

Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications. This rule does not have tribal implications, as specified in Executive Order 13175. Thus Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order had the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action does not establish any new regulatory requirements.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress through OMB, explanations when the Agency decides not to use available and applicably voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

*K. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 24, 2008. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides,

in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

Under CAA section 307(b)(1), a petition to review this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days of May 1, 2008.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 24, 2008.

**Stephen L. Johnson,**  
Administrator.

[FR Doc. E8–9485 Filed 4–30–08; 8:45 am]

BILLING CODE 6560–50–P

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**OFFICE OF MANAGEMENT AND BUDGET**

**Office of Federal Procurement Policy**

**48 CFR Part 9904**

**Cost Accounting Standards Board; Accounting for the Costs of Employee Stock Ownership Plans (ESOPs) Sponsored by Government Contractors**

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Final rule.

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**SUMMARY:** The Cost Accounting Standards Board (the Board), Office of Federal Procurement Policy, has adopted a final rule to amend Cost Accounting Standard (CAS) 412, “Cost Accounting Standard for composition and measurement of pension cost,” and CAS 415, “Accounting for the cost of deferred compensation.” These amendments address issues concerning the recognition of the costs of Employee Stock Ownership Plans (ESOPs) under Government cost-based contracts and subcontracts. These amendments provide criteria for measuring the costs of ESOPs and their assignment to cost

accounting periods. The allocation of a contractor's assigned ESOP costs to contracts and subcontracts is addressed in other Standards. The amendments also specify that accounting for the costs of ESOPs will be covered by the provisions of CAS 415, "Accounting for the cost of deferred compensation," and not by any other Standard. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy (OFPP) Act.

**DATES:** *Effective Date:* June 2, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Laura Auletta, Manager, CAS Board, 725 17th Street, NW., Room 9013, Washington, DC 20503 (telephone: 202-395-3256).

**SUPPLEMENTARY INFORMATION:**

**A. Regulatory Process**

The Board's rules, regulations and standards are codified at 48 CFR chapter 99. The OFPP Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised Cost Accounting Standard, to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper.)

2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).

3. Promulgate a Notice of Proposed Rulemaking (NPRM).

4. Promulgate a Final Rule.

This final rule is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1), and, is step four of the four-step process.

**B. Background and Summary**

The CAS and Federal Acquisition Regulation (FAR) have dealt with issues associated with ESOPs since ESOPs became popular in the late 1970s as a vehicle for providing incentive compensation to employees, as well as a means for corporations to finance their capital requirements. The popularity of ESOPs was greatly enhanced by their inclusion in the Employee Retirement Income Security Act of 1974 (ERISA) and by several beneficial changes to the Federal Income Tax Code in that same time period.

At first, the issues that arose were regarded as allowability matters that were to be treated in the FAR (or one of its predecessors, the Defense Acquisition Regulation or Armed

Services Procurement Regulation). The views of the Board were sought primarily on an advisory basis. However, after issuance of the decision of the Armed Services Board of Contract Appeals (ASBCA) in the "Parsons case," Ralph Parsons Co., ASBCA Nos. 37391, 37946, and 37947, December 20, 1990, 91-1 BCA 23648, reconsideration denied 91-2 BCA 23751, various government commenters suggested to the Board that ESOP cost measurement and period assignment matters warranted placement on the Board's agenda. These suggestions were amplified in light of the decision of the ASBCA in Ball Corp., ASBCA No. 49118, April 3, 2000, 00-1 BCA 30864. This position has been reiterated both by the Department of Defense and by some contractors.

The Board first considered issuing an Interpretation of its existing Standards, but then decided that additional research was needed. Various approaches for dealing with ESOP accounting issues were considered by the Board and other interested parties in the late 1990s. On September 15, 2000, the Board issued a Staff Discussion Paper (SDP) on this topic (65 FR 56008, Sept. 15, 2000). In response to the comments submitted on the SDP, on August 20, 2003 the Board issued an ANPRM (68 FR 50111) for the purpose of amending CAS 412 and 415 to address issues concerning the recognition of the costs of Employee Stock Ownership Plans (ESOPs) under Government cost-based contracts and subcontracts.

