

materials containing CERCLA hazardous substances, (3) the Wood Product Manufacturing industry (NAICS 321), (4) the Fabricated Metal Product Manufacturing industry (NAICS 332), and (5) the Electronics and Electrical Equipment Manufacturing industry (NAICS 334 and 335), as classes of facilities that require further study before EPA begins development of a proposed regulation under CERCLA Section 108(b). Once the in-depth analysis is complete, the Agency will decide whether to begin development of a proposed regulation for these classes of facilities.<sup>85</sup>

Dated: December 30, 2009.

**Lisa P. Jackson,**  
Administrator.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225 and 252

#### Defense Federal Acquisition Regulation Supplement; Foreign Participation in Acquisitions in Support of Operations in Afghanistan (DFARS Case 2009-D012)

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comment.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement: Waiver of the section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from non-designated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and Determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products (other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan.

<sup>85</sup> As part of developing proposed and final rules, the Agency will consider whether facilities within the classes identified in this notice that have RCRA permits or are subject to interim status requirements under RCRA, and already are subject to RCRA financial assurance and facility-wide corrective action requirements, also need to be subject to financial responsibility requirements under CERCLA Section 108(b). In addition, EPA is aware, and will consider in its development of proposed and final rules, that some facilities within the classes identified in this notice may be subject to other financial responsibility requirements.

**DATES:** Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 9, 2009 to be considered in the formulation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D012, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D012 in the subject line of the message.

- *Fax:* (703) 602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On July 9, 2009, the Deputy Secretary of Defense issued a waiver of the procurement prohibition of Section 302(a) of the Trade Agreements Act of 1979 with regard to acquisitions by the Department of Defense or by the General Services Administration, on behalf of DoD, in support of operations in Afghanistan. This waiver applies to offers of products and services from the following nine South Caucasus/Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan. This waiver was authorized by the United States Trade Representative by letter of June 2, 2009.

In addition, the Deputy Secretary of Defense also made a determination that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program to offers of products (other than arms, ammunition, or war materials) and construction materials from these SC/CASA states acquired in direct support of operations in Afghanistan. For purposes of this rule, the term “products other than arms, ammunition, or war materials” equates to the products listed at DFARS 225.401-70.

The draft proposed rule adds a new section 225.7704 to Subpart 225.77,

Acquisitions in Support of Operations in Iraq or Afghanistan, to specifically address the two determinations by the Deputy Secretary of Defense relating to acquisitions in support of operations in Afghanistan.

More specifically, in order to implement the waiver of the Trade Agreements Act of 1979 prohibition on acquisitions of products or services from non-designated countries, the proposed rule—

- Adds in the subpart on Trade Agreements (225.401 and 225.403) cross references to 225.7704-1;

- Adds alternates to the trade agreements provision and clause (252.225-7020 and -7021, with conforming changes to the provision and clause prescriptions at 225.1101 paragraphs (5) and (6)); and

- Adds a requirement to the clauses at 252.225-7021 and 252.225-7045 that the contractor shall inform its government of its participation in the acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

In order to implement the determination of the inapplicability of the Balance of Payments Program to end products and construction material from the SC/CASA states, the proposed rule—

- Modifies Subpart 225.5, to provide that whenever the acquisition is in support of operations in Afghanistan, offers of end products (other than arms, ammunition, and war materials) from SC/CASA states shall be treated the same as qualifying country offers;

- Modifies Subpart 225.75, Balance of Payments Program, to provide exceptions in 225.7501(b)(1)(iii) and (b)(2), with cross references to 225.7704-2;

- Adds alternates to the Balance of Payments Program provisions and clauses at 252.225-7000, -7001, -7035, -7036-7044, and -7045, with conforming changes to the provision and clause prescriptions at 225.1101 paragraphs (1), (2), (10), and (11) and 225.7503.

Other changes:

- Definitions of “South Caucasus/Central and South Asian (SC/CASA) state,” SC/CASA state construction material, and “SC/CASA state end product” have been added at 225.003, because these terms are used in more than one subpart.

- Conforming change were made to the clause dates in 252.212-7001.

- A correction is made to Alternate I of 252.225-7035 to delete the phrase

“Australian or” from paragraph (c)(2)(i). It was overlooked when the Free Trade Agreement with Australia was added that Alternate I also required revision (when only trade agreement with Canada is applicable).

- A correction is made to the paragraph number of Canadian end product of Alternate I 252.225–7036 to conform to changes to the paragraph number of “Free Trade Agreement end product” in the basic clause of 252.225–7036.

- A correction is made to Alternate I of 252.225–7045, to add in paragraph (b), line 4, that the Bahrain Free Trade Agreement does not apply.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a 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.*, because this rule only impacts acquisition that are in support of operations in Afghanistan. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties on this issue. DoD also will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2009–D012.

### C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule proposes to modify information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, the impact on existing approved information collection requirements is expected to be negligible.

In addition, this proposed rule contains a new information collection requirement that requires approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* DoD invites comments on the following aspects of the proposed rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

*Title:* Defense Federal Acquisition Regulation Supplement (DFARS); Foreign Participation in Acquisitions in Support of Operations in Afghanistan.

*Type of Request:* New collection.

*Number of Respondents:* 100.

*Responses per Respondent:* 1.

*Annual Responses:* 100.

*Average Burden per Response:* .25 hours.

*Annual Burden Hours:* 25.

*Needs and Uses:* DoD needs the contractors from South Caucasus/Central and South Asian states to inform their governments regarding their participation in DoD acquisitions and also to advise their governments that they generally will not have such opportunities in the future unless their governments provide reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services. This is necessary to comply with a condition of the waiver authority provided by the United States Trade Representative to the Secretary of Defense.

*Affected Public:* Businesses or other for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Frequency:* On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes amending 48 CFR parts 225 and 252 as set forth below:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 225—FOREIGN ACQUISITION

#### 225.003 [Amended]

2. Amend section 225.003 by:

a. Redesignating existing paragraphs (12) and (13) as paragraph (15) and (16); and

b. Adding new paragraphs (12), (13), and (14), and

3. Amend section 225.401 by:

a. Redesignating paragraphs (a)(2) introductory text and (a)(2)(A), (a)(2)(B), and (a)(2)(C) as paragraphs (a)(2)(A) introductory text and paragraphs (a)(2)(A)(1), (a)(2)(A)(2), and (a)(2)(A)(3), respectively; and

b. Adding paragraph (a)(2)(B) to read as follows:

#### 225.401 Exceptions.

(a) \* \* \*

(2) \* \* \*

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704–1.

\* \* \* \* \*

4. Amend section 225.403 by adding paragraph (c)(iii) to read as follows:

#### 225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c) \* \* \*

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704–1).

5. Amend section 225.502 by adding introductory text to read as follows:

#### 225.502 Application.

Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products listed in 225.401–70 from South Caucasus or Central and South Asian states the same as qualifying country offers.

\* \* \* \* \*

6. Amend section 225.1101 by:

a. Redesignating paragraph (1) as paragraph (1)(i);

b. Adding paragraph (1)(ii);

c. Redesignating existing paragraphs (2) introductory text, (2)(i), (2)(ii), (2)(iii), (2)(iv) introductory text, (2)(iv)(A), (2)(iv)(B), and (2)(v) as paragraph (2)(i) introductory text, (2)(i)(A), (2)(i)(B), (2)(i)(C), (2)(i)(D) introductory text, (2)(i)(D)(1) and (2)(i)(D)(2), and (2)(i)(E) respectively;

d. Adding paragraph (2)(ii);

e. Redesignating paragraph (5) as paragraph (5)(i);

f. Adding paragraph (5)(ii);

e. Redesignating paragraph (6)(iii) as (6)(iv);

f. Adding paragraph (6)(iii);

g. Redesignating paragraph (10) as paragraph (10)(i);

h. Adding paragraphs (10)(ii), (10)(iii), and (10)(iv); and

i. Revising paragraphs (11)(i)(A) and (11)(i)(B) to read as follows:

#### **225.1101 Acquisition of supplies.**

(1) \* \* \*

(ii) Use the provision with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

\* \* \* \* \*

(ii) Use the clause with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

\* \* \* \* \*

(5) \* \* \*

(ii) Use the provision with its Alternate I when the acquisition is of end products in support of operations in Afghanistan.

