

section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

#### List of Subjects

29 CFR Part 4001

Pensions.

29 CFR Part 4022

Pension insurance, Pensions.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4001 and 4022 as follows.

#### PART 4001—TERMINOLOGY

1. The authority citation for part 4001 continues to read as follows:

**Authority:** 29 U.S.C. 1301, 1302(b)(3).

2. In § 4001.2, add a new definition in alphabetical order to read as follows:

##### § 4001.2 Definitions

\* \* \* \* \*

*PPA 2006 bankruptcy termination* means a plan termination to which section 404 of the Pension Protection Act of 2006 applies. Section 404 of the Pension Protection Act of 2006 applies to any plan termination in which the termination date occurs while bankruptcy proceedings are pending with respect to the contributing sponsor of the plan, if the bankruptcy proceedings were initiated on or after September 16, 2006. Bankruptcy proceedings are pending, for this purpose, if a contributing sponsor has filed or has had filed against it a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan.

\* \* \* \* \*

#### PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

3. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

4. In § 4022.2, amend the first paragraph by removing the words “plan year, proposed termination date, substantial owner” and adding in their place “plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, substantial owner.”

5. Add new § 4022.11 to subpart A to read as follows:

##### § 4022.11 Guarantee of benefits relating to uniformed service.

This section applies to a benefit of a participant who becomes reemployed after service in the uniformed services that is covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

(a) A benefit described in paragraph (b) of this section that would satisfy the requirements of § 4022.3(a) and (c) (together with any benefit earned for the period preceding military service) except for the fact that the participant was not reemployed on or before the termination date will be deemed to satisfy those requirements if PBGC determines, based upon a demonstration by the participant or otherwise, that he or she became reemployed after the termination date and entitled to the benefit under USERRA.

(b) A benefit described in this paragraph (b) is a benefit attributable to a period of service commencing before the termination date and ending on the termination date during which the participant was serving in the uniformed services as defined in 38 U.S.C. 4303(13) (or was in a subsequent reemployment eligibility period) and to which the participant is entitled under USERRA.

(c) Example: A plan's vesting requirement is 5 years of service with the employer. A participant has completed 4 years of service when he leaves employment for uniformed service. The plan terminates while the participant is in military service. As of the termination date, the participant would have had 5 years of service and 5 years of benefit accruals if he had remained continuously employed. Upon reemployment after the termination date but within the time limits set by USERRA, the participant would have had 6 years of service under the plan for vesting and benefit accrual purposes, if the plan had not terminated. PBGC would treat the participant as having a vested, nonforfeitable plan benefit with 5 years of vesting service and benefit accruals as of the termination date.

(d) In the case of a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in this section.

Issued in Washington, DC, this 24th day of July 2009.

**Vincent K. Snowbarger,**

*Acting Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E9-18074 Filed 7-28-09; 8:45 am]

**BILLING CODE 7709-01-P**

#### DEPARTMENT OF DEFENSE

##### Defense Acquisition Regulations System

##### 48 CFR Parts 215, 217, and 243

RIN 0750-AG27

##### Defense Federal Acquisition Regulation Supplement; Management of Unpriced Change Orders (DFARS Case 2008-D034)

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

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for DoD management and oversight of unpriced change orders in a manner consistent with the management and oversight requirements that apply to other undefinitized contract actions.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 28, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008-D034, 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 2008-D034 in the subject line of the message.

*Fax:* 703-602-7887.

*Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, 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. Cassandra Freeman, 703-602-8383.

##### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Subpart 217.74 prescribes policies and procedures for the management and oversight of undefinitized contract actions. Unpriced change orders, issued in accordance with FAR Part 43 and DFARS Part 243, are presently excluded from the scope of

DFARS Subpart 217.74. In recognition of the need for full accountability of unpriced change orders, this proposed rule adds policy addressing management, oversight, and limitations on the use of unpriced change orders, similar to the policy that applies to other undefinitized contract actions.

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 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 the proposed rule reinforces existing requirements for appropriate management and timely definitization of contract actions. 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 2008–D034.