After considering the public comments submitted in response to the ANPRM, the Board published an NPRM on July 22, 2005 with request for comment (70 FR 42293). The Board received three sets of public comments in response to the NPRM. This final rule adopts the language in the NPRM, with minor changes to the transition provision. The final rule directs that costs of all ESOPs, regardless of type, be accounted for in accordance with CAS 415, and provides criteria in CAS 415 for measuring the costs of ESOPs and assigning those costs to cost accounting periods.

**C. Public Comments**

A summary of the comments received in response to the NPRM and the Board response are as follows:

**1. Support Issuance of the Proposed Rule**

*Comment:* Two commenters supported the issuance of the final rule. One commenter noted that the changes made to the NPRM in response to its

comments on the ANRPM very effectively addressed its concerns. The second commenter noted that the NPRM indicated that the drafters diligently reviewed how ESOPs operated and reviewed carefully why Congress has consistently supported the creation of employer ownership through ESOPs for over thirty years. This commenter provided some recommendations for clarification and requested the Board move forward with the rulemaking process.

*Response:* The Board thanks the commenters for their responses.

**2. Transition Provisions**

*Comment:* One commenter opined that the proposed transition provisions at 9904.415-63 are overridden by 48 CFR 9904.412-20(b) and most existing ESOPs would not be subject to the revised rules.

*Response:* The Board recognizes the commenter's concern and has amended the transition provision in the final rule to specify that all ESOPs, including those considered to be pension ESOPs, are henceforth subject to CAS 415. When the transition provisions are read in conjunction with 412-20(b), the Board believes that following the receipt of a new CAS covered contract or subcontract all ESOPs shall be covered in CAS 415.

**3. "Awarded" vs. "Allocated"**

*Comment:* One commenter opined that the term "awarded" has no meaning in the context of a qualified ESOP plan and requires clarification.

*Response:* As stated previously in the NPRM (70 FR 42293, dated July 22, 2005), the Board's objective in amending CAS 412 and 415 is to provide consistent cost accounting practices for the measurement and assignment of costs of ESOPs, regardless of whether or not a particular ESOP is a qualified plan under ERISA and the IRS. Accordingly, the Board believes it need not limit itself to the terms and concepts embodied in ERISA or IRS rules and regulations in defining the cost accounting practices to be used in the measurement and assignment of costs of ESOPs. For the reasons stated in the NPRM (see responses to the ANPRM, which are contained in the NPRM and annotated as Comment 3, "Assignment of Costs Based on Award of Shares" and Comment 5, "Definition of an ESOP"), the Board continues to believe that it is appropriate to impose separate allocation and award criteria in order for an ESOP contribution to be measured and assigned to a particular cost accounting period. The Board also believes it has adequately distinguished

between the concepts of allocation and award in both the techniques for application at 9904.415–50(f) and the illustrations at 9904.415–60, and that no further clarification is required.

#### 4. Interest Included in ESOP Contributions

*Comment:* One commenter opined that contractors should be required to separately identify the interest component of ESOP costs to promote transparency.

*Response:* The Board continues to believe that it is not necessary to impose a separate disclosure requirement regarding interest paid by the ESOP trust out of a contractor's ESOP contributions. The Board's reasoning, as provided in the NPRM (70 FR 42293, dated July 22, 2005), also applies here and is summarized, in relevant part, below.

The final rule recognizes the resources used by the contractor to fund the current year's award to employees, whether those shares are purchased by the ESOP in the year of award or made available for allocation by repayment of ESOP debt. In finalizing this rule, the Board believes that it is providing for the measurement of ESOP costs for contract costing purposes in a manner that reflects the CAS objective of consistency in cost accounting practices.

