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DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****48 CFR Chapter 44**

[Docket ID FEMA-2006-0033]

RIN 1660-AA46

Federal Emergency Management Agency (FEMA) Acquisition Regulation System; Removal of Chapter 44**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Direct final rule.

SUMMARY: This direct final rule removes the Federal Emergency Management Agency Acquisition Regulation in its entirety. This removal is a result of the establishment of the Department of Homeland Security and its subsequent Homeland Security Acquisition Regulation supplement to the Federal Acquisition Regulation.

DATES: This rule is effective May 1, 2007, unless adverse comment is received by April 2, 2007. If adverse comment is received, FEMA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by Docket ID FEMA-2006-0033, by one of the following methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: FEMA-RULES@dhs.gov. Include Docket ID FEMA-2006-0033 in the subject line of the message.

Fax: 866-466-5370.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of www.regulations.gov.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at FEMA.

FOR FURTHER INFORMATION CONTACT:

Joyce M. Ard, Federal Emergency Management Agency, 500 C Street, SW., Patriot Plaza Room 201, Washington, DC 20472, (phone) 202-646-3213, (facsimile) 202-646-2928, or (e-mail) joyce.ard@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is issuing this action as a direct final rule without prior proposal because FEMA believes that this action is not controversial and will not result in any adverse comments. This direct final rule removes the FEMA Acquisition Regulation (FEMAAR) at 48 CFR Chapter 44 in its entirety. (FEMAAR was published in 50 FR 31316, Aug. 1, 1985, and amended at 55 FR 28206, July 10, 1990). The specific language and subsequent clauses are removed as a result of the transfer of FEMA to the Department of Homeland Security (DHS) on March 1, 2003. The Homeland Security Acquisition Regulation (HSAR), 48 CFR Chapter 30, issued in 68 FR 67867, Dec. 4, 2003 and amended as a final rule in 71 FR 25759, May 2, 2006, 71 FR 48800, Aug. 22, 2006 and in 72 FR 1296, Jan. 11, 2007 established a uniform department-wide acquisition regulation for DHS and for purposes of 48 CFR Chapter 30 listed all entities for which the chapter applied to include FEMA.

FEMA believes it is important to make this action effective as soon as possible not only to remove inapplicable regulatory text, but to be consistent with DHS uniform department-wide acquisition regulations. For these reasons, FEMA believes that it is appropriate to issue this rule as a direct final rule. This rule conforms with the good cause exemption under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), because notice and comment is unnecessary. As stated above, this rulemaking simply completes an administrative task by removing inapplicable and inconsistent regulatory text. However, if FEMA receives a significant adverse comment within 30 days of publication of this direct final rule, FEMA will publish a timely notice of withdrawal in the **Federal Register**. If FEMA receives no significant adverse comment, before the effective date, FEMA will publish a document in the **Federal Register** stating that no adverse

comment was received and confirming that this rule will be effective as scheduled.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct a RFA analysis when an agency is "required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule." 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). Here, FEMA is issuing this action as a direct final rule without prior proposal because FEMA believes that this action is not controversial and will not result in any adverse comments. Moreover, as stated previously, good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a "significant regulatory action" is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Sections 503(1), 701(a)(2), 1511(d)(2) of the Homeland Security Act, 6 U.S.C. 313(1), 341(a)(2), 551(d)(2), established FEMA as a component within DHS. As a DHS component FEMA adheres to the HSAR, 48 CFR 3001.105-2(a) and 3001.301(a)(1). This direct final rule removes the FEMAAR as a result of the establishment of FEMA as a DHS component. Therefore, this rulemaking is not considered to be an economically significant regulatory action under

section 3(f) of Executive Order 12866. This rule adheres to the principles of regulation as set forth in the Executive Order.

Executive Order 13132, Federalism

This direct final rule 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. It will not preempt any State laws. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

National Environmental Policy Act

This direct final rule falls within the exclusion category of 44 CFR 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this direct final rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Paperwork Reduction Act of 1995

This direct final rule will not revise information collection requirements currently approved under the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number. FEMA has determined that because the direct final rule would not involve information collection, there is no need to address the Paperwork Reduction Act in the promulgation of the rule.

Executive Order 12988

This direct final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 48 CFR Chapter 44

Government procurement.

■ Accordingly, under the authority of sections 503(1), 701(a)(2), 1511(d)(2) of the Homeland Security Act, 6 U.S.C. 313(1), 341(a)(2), 551(d)(2), FEMA amends 48 CFR by removing chapter 44.

Dated: February 22, 2007.

R. David Paulison,

Director, Federal Emergency Management Agency, Department of Homeland Security.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039-7043-42; I.D. 022707B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,201 nm² (7,549 km²), east of Portsmouth, New Hampshire, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours March 4, 2007, through 2400 hours March 18, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded

from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey