed sources and modifications from causing, in conjunction with other applicable emission increases or decreases, an increase in TSP ambient levels above the applicable PSD increments. The increments are contained in state rule 10 CSR 10-6.060(7)(E), Table 5. The table has been revised to clarify that the Class I, II, and III increments apply to TSP. State rule 10 CSR 10-6.060(8)(H)2. has been revised to clarify that the PSD increment for sources impacting federal mandatory Class I areas can receive an air quality increment variance if the TSP increase is consistent with 40 CFR Part 51.166(P)(4). State rule 10 CSR 10-6.060(8)(H)(2) as revised is acceptable.

Missouri rule 10 CSR 10-6.060(5)(C) requires that sources analyze the ambient air quality in the area a new source would impact, and this analysis would include both PM₁₀ and TSP matter. This satisfies the requirements of 40 CFR Part 51.155m (i), (ii), and (iii).

Emergency Episode Plans

Missouri revised its rule 10 CSR 10-6.130, Controlling Emissions During Episodes of High Air Pollution Potential, so that the rule is consistent with 40 CFR Part 51, Appendix L. in all respects. There are no group I PM₁₀ areas in Missouri, so new contingency plans for emergency episodes have not been developed. The state of Missouri, the city of St. Louis, St. Louis County, and Kansas City developed contingency plans for major sources in their jurisdictions in the early 1970s. These plans require curtailment of activities which emit particulate matter during an episode without regard to the particle size of the material. The plans will now be activated by elevated levels of PM₁₀ rather than TSP. Requirements for PM₁₀ episode monitoring are contained in Missouri's revised monitoring SIP, which is described below.

Missouri rule 10 CSR 10-6.130 contains provisions which require the Director of the Missouri Air Program to take certain actions at the various episode levels. These actions are consistent with the source curtailment Tables I, II, and III of 40 CFR Part 51, Appendix L. Missouri's PM₁₀ emergency episode plan is acceptable.

After reviewing the Missouri PM₁₀ SIP submission, it has been determined that it meets all the requirements of the CAA, EPA regulations, and policies and is, therefore, approvable as part of the Missouri SIP. The existing emission control regulations pertaining to particulate matter and visible emissions are not altered by this action, and all such regulations presently contained in Missouri's SIP remain in effect.

EPA Action: Missouri's PM₁₀ SIP is approved. Specifically, this action approves revisions to Missouri's rules 10 CSR 10-6.010, Ambient Air Quality Standards; 10 CSR 10-6.020, Definitions; 10 CSR 10-6.040, Reference Methods; 10 CSR 10-6.060, Permits Required, and 10 CSR 10-6.130, Controlling Emissions During Episodes of High Air Pollution Potential. These revisions became effective April 28, 1988.

Redesignation of TSP Nonattainment Areas

The final rulemaking of July 1, 1987 (52 FR 24682), promulgating the PM₁₀ standard discussed an area redesignation policy with respect to TSP. The policy encouraged states to request redesignation of TSP nonattainment areas to unclassifiable for TSP at the time they submit their PM₁₀ control strategies. The rulemaking stated that when EPA approves the control strategy as sufficient to attain and maintain the PM₁₀ NAAQS, the redesignation will also be approved. An area designation for TSP must be retained until EPA promulgates PM₁₀ increments, because the PSD increment system for TSP must be utilized until then. The TSP increment system depends on the existence of section 107 designations. Once states have PM₁₀ SIPs in place and EPA promulgates PM₁₀ increments, the TSP designations can be eliminated. No other regulatory provisions of the Clean Air Act or EPA regulations are any longer tied to the TSP designations, so states are not required to justify their TSP redesignation requests.

Missouri requested that all areas of the state which are presently designated nonattainment for TSP be redesignated to unclassified. This request was contained in section (4)(d) of Missouri's PM₁₀ SIP submittal on June 15, 1988. Because there are no group I or group II areas in Missouri, it is presumed that the

existing particulate matter SIP is adequate to demonstrate attainment and maintenance of the PM₁₀ standards. The state has identified its existing particulate matter SIP in its submission. This is essentially a listing of all state rules for controlling particulate matter. Therefore, the existing SIP is deemed adequate to attain and maintain the PM₁₀ air quality standards. Missouri's request to redesignate all TSP nonattainment areas to unclassified is acceptable.