(6) \* \* \*

(iii) Use the clause with its Alternate II when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

\* \* \* \* \*

(10) \* \* \*

(iii) Use the provision with its alternate II when the clause at 252.225–7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III when the clause at 252.225–7036 is used with its Alternate III.

(11)(i) \* \* \*

(A) Use the basic clause when the estimated value equals or exceeds \$67,826 except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$67,826 except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

\* \* \* \* \*

7. Amend Section 225.7501 by:

a. Redesignating existing paragraph

(b)(1)(iii) as paragraph (b)(1)(iv);

b. Adding paragraph (b)(1)(iii); and

c. Revising paragraph (b)(2) to read as follows:

#### **225.7501 Policy.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii), If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401–70 (see 225.7704–2); or

\* \* \* \* \*

(2) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704–2); or

\* \* \* \* \*

8. Amend section 225.7503 by:

a. Redesignating paragraph (a) as paragraph (a)(1);

b. Adding paragraph (a)(2);

c. Revising paragraph (b) to read as follows:

#### **225.7503 Contract clauses.**

\* \* \* \* \*

(a) \* \* \*

(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.

(b)(1) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,443,000 or more, except as provided in paragraph (b)(4) of this section.

(2) For acquisitions with a value of \$7,443,000 or more, but less than \$8,817,449, use the clause with its Alternate I unless the acquisition is in support of operations in Afghanistan, use the clause with its Alternate III.

(3) If the acquisition is for construction with a value of more than \$8,817,449 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,443,000 or more, but less than \$8,817,449, and is in support of operations in Afghanistan, use the clause with its Alternate III.

9. Revise section 225.7700 to read as follows:

#### **225.7700 Scope.**

(a) Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181); and

(b) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisition in support of operations in Afghanistan.

10. Add sections 225.7704, 225.7704–1, 225.7704–2, and 225.7704–3 to read as follows:

#### **225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.**

##### **225.7704–1 Applicability of trade agreements.**

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see Subpart 225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

##### **225.7704–2 Applicability of balance of payments program.**

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see Subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401–70) and construction materials from the SC/CASA states that are being acquired by or on behalf of the DoD in direct support of operations in Afghanistan.

##### **225.7704–3 Solicitation provisions and contract clauses.**

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Programs solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

11. Amend section 252.212–7001 by:

a. Revising the clause date;

b. Redesignating paragraph (b)(5) as paragraph (b)(5)(i);

c. Adding paragraph (b)(5)(ii);

d. Redesignating paragraph (b)(10) as paragraph (b)(10)(i);

e. Revising new paragraph (b)(10)(i); and

f. Adding paragraphs (b)(10)(ii), (b)(12)(iii), and (b)(12)(iv) to read as follows:

**252.212–7001 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Date)

\* \* \* \* \*

(b) \* \* \*

(5)(i) \_\_\_\_ 252.225–7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a–10d, E.O. 10582).

(ii) \_\_\_\_ Alternate I (DATE) of 252.225–7001.

\* \* \* \* \*

(10)(i) \_\_\_\_ 252.225–7021, Trade Agreements (DATE) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

(ii) \_\_\_\_ Alternate I (DATE) of 252.225–7021.

\* \* \* \* \*

(12)(i) \_\_\_\_ 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (MAR 2007) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

(ii) \_\_\_\_ Alternate I (DATE) of 252.225–7036.

(iii) \_\_\_\_ Alternate II (DATE) of 252.225–7036.

(iv) \_\_\_\_ Alternate I II (DATE) of 252.225–7036.

