information to certify and subsequently verify that beneficiaries of low-income support are qualified to receive the support.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 54

Communications common carriers, Infants and children, Reporting and recordkeeping requirements, Telecommunications, Telephone.

■ Accordingly, 47 CFR Part 54, Subpart E is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE FOR LOW-INCOME CONSUMERS

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

■ 2. Section 54.410 is amended by revising paragraph (b) introductory text and (c) to read as follows:

§ 54.410 Certification and Verification of Consumer Qualification for Lifeline.

* * * * *

(b) Self-certifications. After income certification procedures are implemented, eligible telecommunications carriers and consumers are required to make certain self-certifications, under penalty of perjury, relating to the Lifeline program. Eligible telecommunications carriers must retain records of their self-certifications and those made by consumers.

* * * * *

(c) Verification of Continued Eligibility. Consumers qualifying for Lifeline may be required to verify continued eligibility on an annual basis.

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state verification procedures to validate consumers' continued eligibility for Lifeline. The eligible telecommunications carrier must be able to document that it is complying with state regulations and verification requirements.

(2) By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers. Eligible telecommunications carriers may verify directly with a state that particular subscribers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the state, they may survey subscribers directly and provide the results of the sample to the Administrator. Subscribers who are subject to this verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program. Subscribers who are subject to this verification and qualify under the income-based eligibility criteria must prove their continued eligibility by presenting current income documentation consistent with the income-certification process in § 54.410(a)(2). These subscribers must also self-certify, under penalty of perjury, the number of individuals in their household and that the documentation presented accurately represents their annual household income. An officer of the eligible telecommunications carrier must certify, under penalty of perjury, that the company has income verification procedures in place and that, to the best of his or her knowledge, the company was presented with corroborating documentation. The eligible telecommunications carrier must retain records of these certifications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16608 Filed 7–18–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 235, and 252

RIN 0750–AF13

Defense Federal Acquisition Regulation Supplement; Export-Controlled Items (DFARS Case 2004–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for complying with export control laws and regulations when performing DoD contracts. The rule recognizes contractor responsibilities to comply with existing Department of Commerce and Department of State regulations. The rule adds two new clauses to be used when export-controlled items, including information or technology, are expected to be involved in the performance of a contract, or when there is a possibility that export-controlled items, including information or technology, may come to be involved during the period of performance of the contract.

DATES: *Effective date:* July 21, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 19, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D010, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2004–D010 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Felisha Hitt, 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. Felisha Hitt, 703–602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule at 70 FR 39976 on July 12, 2005, to address requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts. In consideration of the public comments received, DoD published a second proposed rule at 71 FR 46434 on August 14, 2006. The second proposed rule simplified the policy framework in recognition of existing policy found in the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), enacted on January 28, 2008, requires DoD to prescribe regulations, not later than July 26, 2008, to address requirements for DoD contractors to comply with laws and regulations applicable to goods or technology subject to export controls. In view of this new statutory requirement, and in consideration of the public comments received in response to the second proposed rule, DoD has developed an interim rule to address export controls. The differences between the second proposed rule and this interim rule include—

• Definition and use of the term ''export-controlled items'' instead of ''export-controlled information and technology,'' to more appropriately describe what is controlled by the ITAR and EAR and addressed by this rule.

• Information in the definition of ''items'' with respect to the EAR to clarify that access to an ''export-controlled item'' is not necessarily subject to the EAR. Only technology and software source code (and not commodities) are subject to the EAR when released to a foreign national inside the United States.

• Relocation of the definition of ''fundamental research'' to DFARS 204.7301, because the proposed clause containing the definition has been excluded from the interim rule.

• Addition of a definition of ''applied research'' in DFARS 204.7301, since the term is used within the definition of ''fundamental research'' in that section. The definition of ''applied research'' is consistent with the one found at FAR 35.001. Although the term ''basic research'' is also used within the definition of ''fundamental research,'' a definition of that term is not included in 204.7301, since the term is defined in FAR 2.101 for general use throughout the FAR system.

• Addition of references to the ITAR and the EAR in 204.7302 for clarity.

• Relocation of procedural requirements, formerly in 204.7303, Policy, to a new Procedures section at 204.7304.

• Clarification of the clause prescription at 204.7305(a) (formerly 204.7304(a)).

• Reduction of the number of contract clauses from three to two by eliminating the separate clause for fundamental research contracts.

• Addition of text in the clause at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, to specify that, if during performance of the contract, the contractor becomes aware and notifies the contracting officer that the contractor will generate or need access to export-controlled items, the contracting officer may, as one of three possible courses of action, terminate the contract in whole or in part for the convenience of the Government.

DoD received comments from 167 persons or organizations in response to the second proposed rule. The comments are grouped into the following seven categories:

1. National policy concerns.
2. Concerns with the scope or text of the rule.
3. Requirement that the contract clause include a list of specific information and/or technology subject to export controls.
4. Ability of DoD to identify export-controlled information and technology.
5. Flow-down of export control clauses to subcontracts.
6. Termination for convenience.
7. Reasonable limits on identifying foreign persons.

The following is a discussion of the comments and the changes included in this interim rule as a result of those comments:

1. National Policy Concerns

a. *Comment:* Many individual citizens were concerned about foreign access to classified information.

DoD Response: It is important to understand that this DFARS rule is intended to reinforce the statutory and regulatory requirements that must be in place prior to foreign national access to any export-controlled items, including information or technology, whether classified or not. Access to classified information or technology is subject to additional requirements. The second proposed rule and this interim rule do not permit foreign students or workers access to classified information. To the contrary, this interim rule reminds universities and companies of their responsibility to comply with export control laws and regulations. It also directs contracting officers to include clauses in solicitations and contracts, as appropriate, to clearly inform contractors of their responsibilities when export-controlled items are expected to be or may be involved in the performance of the contract.

b. *Comment:* Thirty-eight respondents voiced concern regarding the loss of jobs for U.S. citizens to foreign workers and graduate students.

DoD Response: The DFARS rule neither encourages nor endorses the use of foreign workers or students. One purpose of the rule is to ensure that appropriate contracts include a clause that informs contractors that export-controlled items are expected to be involved in the performance of their contracts and to remind them of their separate responsibility to comply with export control laws and regulations.

c. *Comment:* Eleven respondents expressed concern regarding the security risks of outsourcing jobs or using foreign students for DoD research.

DoD Response: This DFARS rule should have the effect of reducing the risk of unauthorized access to export-controlled information or technology under DoD contracts. The rule requires DoD to inform contractors if export-controlled items are expected to be involved in contract performance, and to remind contractors of their responsibility to comply with export control laws and regulations.

d. *Comment:* Comments received from universities and their associations stated that the rule conflicts with National Security Decision Directive (NSDD) 189, because fundamental research is shielded from export control laws. Twenty-one respondents wanted DoD to ensure that no restrictions would apply to fundamental research.

DoD Response: This DFARS rule is consistent with existing laws, Executive orders, and regulations. NSDD 189 provides an exception to its own applicability when the directive conflicts with applicable statutes. NSDD 189 states, ''No restrictions may be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable U.S. Statutes.'' Export control laws are applicable statutes. It should also be noted that fundamental research, as defined by NSDD 189, does not involve ''proprietary research * * *, industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.'' Most DoD contracts awarded for conducting fundamental research do not involve export-controlled information or technology. However, there are rare instances in which export-controlled information or technology may be used to conduct fundamental research. In such cases, the entity must be in compliance with the applicable export control laws and regulations. Also, there is a borderline where fundamental research meets more advanced applied research and development. One purpose of the DFARS rule is to remind universities that they must notify the contracting officer when they have reason to believe this line may be crossed.

e. *Comment:* Twenty-six respondents stated that hiring competent U.S. workers reduces security risk.