For financial accounting purposes, contractors are required to follow generally accepted accounting principles (GAAP). Under GAAP (specifically American Institute of Certified Public Accountants (AICPA) Statement of Position 93–6, paragraphs 6.24 thru 6.27, "Employer's Accounting for Employee Stock Ownership Plans"), companies are required to separately identify the interest and principal of the ESOP financing, and thus the transparency noted by the commenter already exists. Therefore, there is no need for the Board to promulgate a duplicate requirement. The Board further notes that whether interest or other cost components associated with financing a leveraged ESOP are allowable costs is determined under FAR Part 31. The final rule does not, in any manner, preclude the FAR Council from drafting rules that explicitly allow or disallow interest or any other cost component associated with an ESOP. Should the FAR Council decide to explicitly disallow interest or any other cost component associated with an ESOP, CAS 405 already requires that such costs be segregated in the contractor's accounting records. In addition, CAS 405 also requires that such costs be identified and excluded

from any billing, claim, or proposal applicable to a Government contract. Therefore, the Board does not believe it is necessary to require separate disclosure of any interest paid by the ESOP trust out of a contractor's ESOP contribution.

#### 5. Clarification of Examples

*Comment:* One commenter opined that the following illustrations should be clarified:

a. The commenter recommended that 9904.415–60(f) should be revised to read as follows:

Contractor F has a non-leveraged ESOP. Under the contractor's plan, employees are awarded 5,000 shares of stock for the year ended December 31, 2007. The market value of the stock as of 12/31/07, as determined on 2/5/08 is \$10.00 per share. On February 5, 2008, the 5,000 shares are contributed to the ESOP and allocated to the individual employee accounts.

*Response:* The Board does not believe a change to the illustration in the NPRM is warranted. The recommended revision would alter the content of the example and render it inconsistent with the language in the revised standard. The illustration in the NPRM is intended to demonstrate that the valuation date of the stock is the date the contribution is made in accordance with CAS 415–50(f)(1), not the date that employees are awarded the stock under the contractor's plan. As stated in the ANPRM, the Board believes that the "contribution" approach to ESOP cost accounting is the best measure of a contractor's cost to provide the ESOP benefit awarded to an employee. Therefore, the value of the shares transferred to an ESOP is established as of the contribution date (the date when the title to the shares is transferred to the trust), not the date when the shares are awarded to the employee. As such, the language in the NPRM remains unchanged.

b. The commenter recommended that 9904.415–60(g) should be revised to read as follows:

On February 15, 2008, the contractor contributes \$780,000 in cash to the ESOP trust (ESOT) to satisfy the principal and interest payment on the ESOT loan for FY 2007. The contractor's contribution of \$780,000 causes 9,000 shares of stock to be allocated in the true ESOP. One thousand (1,000) shares of stock are contributed to a true ESOP on 2/2/05, valued at \$60,000 as of 12/31/07.

*Response:* The Board does not believe a change to the illustration in the NPRM is warranted. The introduction of the term "true ESOP" would be

inappropriate since it is not defined or used in the standard, and the language of the standard clearly distinguishes between the ESOP and the ESOP trust (ESOT). Furthermore, the illustration makes an important distinction between shares released to the ESOT as a result of the cash payment by the contractor, the additional shares contributed to the ESOT, and the total shares actually allocated to individual employee accounts. Thus, the language in the NPRM remains unchanged.

c. The commenter recommended that 9904.415–60(h)(1) should be revised to read as follows:

Contractor H has a leveraged ESOP. Under the contractor's plan, employees are awarded 8,000 shares of stock for the year ended December 31, 2007. Only 8,000 shares of stock are allocated as of 12/31/07. \$100,000 of the total payment of \$500,000 made on 1/31/08 was for the FY '08, and 2,000 shares will be allocated as of 12/31/08.

