the use of EPA based on established prices to encompass industry-wide and geographically based market price references, expands the use of EPA based on indexes to encompass indexes for commercial products or services which are identical or similar to the end products to be provided under the contract, and authorizes the development and use, subject to established agency review and approval procedures, of clauses using EPA references described above. The proposed coverage is being published because it is expected to have an effect beyond the internal operating procedures of DLA and to provide an opportunity for public participation and

DATES: Comments on the proposed DLAR rule must be submitted in writing to the address shown below on or before May 1, 1995, to be considered in the formulation of the final rules.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, Directorate of Procurement, Contract Policy Team (AQPLL), Ms. Melody Reardon, Cameron Station, Alexandria, Virginia 22304–6100 FAX: (703) 274–0310.

FOR FURTHER INFORMATION CONTACT: Melody Reardon, Defense Logistics Agency, AQPLL, (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Fuel Supply Center, a major contracting activity of DLA, has historically utilized a method of price adjustment in the bulk petroleum area using price indexes for the same or similar end products (most recently, actual monthly sales price averages published by the Department of Energy in the Petroleum Marketing Monthly) and using market price assessments for commercial products published in industry trade journals. For the past few years, these EPA clauses have either been approved by the Director, Defense Procurement, or authorized under individual deviations granted by the Executive Director, Procurement, DLA. Deviations were requested because the types of EPA references used in these clause are not specifically recognized under the three general types of EPA references at FAR 16.203. Currently, FAR 16.203-1(a) and its related coverage and clauses, recognize EPA references based on established market or catalog prices of the individual contractor only. The proposed DLAR coverage will expand this to include industry-wide and geographically specific market price assessments and authorize the development and use of

clauses on that basis. FAR 16.203–1(c) and its related coverage recognize EPA references based only on indexes for labor or materials. The proposed DLAR coverage would expand this to include indexes for the same or similar commercial end products and authorize the development and use of clauses on that basis.

None of the three EPA types currently encompassed by the FAR are appropriate for many of the competitive procurements of commercial products undertaken by DFSC and other DLA contracting offices. The use of an EPA reference based on an individual contractor's established price or cost of materials is impractical for procurements under which indefinite quantity contracts will be issued. Unique EPA references for each offeror engender relative price variations during the delivery period, making it impossible to determine the most favorable offer at time of award. This creates a significant price risk for the Government and undermines the competitive process. Use of an index based on raw material cost ignores the effect of market conditions which affect producer margins. This creates a price risk for the Government in periods where margins are contracting and for the contractors in periods where the margins are expanding. Such fluctuations can be significant in petroleum markets. Given the need for a common EPA reference, a reference that more closely follows market prices for the end item reduces price risk for both the Government and the contractor. Such references are also more in conformance with commercial practice.

B. Regulatory Flexibility Act

The proposed change is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The primary user of the new DLAR coverage will be the Defense Fuel Supply Center, which has been utilizing these types of EPA references since the early 1980s. The proposed rule will therefore not represent a change for small entities doing business with the DFSC. Flexibility is also limited by the need to establish a common EPA reference for competing offerors, as discussed above. Given this need, establishing the reference based on the same or similar end products as being provided under the contract, as opposed to labor or material costs, minimizes the price risk experienced by small entities. An initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other

interested parties. Comments will also be considered concerning the effect of the proposed rule on small entities in accordance with section 612 of the Act. Such comments must be submitted separately and cite this case in correspondence.

C. Paperwork Reduction Act

The proposed rules do not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, et sea.

List of Subjects in 48 CFR Part 5416

Government procurement.

Therefore, it is proposed that 48 CFR Chapter 54, as proposed in the **Federal Register** (59 FR 21954, April 28, 1994) be amended by adding part 5416 to read as follows:

PART 5416—TYPES OF CONTRACTS

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed-Price Contracts with Economic Price Adjustment
5416.203-1 Description
5416.203-3 Limitations
5416.203-4 Contract Clauses

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR Part 1, subpart 1.3 and 48 CFR Part 201, subpart 201.3.

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed Price Contracts with Economic Price Adjustment

5416.203-1 Description.

(a) (S-90) Adjustments based on established prices. Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S-90) Adjustments based on cost indexes of labor or materials. These price adjustments may also be based on increases or decreases in indexes for commodity groups specific supplies or services, or contract end items.

5416.203-3 Limitations.

(S–90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

5416.203-4 Contract clauses.

(S-90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203-1 (a)(S-90) or (c)(S-90). Established prices in such clauses need not be verifiable using the criteria in 48 CFR (FAR) 15.804-3. Established prices