DoD Response: The DFARS rule does not address the impact of workforce competency on security. Therefore, this comment does not affect the content of the rule.

f. *Comment:* Many respondents commented on issues associated with foreign workers. These included concerns about the H–1b visa process; willingness of foreign workers to accept lower wages; increasing dependence on foreign researchers undermining the future U.S. science and engineering base; the need for immigration law reform; relaxing security requirements for foreign students; minority citizen unemployment; and weak academic credentials of some foreign students.

DoD Response: These comments are not applicable to this DFARS rule. The DFARS rule directs contracting officers to inform contractors when they know, based on input from the requiring activity, that export-controlled items are expected to be involved in the performance of a DoD contract, and to remind DoD contractors of their responsibility to comply with export control laws and regulations.

g. *Comment:* Several respondents commented on the administrative cost or cost-effectiveness of complying with export control laws and regulations. Twenty of these comments dealt with specific steps associated with compliance. Seven responses contained reminders that key technologies and/or national security data must be safeguarded regardless of the cost.

DoD Response: These comments are not applicable to this DFARS rule. While the cost of compliance with export control laws and regulations may be relatively small or large, this DFARS rule does not add to or subtract from that cost. All U.S. persons are responsible for complying with export control laws and regulations (which were not created or augmented by this rule), and this rule does not exempt anyone from that responsibility.

2. Concerns With the Scope or Text of the Rule

a. *Comment:* Twenty-five respondents from the university community expressed concern that the second proposed rule was still too broad or that it went beyond reminding contractors of their separate EAR and ITAR responsibilities. Seemingly related comments from some of the same respondents added that DoD should leave the subject to the Department of State and the Department of Commerce.

DoD Response: DoD does not believe that the DFARS rule goes beyond reminding contractors of their responsibilities. The rule requires contracting officers to include an appropriate clause in solicitations and contracts if export-controlled items are expected to be involved in contract performance, as determined by the requiring activity. This is the method for ''reminding'' contractors, i.e., getting the required information into solicitations and contracts. The clause language clearly directs contractors to the ITAR and the EAR, and to the Department of State and the Department of Commerce for answers to questions about ITAR and EAR requirements. DoD relies on the Departments of State and Commerce to administer their export control programs.

b. *Comment:* Twenty-six respondents stated that fundamental research cannot generate controlled information or technology.

DoD Response: DoD disagrees with this comment, because there are situations in which export controls may affect the conduct of fundamental research:

(1) Although fundamental research cannot by definition result in export-controlled information, fundamental research can evolve into more advanced applied research. At this transition point, the research may involve export-controlled information or technology. The instances when this happens midway through a research contract may be rare. However, almost all applied research is an outgrowth of work that began as fundamental research. There is a point at which certain research projects become specific enough to involve export-controlled information or technology. To maintain national security, DoD and its contractors must be mindful of their responsibility to identify that crossover point.

(2) When export-controlled information or technology is used to conduct fundamental research.

(3) When the distribution of the results of fundamental research is restricted due to proprietary reasons or if the research has received national security classification (see EAR section 734.8).

c. *Comment:* Nineteen respondents requested clarification of the proposed clause at 252.204–70XX, Requirements for Contracts Involving Export-Controlled Information or Technology. Some respondents questioned if all technology must be identified, even if applicable licensing permitted its use. Other respondents requested guidance for situations where exclusions for other than fundamental research exist, such as those for published materials or bona fide employees.

DoD Response: Export-controlled items, including information and technology, remain controlled under applicable statutes even if an exemption applies in a particular situation. Neither the prescriptive language of the DFARS rule, nor the clauses prescribed for use, are the appropriate place for guidance or information regarding exemptions. Note that the DFARS rule does not include the requirement that specific export-controlled information or technology be identified in the contract clause. (See the DoD Response to the Comment in section 3 of this discussion.)

d. *Comment:* Several respondents stated that the structure of the clauses is more complex than necessary. They recommended two clauses instead of three.