*Response:* The Board does not believe a change to the illustration in the NPRM is warranted. The commenter's recommendation would revise the example to state that the 2,000 shares remaining in the ESOT and not awarded for 2007 will be awarded in 2008. The Board does not believe this should be added to the example because it may result in the reader incorrectly assuming that the remaining shares will always be awarded in the following year (in this case, 2008). This assumption cannot be made since there will not necessarily be an obligation to award these shares in 2008. Thus, the language in the NPRM remains unchanged.

d. The commenter recommended that 9904.415–60(h)(2) should be revised to read as follows:

At December 31, 2008, the employees are awarded 12,000 shares of stock. On January 31, 2009, Contractor H contributes \$500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2008, resulting in the bank releasing 10,000 shares of stock. On February 10, 2009, 12,000 shares are allocated to individual employee accounts satisfying the deferred compensation obligation for 2008. If the contractor claims the contribution or an allowable cost, or claims a tax deduction, for 2007, then the shares released as a result of the contribution must be allocated for the year in which the contribution is allowed or claimed as a corporate tax deduction. In addition to the \$500,000 contribution, which resulted in 10,000 shares being allocated as of 12/31/08, an additional 2,000 shares of stock were contributed to a true ESOP on 2/10/09, and allocated as of 12/31/08.

*Response:* The Board does not believe a change to the illustration in the NPRM is warranted. As stated in the NPRM (70 FR 42293, dated July 22, 2005), the cost accounting practices specified in CAS 415 are not dependent on tax deductibility of any contribution since two plans with identical contribution requirements should not have different cost accounting treatment solely because of differences in tax deductibility. Therefore, changing the illustration would result in inconsistency with the language in the revised standard, since such a change would base the assignment of ESOP costs for contract costing purposes on ERISA and/or IRS rules that have not been incorporated into the Standard. As such, the language in the NPRM remains unchanged.

e. The commenter recommended that 9904.415–60(i) should be revised to read as follows:

Contractor I has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares for FY 2007, which ended December 31, 2007. On February 10, 2008, Contractor I contributes \$700,000 in cash to satisfy the principal and interest payment for the ESOP loan for FY 2007. This contribution results in the bank releasing 10,000 shares of stock. On March 1, 2008, the ESOP allocates the 10,000 shares to individual employee accounts satisfying the 2007 obligation. The 10,000 shares of stock are allocated as of 12/31/07.

*Response:* The Board does not believe a change to the illustration in the NPRM is warranted. The recommended revision would eliminate the purpose of this illustration, which is intended to address instances where the shares are awarded on one date (in this example, December 31, 2007) but are not allocated to individual employee accounts until a later date (in this case, March 1, 2008). This example is intended to illustrate the assignment of ESOP contributions in accordance with 9904.415–50(f)(2) and the distinction between award and allocation. As such, the language in the NPRM remains unchanged.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

#### E. Regulatory Flexibility Act, Unfunded Mandates Reform Act, Congressional Review Act, and Executive Orders 12866 and 13132

The Board certifies that this rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from the application of the Cost Accounting Standards. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Orders 12866 and 13132, the final rule will not significantly or uniquely affect small governments, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more. The final rule is not a “major rule” under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2). Finally, the rule does not have federalism implications as described in Executive Order 13132.

#### List of Subjects in 48 CFR Part 9904

Accounting, Government procurement.

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

■ For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

#### PART 9904—COST ACCOUNTING STANDARDS

■ 1. The authority citation for part 9904 continues to read as follows:

**Authority:** Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

■ 2. Section 9904.412–20 is revised to read as follows:

##### 9904.412–20 Purpose.

(a) The purpose of this Standard 9904.412 is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

(b) This Standard does not cover the cost of Employee Stock Ownership Plans (ESOPs) that meet the definition of a pension plan. Such plans are considered a form of deferred

compensation and are covered under 9904.415.

■ 3. Section 9904.415–20 is revised to read as follows:

##### 9904.415–20 Purpose.

(a) The purpose of this Standard 9904.415 is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except the following which are covered in other Cost Accounting Standards:

(1) The cost for compensated personal absence, and

(2) The cost for pension plans that do not meet the definition of an Employee Stock Ownership Plan (ESOP).