Specifically, there are areas in the city of St. Louis and the city of St. Joseph which are presently designated primary nonattainment for TSP. There are also areas of St. Louis, St. Joseph, and Kansas City which are designated secondary nonattainment for TSP. All of these areas are hereby redesignated to unclassified for TSP. These areas are more specifically identified in 40 CFR Part 81, Subpart C, § 81.326.

EPA Action: EPA approves Missouri's request to redesignate TSP nonattainment areas to unclassifiable.

PM₁₀ Monitoring

Missouri's monitoring SIP was originally approved by EPA in September 1984 as meeting the requirements of 40 CFR 58.20. For the most part, the monitoring SIP is generic and does not contain references to any of the criteria pollutants. However, the monitoring SIP was revised to substitute PM₁₀ or particulate matter for those instances where TSP was mentioned in the originally approved plan. The revisions made in the Missouri monitoring SIP are acceptable.

EPA Action: EPA approves Missouri's Air Quality Monitoring Plan (revised 1988).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 29, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 29, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each

request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this rulemaking will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, and Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Date: July 11, 1989.

Morris Kay,

Regional Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(66) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(66) The Missouri Department of Natural Resources submitted revisions to its state implementation plan to incorporate PM₁₀ on March 29, 1988, May 12, 1988, and June 15, 1988.

- (i) Incorporation by reference.
- (A) Revisions to the following Missouri air pollution rules:
 - 10 CSR 10-6.010 Ambient Air Quality Standards
 - 10 CSR 10-6.020 Definitions
 - 10 CSR 10-6.040 Reference Methods
 - 10 CSR 10-6.060 Permits Required
 - 10 CSR 10-6.130 Controlling Emissions

During Episodes of High Air Pollution Potential
 These rules were published in the Missouri Register on April 18, 1988, and became effective April 28, 1988.
 (ii) Additional material
 (A) A revision to the Missouri Monitoring Plan was submitted March 29, 1988.

(B) A narrative description of the PM₁₀ SIP for the state of Missouri was submitted June 15, 1988.

§ 52.1332 [Amended]

3. The table in § 52.1332, Attainment dates for national standards is revised to read as follows:

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone	PM ₁₀
	Primary	Secondary	Primary	Secondary				
Metropolitan Kansas City Interstate.....	b	e	d	d	d	5/31/75	b	d
Southwest Missouri Intrastate.....	a	a	d	d	d	d	d	d
Southeast Missouri Intrastate.....	d	d	d	d	d	d	d	d
Northern Missouri Intrastate.....	a	a	d	d	d	d	d	d
Metropolitan St. Louis Interstate.....	b	e	d	d	d	c	c	d

Note: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1978) § 52.1332. Only portions of those AQCRs with attainment dates after July 1975 have new attainment dates under the 1977 Clear Air Act Amendments. The reader is referred to 40 CFR Part 81 for identification of the designated areas under section 107(d) of the Act.

- a. July 1975.
- b. December 31, 1982.
- c. December 31, 1987.
- d. Air quality levels presently below secondary standards.
- e. Secondary standard attainment date to be determined by secondary attainment plan.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40
 40 CFR Part 81, Chapter C, is amended as follows:

Subpart C—Missouri

1. The authority citation for Part 81 continues to read as follows:
 Authority: 42 U.S.C. 7401-7642.

§ 81.326 [Amended]

2. Section 81.326, Missouri, is amended by revising the first three entries in the status designation table for TSP to read as follows:

MISSOURI—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
St. Louis AQCR (070):				
St. Louis (an area extending west about 2 miles from the Mississippi River, north to near I-270 and south to about 1 mile beyond the city limits).....			x	
Remainder of the city of St. Louis.....			x	
Remainder of AQCR.....				x
Kansas City AQCR (094):				
Kansas City (an area extending approximately from the Kansas state line east along Red Bridge Road and 115th Street to Missouri Highway 291, then north to I-70, east to Missouri Highway 7, north to U.S. Highway 24 west to Missouri Highway 291, north to Missouri Highway 152, west to Missouri Highway 9, south to U.S. Highway FF, and due south to the state line).....			x	
St. Joseph: Within city limits.....			x	

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 303

Procurement Integrity

AGENCY: Office of the Secretary, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its acquisition regulation to implement Procurement Integrity, section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100-679 and the Federal Acquisition Regulation (FAR) coverage at FAR 3.104.