\* \* \* \* \*

12. Amend section 252.225–7000 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

**252.225–7000 Buy American Act—Balance of Payments Program Certificate.**

As prescribed in 225.1101(1)(i), use the following provision:

\* \* \* \* \*

Alternate I (Date)

As prescribed in 225.1101(1)(ii), add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and “SC/CASA state end product” in paragraph (a) and replace the phrase “qualifying country end products” in paragraphs (b)(2) and (c)(2) with the phrase “qualifying country end products or SC/CASA state end products.”

13. Amend section 252.225–7001 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

**252.225–7001 Buy American Act and Balance of Payments Program.**

As prescribed in 225.1101(2)(i), use the following clause:

\* \* \* \* \*

Alternate I (Date)

As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a)(10) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(11) “SC/CASA state end product” means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

\* \* \* \* \*

14. Amend section 252.225–7020 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

**252.225–7020 Trade Agreements Certificate.**

As prescribed in 225.1101(5)(i), use the following provision:

\* \* \* \* \*

Alternate I (Date)

As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2) and (c) for paragraph (a), (b)(2) and (c) of the basic clause:

(a) *Definitions*. “Designated country end product,” “nondesignated country end product,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state,” “SC/CASA state end product,” and “U.S.-made end product” have the meanings given in the Trade Agreements clause of this solicitation.

(b)(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(c) *Certification and identification of country of origin*.

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number)

(Country of Origin)

(ii) The following are other nondesignated country end products:

(Line Item Number)

(Country of Origin)

15. Amend section 252.225–7021 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

**252.225–7021 Trade Agreements.**

As prescribed in 225.1101(6)(i), use the following clause:

\* \* \* \* \*

Alternate I (Date)

As prescribed in 225.1101(5)(iii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):

(a)(14) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) “SC/CASA state end product” means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was

transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted. (d) The contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

16. Amend section 252.225–7035 by revising the introductory text; revising Alternate I; and adding Alternate II and Alternate III at the end of the section to read as follows:

**252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.**

As prescribed in 225.1101(10)(i), use the following provision:

\* \* \* \* \*

**Alternate I (Date)**

As prescribed in 225.1101(10)(ii), substitute the phrase “Canadian end product” for the phrases “Bahrainian end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” and “Moroccan end product” in paragraph (a) of the basic provision; and substitute the phrase “Canadian end products” for the phrase “Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products” in paragraphs (b)(2) and (c)(2)(ii) of the basic provision, and delete the phrase “Australian or” from paragraph (c)(2)(i) of the basic provision.

**Alternate II (Date)**

As prescribed in 225.1101(10)(iii), add the terms “South Caucasus/Central and South Asian (SC/CASA) state” and

“SC/CASA state end product” in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number)

(Country of Origin)

**Alternate III (Date)**

As prescribed in 225.1101(10)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions.* “Canadian end product,” “commercially available off-the-shelf (COTS) item,” “domestic end product,” “foreign end product,” “qualifying country end product,” “SC/CASA state end product,” and “United States” have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number)

(Country of Origin)

(c)(2)(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number)

(Country of Origin)

17. Amend section 252.225–7036 by revising Alternate I; adding Alternate II and Alternate III at the end of the section to read as follows:

**252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.**

\* \* \* \* \*

**Alternate I (Date)**

As prescribed in 225.1101(11)(i)(B), substitute the following paragraphs (a)(8) and (c) for paragraphs (a)(8) and (c) of the basic clause:

(a)(8) \* \* \*

**Alternate II (Date)**

As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) “SC/CASA state end product” means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, or, at the Contractor's option, a domestic end product.

## Alternate III (Date)

As prescribed in 225.1101(11)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause,

(a)(14) “Canadian end product,” means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(15) “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(16) “SC/CASA state end product” means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the

Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

18. Amend section 252.225–7044 by adding Alternate I at the end of the section.

**252.225–7044 Balance of Payments Program—Construction Material.**

\* \* \* \* \*

Alternate I (Date)

As prescribed in 225.7503(a) 225.7503(a)(ii), add the following definitions to paragraph (a) and replace the phrase “domestic construction material” in the second sentence of paragraph (b) with the phrase “domestic construction material or SC/CASA state construction material.”