■ 4. Section 9904.415–30 is amended by revising paragraph (a), introductory text, adding paragraphs (a)(2) and (3), and revising paragraph (b) to read as follows:

##### 9904.415–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard 9904.415. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section requires otherwise.

\* \* \* \* \*

(2) Employee Stock Ownership Plan (ESOP) means:

(i) An employee benefit plan that is described by the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) of 1986 as a stock bonus plan, or combination stock bonus and money purchase pension plan, designed to invest primarily in employer stock, and

(ii) Any other deferred compensation plan designed to invest primarily in the stock of the contractor's corporation including, but not limited to, plans covered by ERISA.

(3) Fair value means the amount that a seller would reasonably expect to receive in a current arm's length transaction between a willing buyer and a willing seller, other than a forced or liquidation sale.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) Market value means the current or prevailing price of a stock or other property as indicated by market quotations.

(2) [Reserved]

■ 5. Section 9904.415–40 is revised to read as follows:

**9904.415–40 Fundamental requirement.**

(a) The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost of deferred compensation shall be the amount paid and shall be assigned to the cost accounting period in which the payment is made.

(b) Measurement of deferred compensation costs.

(1) For deferred compensation other than ESOPs, the deferred compensation cost shall be the present value of the future benefits to be paid by the contractor.

(2) For an ESOP, the deferred compensation cost shall be the amount contributed to the ESOP by the contractor.

(c) The cost of each award of deferred compensation shall be considered separately for purposes of measurement and assignment of such costs to cost accounting periods. However, if the cost of deferred compensation for the employees covered by a deferred compensation plan can be measured and assigned with reasonable accuracy on a group basis, separate computations for each employee are not required.

■ 6. Section 9904.415–50 is amended by revising paragraph (d) introductory text and (e) introductory text and adding paragraph (f) to read as follows:

**9904.415–50 Techniques for application.**

\* \* \* \* \*

(d) The following provisions are applicable for plans, other than ESOPs, that meet the conditions of 9904.415–50(a) and the compensation is to be paid in money.

\* \* \* \* \*

(e) The following provisions are applicable for plans, other than ESOPs, that meet the conditions of 9904.415–50(a) and the compensation is received by the employee in other than money. The measurements set forth in this paragraph constitute the present value of future benefits for awards made in other than money and, therefore, shall be deemed to be a reasonable measure of the amount of the future payment:

\* \* \* \* \*

(f)(1) For an ESOP, the contractor's cost shall be measured by the contractor's contribution, including interest and dividends if applicable, to the ESOP. The measurement of contributions made in the form of stock of the corporation or property, shall be

based on the market value of the stock or property at the time the contributions are made. If the market value is not available, then fair value of the stock or property shall be used.

(2) A contractor's contribution to an ESOP shall be assignable to a cost accounting period only to the extent that the stock, cash, or any combination thereof resulting from the contribution is awarded to employees and allocated to individual employee accounts by the tax filing date for that period, including any permissible extensions thereof. All stock or cash that is allocated to the individual employee accounts between the end of the cost accounting period and the tax filing date for that period must be assigned to the cost accounting period in which the employee is awarded the stock or cash. Any portion of the stock or cash resulting from a contractor's contribution that is not awarded to employees or allocated to individual employee accounts by the tax filing date for that period, including any permissible extensions thereof, shall be assigned to a future cost accounting period or periods when the remaining portion of stock or cash has been awarded to employees and allocated to individual employee accounts. This stock shall retain the value established when it was originally purchased by or otherwise made available to the ESOP.