DoD Response: The interim rule reduces the number of clauses from three to two.

3. Requirement That the Contract Clause Include a List of Specific Information and/or Technology Subject to Export Controls

Comment: One respondent objected to the requirement in the proposed clause at 252.204–70XX, for a list of the specific export-controlled information and/or technology, which the parties are to keep current during the period of contract performance. The respondent recommended elimination of this requirement, because it is unnecessary and would create the possibility of a contractor being in breach of the clause due to inadvertent errors in the list, even if the contractor has an adequate export control system.

DoD Response: DoD considered the requirement and concluded that a different approach would better achieve the intended purpose while being less burdensome. A DoD Inspector General report on this subject (D–2004–061) stressed the importance of identifying export-controlled information and technology in DoD contracts to ensure the awareness necessary to prevent unauthorized disclosure. A key message in the DoD Inspector General report was that there is an inadequate understanding of export control requirements among some in the contractor community, and inadequate attention paid to the effect export controls have on the performance of DoD contracts. Identifying the export-controlled information and technology involved in the performance of the contract was intended to ensure that inexperienced contractors understand what must be controlled, and that

experienced contractors and their Government counterparts share a common understanding of the export-controlled information and technology involved in the contractor's proposed approach to satisfying contract requirements. Mindful of this underlying intent, and considering the merits of the public comments, DoD considered an alternative that would achieve the intended result. That alternative was to require the clause to identify the category(ies) of export-controlled information and/or technology (rather than the specific export-controlled information and/or technology) expected to be involved in performance of the contract. This alternative proved unacceptable, however, to the agencies of the Federal Government responsible for enforcing export control laws and regulations. From their point of view, it is important that any contract clause be free of information that could possibly create ambiguity about the contractor's responsibility to comply with export control laws and regulations. As a result, the DFARS rule will cause requiring activities, contracting officers, offerors, and contractors to be aware that export-controlled items, including information and technology, are expected to be involved in performance of the contract, but it will not require identification of the export-controlled items. The contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided in the rule or the prescribed contract clauses.

4. Ability of DoD To Identify Export-Controlled Information and Technology

Comment: Several respondents stated that DoD contracting officers are not qualified to identify controlled information and technology, nor do they know when exclusions and exemptions from licensing requirements apply.

DoD Response: DoD agrees that this is not an area in which DoD contracting officers are expected to have expertise. The DFARS rule does not require contracting officers to identify specific export control classifications or categories for the information or technology involved. Moreover, the DFARS rule notes that the agencies responsible for the ITAR and EAR have responsibility for providing authoritative guidance on such matters. The DFARS rule assigns to the requiring activity the responsibility for determining whether export-controlled items are expected to be involved in performance of a contemplated contract. Requiring activity personnel are responsible for determining if a research proposal merits funding and whether the Government receives adequate value for services performed. Training for such requiring activity personnel (and contracting officers) is presently available through the Defense Acquisition University. This training is being supplemented to make it more suitable for personnel responsible for implementing this DFARS rule and to keep the information current and share lessons learned.

5. Flow-Down of Export Control Clauses to Subcontracts

Comment: Several respondents stated that the flow-down of any export-control related clauses is problematic for universities. Commercial entities may not be aware of NSDD 189 and fundamental research. Overuse of the clause when unnecessary could harm the university-industry-government research partnership.

DoD Response: The clause in the interim rule at DFARS 252.204–7008, Requirements for Contracts Involving Export-Controlled Items, requires flow-down only to subcontracts that are expected to involve access to or generation of export-controlled items. The clause in the interim rule at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, must be used when the parties do not anticipate that the contractor will generate or need access to export-controlled items and does not include a flow-down requirement.

6. Termination for Convenience

Comment: One respondent requested that termination for convenience be allowed for those projects that begin as fundamental research but later develop export control issues.