“South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

19. Amend section 252.225–7045 by revising the clause date of Alternate I; revising paragraph (b) of Alternate I; and adding Alternate II and Alternate III to read as follows:

**252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

\* \* \* \* \*

Alternate I (Date). \* \* \*

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

\* \* \* \* \*

## Alternate II (Date)

As prescribed in 225.7503(b)(iii), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d): “South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(d) The contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

Alternate III (Date) As prescribed in 225.7503(b)(iv), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

“South Caucasus/Central and South Asian (SC/CASA) state” means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

“SC/CASA state construction material” means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(d) The contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR 223 and 224

[Docket No. 0912231440-91443-01]

RIN 0648-XT28

#### Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition to List Atlantic Sturgeon as Threatened or Endangered under the Endangered Species Act (ESA)

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

**ACTION:** 90-day petition finding; request for information.

**SUMMARY:** We (NMFS) announce a 90-day finding on a petition to list Atlantic

sturgeon (*Acipenser oxyrinchus oxyrinchus*) as endangered, or to list multiple distinct population segments (DPSs) as threatened or endangered and designate critical habitat under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. A status review for Atlantic sturgeon was completed in February 2007, and we are currently preparing a determination on whether listing the species or DPSs of the species as threatened or endangered is warranted. To ensure that the determination considers information that is comprehensive and current, we solicit scientific and commercial information regarding this species.

**DATES:** Information and comments must be submitted to NMFS by February 5, 2010.

**ADDRESSES:** You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN), 0648 XT28, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930 (for Atlantic sturgeon populations occurring in the Northeast); or Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701 (for Atlantic sturgeon populations occurring in the Southeast).

Facsimile (fax): 978-281-9394 (for Atlantic sturgeon populations occurring in the Northeast); 727-824-5309 (for Atlantic sturgeon populations occurring in the Southeast).

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

We will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain a copy of this petition and the 2007 status review from the above addresses or

online from the NMFS website: <http://www.nmfs.noaa.gov/pr/species/fish/atlanticsturgeon.htm#documents>.

#### FOR FURTHER INFORMATION CONTACT:

Kimberly Damon-Randall or Lynn Lankshear, (978) 282-8485 and (978) 282-8473, NMFS Northeast Region; Kelly Shotts, NMFS Southeast Region, (727) 824-5312; or Lisa Manning, NMFS, Office of Protected Resources, (301) 713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 6, 2009, we received a petition from the Natural Resources Defense Council (NRDC) to list Atlantic sturgeon as endangered under the ESA. As an alternative, the petitioner requested that the species be delineated and listed as the five DPSs described in the 2007 Status Review of Atlantic Sturgeon (SRT, 2007); i.e., Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPS, with the Gulf of Maine and South Atlantic DPSs listed as threatened, and the remaining three DPSs listed as endangered. The petitioner also requested that critical habitat be designated for Atlantic sturgeon under the ESA. The petition summarizes how the species has declined as a result of overfishing during the 19th century and has failed to recover in the time since a coast-wide fishing moratorium was put in place in 1998. The petition cites bycatch, degraded water quality, dams, dredging, and ship strikes as the most important factors contributing to the continued decline of this species. The petition also cites global warming as a factor that will become increasingly significant as a stressor on Atlantic sturgeon populations by exacerbating harmfully low dissolved oxygen (DO) concentrations (or hypoxic water conditions), to which Atlantic sturgeon are particularly sensitive. The petition summarizes the biology, status, and threats for Atlantic sturgeon and for each petitioned DPS.

As described in the petition and in the 2007 status review (SRT, 2007), the historic range of Atlantic sturgeon in the United States included approximately 38 rivers, from the St. Croix River in Maine to the Saint Johns River in Florida. Atlantic sturgeon were also historically present in approximately four river systems in Canada. The Gulf of Maine DPS includes the Penobscot, Saco and Merrimack Rivers, and the estuarial complex of the Kennebec, Androscoggin, and Sheepscot Rivers. The New York Bight DPS includes the Taunton, Connecticut, Hudson, and Delaware River systems. The