DATES: Effective Date: July 31, 1989.

Comment Date: Comments must be received by September 14, 1989.

ADDRESS: Any person or organization wishing to submit data, views, or comments pertaining to the interim rule may do so by filing them with Norman Audi, Division of Acquisition Policy, OAGM-OMAC-OASMB, Room 517D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Norman Audi, (202) 245-0326.

SUPPLEMENTARY INFORMATION:**A. Background**

The FAR was amended by FAC 84-47 to implement section 6 of the OFPP Act Amendments of 1988, 54 FR 20488. The FAR was amended on May 23, 1989, 54 FR 22282, to delay the implementation date until July 16, 1989. The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information. The Act also contains certification and disclosure provisions for both contractors and Government officials, imposes post-employment restrictions on Government officials and employees, and provides for criminal, civil, administrative, and contractual penalties for violations of the Act.

This interim rule provides guidance to the Department's managers on internal requirements which are necessary to implement the law and FAR regulation on Procurement Integrity. It also provides the public with the Department's procedures in reviewing and resolving alleged violations of the Act.

B. Determination To Issue Interim Regulation

A determination has been made to issue this regulation as an interim rule. This action is necessary to implement the FAR interim rule for immediate use by Department of Health and Human Services personnel. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments in response to this interim rule will be considered in formulating a final rule.

C. Regulatory Flexibility Act

This interim rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this interim rule will not have a significant impact on small business entities.

D. Paperwork Reduction Act

This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this interim rule will be issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 303

Government procurement.

48 CFR Chapter 3 is amended in the manner set forth below.

Dated: July 24, 1989.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. In the table of contents, section 303.104 and sections 303.104-4 through 303.104-12 are added to Subpart 303.1 to read as follows:

Sec.

303.104 Procurement integrity.

303.104-4 Definitions.

303.104-5 Disclosure of proprietary and source selection information.

303.104-6 Restrictions on Government officials, employees, and consultants.

303.104-9 Certification requirements.

303.104-11 Processing violations or possible violations.

303.104-12 Ethics program training requirements.

303.104 Procurement integrity.**303.104-4 Definitions.**

(h)(1) "Procurement official" means any individual who has participated personally and substantially in the conduct of a procurement. The following classes of employees may be considered procurement officials depending on the circumstances prevailing in a given case: contracting officers, contract specialists, contract administrators, procurement agents, procurement clerks, cost/price analysts, procurement analysts, clerical support and administrative personnel, auditors, professional staff of the Division of Cost Allocation, acquisition review and approval officials, contract clearance staff, board of award members, supervisory procurement officials, small and disadvantaged business utilization specialists, project officers, project managers, program officials, officials who provide special program clearances and approvals, program managers, technical evaluation panelists, peer reviewers, source selection evaluation board members, source selection advisory council members, source selection authorities, finance officials, and procurement lawyers. Concept peer reviewers are not considered to be procurement officials when participating

in project concept reviews pursuant to 42 CFR 52h.10(a). However, concept peer reviewers, or other peer reviewers, who participate in a project approach review are procurement officials. When there is a question whether an individual is a procurement official, the activities of the individual should be analyzed by the contracting officer to determine whether there is both personal and substantial involvement in a procurement. If there is doubt in a particular case, the doubt should be resolved by including the individual as a procurement official. The contracting officer has the authority to decide who is or who is not a procurement official in a particular case. The opinion of the Office of the General Counsel (OGC) should be requested when the contracting officer believes the situation is particularly complex or sensitive. When the contracting officer's decision is disputed by the individual whose status as a procurement official is in question, the matter will be referred to the Principal Official Responsible for Acquisition (PORA) for a final determination.

(k)(1) "Source selection information" includes "derivative documents" which are documents containing references to or directly citing or paraphrasing proprietary or source selection information.

303.104-5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary, source selection information, or derivative documents shall—

(1) Ensure documents are marked as prescribed in FAR 3.104-4 (j) and (k);

(2) Provide physical security for documents in the office environment during and after duty hours; and

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, double wrapping with more than one envelope, and sealing of envelopes, as necessary.