DoD Response: The clause in the interim rule at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, addresses this issue. Paragraph (c) of the clause states that if, during performance of the contract, the contractor notifies the contracting officer that the contractor will generate or need access to export-controlled items, the contracting officer may, as one of three possible courses of action, terminate the contract in whole or in part for the convenience of the Government in accordance with the Termination clause of the contract.

7. Reasonable Limits on Identifying Foreign Persons

Comment: One respondent commented that DoD should place limits on identifying foreign persons and should avoid unnecessarily broad reviews of individuals working on subcontracted research efforts at universities.

DoD Response: The comment is not relevant to this DFARS rule. The rule does not address requirements for identification of foreign persons.

This rule was not 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 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 all contractors, including small entities, are already subject to export-control laws and regulations. The requirements of this rule reinforce existing responsibilities. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D010.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 890(a) requires DoD to prescribe regulations, not later than July 26, 2008, requiring DoD contractors providing goods or technology subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 to comply with those Acts and applicable regulations, including the International Traffic in Arms Regulations and the Export Administration Regulations. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 204, 235, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 235, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 235, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Subpart 204.73 is added to read as follows:

Subpart 204.73—Export-Controlled Items

Sec.

204.7300 Scope of subpart.
204.7301 Definitions.
204.7302 General.
204.7303 Policy.
204.7304 Procedures.
204.7305 Contract clauses.

Subpart 204.73—Export-Controlled Items

204.7300 Scope of subpart.

This subpart implements Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

204.7301 Definitions.

As used in this subpart—

Applied research means the effort that—

(1) Normally follows basic research, but may not be severable from the related basic research;

(2) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(3) Attempts to advance the state of the art.

Export-controlled items is defined in the clauses at 252.204–7008 and 252.204–7009.

Fundamental research, as defined by National Security Decision Directive (NSDD) 189, means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

204.7302 General.

Export control laws and regulations restrict the transfer, by any means, of certain types of items to unauthorized persons. The International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) establish these restrictions. See PGI 204.7302 for additional information.

204.7303 Policy.

(a) It is in the interest of both the Government and the contractor to have a common understanding of export-controlled items expected to be involved in contract performance.

(b) The requiring activity shall review each acquisition to determine if, during performance of the contemplated contract, the contractor is expected to generate or require access to export-controlled items.

204.7304 Procedures.

(a) Prior to issuance of a solicitation for research and development, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled items are expected to be involved; or

(2) The work is fundamental research only, and export-controlled items are not expected to be involved.

(b) Prior to issuance of a solicitation for supplies or services, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled items are expected to be involved; or

(2) The requiring activity is unable to determine that export-controlled items will not be involved. See PGI 204.7304 for guidance regarding this notification requirement.

204.7305 Contract clauses.

(a) Use the clause at 252.204–7008, Requirements for Contracts Involving Export-Controlled Items, in solicitations and contracts when the requiring activity provides the notification at 204.7304(a)(1) or (b)(1), indicating that export-controlled items are expected to be involved in the performance of the contract.

(b) Use the clause at 252.204–7009, Requirements Regarding Potential Access to Export-Controlled Items, in solicitations and contracts—

(1) For research and development, except when the clause at 252.204–7008 will be included; or

(2) For supplies and services, when the requiring activity provides the notification at 204.7304(b)(2).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.071 [Redesignated]

■ 3. Section 235.071 is redesignated as section 235.072.

■ 4. A new section 235.071 is added to read as follows:

235.071 Export-controlled items.

For requirements regarding access to export-controlled items, see Subpart 204.73.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Sections 252.204–7008 and 252.204–7009 are added to read as follows:

252.204–7008 Requirements for contracts involving export-controlled items.