■ 7. Section 9904.415–60 is amended by adding paragraphs (f), (g), (h) and (i) to read as follows:

**9904.415–60 Illustrations.**

\* \* \* \* \*

(f) Contractor F has a non-leveraged ESOP. Under the contractor's plan, employees are awarded 5,000 shares of stock for the year ended December 31, 2007. On February 5, 2008, when the shares have a market value of \$10.00 each, the 5,000 shares are contributed to the ESOP and allocated to the individual employee accounts. The total measured and assigned deferred compensation cost for FY 2007 is \$50,000 (5,000 × \$10 = \$50,000). The market value of the contractor's stock when awarded to the employees, whether higher or lower than the \$10.00 per share market value when the contractor's contribution was made to the ESOP, is irrelevant to the measurement of the contractor's ESOP costs.

(g) Contractor G has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares of stock for the year ended December 31, 2007. On February 15, 2008, the contractor contributes \$780,000 in cash to the ESOP trust (ESOT) to satisfy the principal and interest payment on the

ESOT loan for FY 2007, resulting in the bank releasing 9,000 shares of stock, and 1,000 shares of stock valued at \$60,000 to the ESOT, representing the balance of the 10,000 shares. On February 22, 2008, the ESOP allocates 10,000 shares to the individual employee accounts. The total measured and assigned deferred compensation cost for FY 2007 is \$840,000—the contractor's total contribution required to satisfy the deferred compensation obligation totaling 10,000 shares.

(h)(1) Contractor H has a leveraged ESOP. Under the contractor's plan, employees are awarded 8,000 shares of stock for the year ended December 31, 2007. On January 31, 2008, the contractor contributes \$500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2007, resulting in the bank releasing 10,000 shares of stock. On February 10, 2008, 8,000 shares are allocated to individual employee accounts, satisfying the deferred compensation obligation for 2007. The total measured deferred compensation cost for 2007 is \$500,000—the contractor's contribution for the cost accounting period. However, the total assignable deferred compensation cost for 2007 is \$400,000—the portion of the contribution that satisfies the 2007 deferred compensation obligation of 8,000 shares [(8,000 shares / 10,000 shares) × \$500,000 = \$400,000]. The remaining \$100,000 of the contribution made in 2007 is assignable to future periods in which the remaining 2,000 shares of stock are awarded to employees and allocated to individual employee accounts.

(2) At December 31, 2008, the employees are awarded 12,000 shares of stock. On January 31, 2009, Contractor H contributes \$500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2008, resulting in the bank releasing 10,000 shares of stock. On February 10, 2009, 12,000 shares are allocated to individual employee accounts satisfying the deferred compensation obligation for 2008. The total deferred compensation assignable to 2008 is \$600,000, the cost of the 12,000 shares awarded to employees and allocated to individual employee accounts for 2008. The cost of the award is comprised of the contractor's contribution for the current cost accounting period (10,000 shares at \$500,000) and the 2007 contribution carryover (2,000 shares at \$100,000).

(i) Contractor I has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares for FY 2007, which ended December 31, 2007. On

February 10, 2008, Contractor I contributes \$700,000 in cash to satisfy the principal and interest payment for the ESOP loan for FY 2007. This contribution results in the bank releasing 10,000 shares of stock. On March 1, 2008, the ESOP allocates the 10,000 shares to individual employee accounts satisfying the 2007 obligation. The 10,000 shares of stock must be assigned to FY 2007 (these shares cannot be assigned to 2008).

■ 8. Section 9904.415–63 is revised to read as follows:

**9904.415–63 Effective date.**

(a) This Standard 9904.415 is effective as of June 2, 2008.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.415 in effect prior to June 2, 2008 until this Standard, effective June 2, 2008, becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

(d) For contractors and subcontractors that have established advance agreements prior to June 2, 2008 regarding the recognition of the costs of existing ESOPs, the awarding agency and contractor shall comply with the provisions of such advance agreement(s) for these existing ESOPs, regardless of whether the ESOP was previously subject to CAS 412 or 415. These advance agreements may be modified, by mutual agreement, to incorporate the requirements effective on June 2, 2008.