(b) Individuals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104-5(b).

(c) Only the contracting officer has the authority to authorize individuals, or classes of individuals, access to proprietary or source selection information for each procurement except for paragraph (d) of this section.

(d) The following classes of individuals are authorized blanket access to only that source selection information developed before a request for contract is sent to the contract office,

or to later modifications or supplements to such information—

(1) The generators of the requirements, including program, scientific, and technical experts involved in the development of the statements of work, specifications, evaluation plans, budget estimates, or similar documents;

(2) Reviewing officials; and

(3) Supervisors in the management chain of the individuals listed in paragraphs (d) (1) and (2) of this section. The contracting officer shall include in the contract file names and functions of any other individuals authorized access to proprietary or source selection information.

303.104-6 Restrictions on Government officials, employees, and consultants.

(b) Procurement officials leaving the Department will be required to complete the certification set forth in Chapter 1-90 of the General Administration Manual if that official leaves the Department during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000. The administrative officer will forward a copy of the certification to each responsible contracting officer for incorporation into the contract file.

303.104-9 Certification requirements.

(c) The contracting officer shall include the contracting officer certification in the contract file for each contract action over \$100,000. Including the certificate in the contract file shall be considered notification to the head of the agency.

(e)(2) The waiver shall be submitted to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget in the Office of the Secretary for review and approval before submission to the head of the agency.

303.104-11 Processing violations or possible violations.

(a)(1) The contracting officer determination that a reported violation or possible violation of the statutory prohibitions has no impact on the impending award or selection of a source must be submitted through channels, along with supporting documentation, to the PORA for review and approval of the determination before award of a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred through channels, along with all related information available, to the PORA (if the PORA is an SES) or to another SES official designated by the OPDIV. That individual will—

(i) Refer the matter immediately to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget, Office of the Secretary for review, which office may consult with the Office of the General Counsel and the Office of the Inspector General, as appropriate; and

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11 (c) and (d).

(b) The individual in paragraph (a)(2) of this section acts as the agency head designee with respect to actions taken under the FAR clause at 52.203-10, Remedies for Illegal or Improper Activity.

303.104-12 Ethics program training requirements.

(a) The Office of Acquisition and Grants Management in the Office of Management and Acquisition (OAGM), Office of Management and Budget in the Office of the Secretary is responsible for developing a training module which can be used by the Department's OPDIVs and Regional offices to train procurement officials. Upon receipt of the module, each OPDIV and Regional Office must train the procurement officials set forth in 303.104-4(h)(1) before they can act as procurement officials.

(b) After the training has been completed, each procurement official must sign the "Procurement Official's Certificate of Procurement Integrity" before he/she can act as a procurement official on any procurement. The certificate shall be submitted to the servicing personnel office, where the certificate will be filed on the left side of the employee's Official Personnel Folder. A copy of the certificate shall be provided to the contract office which shall maintain a list of the procurement officials who have signed the certificates.

(c) Procurement officials who serve multiple contracting offices (such as procurement lawyers) shall submit

copies of their certificates to OAGM with the originals being transmitted to their servicing personnel office. OAGM shall maintain a list of such procurement officials and inform cognizant contracting officers upon telephonic request whether particular individuals are included on the list.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-9132]

Guidelines for Fishery Management Plans; Corrections

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects some errors in the final rule revising national standard guidelines for fishery management plans published July 24, 1989 (54 FR 30826).

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, 301-427-2334.

In rule document 89-17017 beginning on page 30826 in the issue of July 24, 1989, make the following corrections:

§ 602.14 [Corrected]

1. On page 30838, second column, in § 602.14(b)(1), line 2 of that paragraph change "FCZ" to "EEZ".

Appendix A to Subpart B [Corrected]

2. In Appendix A to Subpart B, under Standard 2, page 30843, second column, paragraph (2)(b), line 3, "item (1)" should read "item (a)" and several paragraphs below, in paragraph (2)(g), line 3, "item (6)" should read "item (f)".

3. Under Standard 3, page 30843, in the first full paragraph of the third column, in lines 7 and lines 10 of that paragraph change "FCZ" to "EEZ".

Dated: July 25, 1989.

James W. Brennan,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 89-17810 Filed 7-28-89; 8:45 am]

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