As prescribed in 204.7305(a), use the following clause:

Requirements for Contracts Involving Export-Controlled Items (Jul 2008)

(a) *Definition. Export-controlled items*, as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730–774) or the International Traffic in Arms Regulations (22 CFR Parts 120–130). The term includes:

(1) *Defense items*, defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data. The term ''defense items'' includes information and technology.

(2) *Items*, defined in the EAR as ''commodities, software, and technology,'' terms that are also defined in the EAR, 15 CFR 772.1. Regarding the release of items subject to the EAR to foreign nationals within the United States, ''items'' only include technology and software source code (and not commodities) subject to the EAR.

(b) The parties anticipate that, in the performance of this contract, the Contractor will generate or need access to export-controlled items.

(c) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to the ITAR and with the Department of Commerce regarding any questions relating to the EAR.

(d) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(e) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420);

(2) The Arms Export Control Act of 1976 (22 U.S.C. 2751 *et seq.*);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701–1707);

(4) The Export Administration Regulations (15 CFR Parts 730–774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120–130);

(6) Executive Order 13222, as extended;

(7) DoD Directive 2040.2, International Transfers of Technology, Goods, Services, and Munitions; and

(8) DoD Industrial Security Regulation (DoD 5220.22–R).

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that are expected to involve access to or generation of export-controlled items.

(End of clause)

252.204–7009 Requirements regarding potential access to export-controlled items.

As prescribed in 204.7305(b), use the following clause:

Requirements Regarding Potential Access to Export-Controlled Items (Jul 2008)

(a) *Definition. Export-controlled items,* as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730–774) or the International Traffic in Arms Regulations (22 CFR Parts 120–130). The term includes:

(1) *Defense items,* defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data. The term ''defense items'' includes information and technology.

(2) *Items,* defined in the EAR as ''commodities, software, and technology,'' terms that are also defined in the EAR, 15 CFR 772.1. Regarding the release of items subject to the EAR to foreign nationals within the United States, ''items'' only include technology and software source code (and not commodities) subject to the EAR.

(b) The parties do not anticipate that, in the performance of this contract, the Contractor will generate or need access to export-controlled items.

(c) If, during the performance of this contract, the Contractor becomes aware that the Contractor will generate or need access to export-controlled items—

(1) The Contractor shall notify the Contracting Officer in writing; and

(2) The Contracting Officer will expeditiously—

(i) Modify the contract to include the Defense Federal Acquisition Regulation Supplement clause 252.204–7008, Requirements for Contracts Involving Export-Controlled Items;

(ii) Negotiate a contract modification that eliminates the requirement for performance of work that would involve export-controlled items; or

(iii) Terminate the contract, in whole or in part, as may be appropriate, for the convenience of the Government, in accordance with the Termination clause of the contract.

(End of clause)

252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 [Amended]

■ 6. Sections 252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 are amended in the introductory text by removing ''235.071'' and adding in its place ''235.072''.

[FR Doc. E8–16673 Filed 7–18–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 13

RIN 1018–AV63

Migratory Bird Permits; Addresses for Applications for Eagle and Migratory Bird Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We correct omissions in our list of addresses the public can use to submit permit applications to conduct activities with migratory birds or with bald eagles or golden eagles.

DATES: This rule is effective on July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

We are the Federal agency delegated the primary responsibility for managing migratory birds, as authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We correct omissions of States, territories, and possessions in 50 CFR 13.11(b)(5), in which we have listed addresses for the public to use to submit permit applications to conduct activities with migratory birds or with bald eagles or golden eagles.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely making administrative corrections to omissions in the lists of States, territories, and possessions we include in our regulations with our addresses for the public to use to request or submit permit applications for activities with bald or golden eagles or migratory birds. Further, it is in the public's best interest to have access to these corrected lists as soon as possible. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements, we find that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in E.O. 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This rule does not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are no costs associated with this rule.

b. This rule does not create inconsistencies with other agencies' actions. The rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

c. This rule does not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of migratory birds.

d. This rule does not raise novel legal or policy issues. The regulations change is in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e.,