[FR Doc. E8–9376 Filed 4–30–08; 8:45 am]

BILLING CODE 3110–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS—R2—ES—2008—0044; 40120—1113—0000—B3]

RIN 1018—AW12

#### Endangered and Threatened Wildlife and Plants; Listing the Potential Sonoran Desert Bald Eagle Distinct Population Segment as Threatened Under the Endangered Species Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are issuing a final rule to amend the regulations for the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11 by designating bald eagles (*Haliaeetus leucocephalus*) in the Sonoran Desert area of central Arizona as threatened under the authority of the Endangered Species Act of 1973, as amended (Act). We are also reinstating and clarifying the former special rule at 50 CFR 17.41 that applied to threatened members of this species. This action revises the CFR to reflect a March 6, 2008, court order.

**DATES:** This action is effective May 1, 2008. However, the court order had legal effect immediately upon being filed on March 6, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### Background

Information about the bald eagle's life history can be found in our July 9, 2007 (72 FR 37346), final delisting rule for bald eagles in the lower 48 States.

#### Previous Federal Action

Information about previous Federal actions was provided in our July 9, 2007 (72 FR 37346), final delisting rule for bald eagles in the lower 48 States.

On October 6, 2004, we received a petition, dated October 6, 2004, from the Center for Biological Diversity (CBD), the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the “Southwestern desert nesting bald eagle population” be classified as a distinct population segment (DPS), that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS under the Act.

On March 27, 2006, the CBD and the Maricopa Audubon Society filed a lawsuit against the U.S. Department of the Interior and the Service for failing to make a timely finding on the petition. The parties reached a settlement and the Service agreed to complete its petition finding by August 2006. We announced our 90-day finding, required under 16 U.S.C. 1533(b)(3)(A), on August 30, 2006 (71 FR 51549), that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On January 5, 2007, the CBD and the Maricopa Audubon Society filed a lawsuit challenging the Service's 90-day finding that the “Sonoran Desert population” of the bald eagle did not qualify as a DPS, and further challenging the Service's 90-day finding that the population should not be up-listed to endangered status.

On July 9, 2007 (72 FR 37346), we published the final delisting rule for bald eagles in the lower 48 States. In that final delisting rule, we stated that our findings on the status of the Sonoran Desert population of bald eagles superseded our 90-day petition finding because the final delisting rule constituted a final decision on whether the Sonoran Desert population of bald eagles qualified for listing as a DPS under the Act.

On August 17, 2007, the CBD and the Maricopa Audubon Society filed a motion for summary judgment, requesting the court to make a decision on their January 5, 2007, lawsuit. On March 5, 2008, the U.S. District Court for the District of Arizona ruled in favor of the CBD and the Maricopa Audubon Society. The court order (*Center for Biological Diversity v. Kempthorne*, CV 07–0038–PHX–MHM (D. Ariz.)), was filed on March 6, 2008.

The court ruled for the plaintiffs and found that the Service:

(1) Finding on the status of the Sonoran Desert population of bald eagles in our July 9, 2007 (72 FR 37346), final delisting rule did not moot the plaintiff's challenge to the August 30, 2006, negative 90-day petition finding;

(2) Applied an inappropriately strict evidentiary burden on the petition at the 90-day review stage and thus arbitrarily and capriciously concluded that the petition did not present substantial information that listing the “Desert bald eagle population” may be warranted; and

(3) Arbitrarily and capriciously conducted the 90-day review of the petition by soliciting information and opinions from a limited outside source.

The court provided the following remedies and ordered the Service to:

(1) Conduct a status review of the Desert bald eagle population pursuant to the Act to determine whether listing that population as a DPS is warranted, and if so, whether listing that DPS as threatened or endangered pursuant to the Act is warranted;

(2) Issue a 12-month finding, pursuant to 16 U.S.C. 1533(b)(3)(B), on whether listing the Desert bald eagle population as a DPS is warranted, and if so, whether listing that DPS as threatened or endangered is warranted; and