## C. Paperwork Reduction Act

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

### List of Subjects in 48 CFR Parts 215, 217, and 243

Government procurement.

**Michele P. Peterson,**  
Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 215, 217, and 243 as follows:

1. The authority citation for 48 CFR Parts 215, 217, and 243 continues to read as follows:

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

## PART 215—CONTRACTING BY NEGOTIATION

### 215.404–71–3 [Amended]

2. Section 215.404–71–3 is amended in paragraph (d)(2), in the first sentence, by revising the parenthetical to read “(also see 217.7404–6(a) and 243.204–70–6)”.

## PART 217—SPECIAL CONTRACTING METHODS

3. Section 217.7401 is amended in paragraph (a)(2) by adding a second sentence and in paragraph (d) by adding a third sentence to read as follows:

### 217.7401 Definitions.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \* For policy relating to definitization of change orders, see 243.204–70.

\* \* \* \* \*

(d) \* \* \* For policy relating to definitization of change orders, see 243.204–70.

4. Section 217.7402 is revised to read as follows:

### 217.7402 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart. However, the contracting officer shall apply the policy and procedures to them to the maximum extent practicable (*also see* paragraph (b) of this section):

(1) UCAs for foreign military sales.

(2) Purchases at or below the simplified acquisition threshold.

(3) Special access programs.

(4) Congressionally mandated long-lead procurement contracts.

(b) If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this subpart for a particular contract action in one of the categories in paragraph (a)(1), (3), or (4) of this section, the contracting officer shall provide prior notice, through agency channels, to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301–3060.

## PART 243—CONTRACT MODIFICATIONS

5. Section 243.204 is revised to read as follows:

### 243.204 Administration.

Follow the procedures at PGI 243.204 for administration of change orders.

### 243.204–70 [Redesignated as 243.204–71]

6. Section 243.204–70 is redesignated as section 243.204–71.

7. A new section 243.204–70 is added to read as follows:

### 243.204–70 Definitization of change orders.

8. Sections 243.204–70–1 through 243.204–70–7 are added to read as follows:

### 243.204–70–1 Scope.

(a) This subsection applies to unpriced change orders with an estimated value exceeding \$5 million.

(b) Unpriced change orders for foreign military sales and special access programs are not subject to this subsection, but the contracting officer shall apply the policy and procedures to them to the maximum extent practicable. If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this subsection for an unpriced change order for a foreign military sale or a special access program, the contracting officer shall provide prior notice, through agency channels, to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301–3060.

### 243.204–70–2 Price ceiling.

Unpriced change orders shall include a not-to-exceed price.

### 243.204–70–3 Definitization schedule.

(a) Unpriced change orders shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the change order (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the change order is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503–6, or take other appropriate action.

### 243.204–70–4 Limitations on obligations.

(a) The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, the limitation on obligations before definitization may be increased to no more than 75 percent (*see* 232.102–70 for coverage on provisional delivery payments).

(b) Obligations should be consistent with the contractor's requirements for the undefinitized period.

**243.204–70–5 Exceptions.**

(a) The limitations in 243.204–70–2, 243.204–70–3, and 243.204–70–4 do not apply to unpriced change orders for the purchase of initial spares.

(b) The head of the agency may waive the limitations in 243.204–70–2, 243.204–70–3, and 243.204–70–4 for unpriced change orders if the head of the agency determines that the waiver is necessary to support—

- (1) A contingency operation; or
- (2) A humanitarian or peacekeeping operation.

**243.204–70–6 Allowable profit.**

When the final price of an unpriced change order is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract; and

(c) The extent to which costs have been incurred prior to definitization of the contract action (see 215.404–71–3(d)(2)). The risk assessment shall be documented in the contract file.

**243.204–70–7 Plans and reports.**

To provide for enhanced management and oversight of unpriced change orders, departments and agencies shall—

(a) Include in the Consolidated Unfinalized Contract Action (UCA) Management Plan required by 217.7405, the actions planned and taken to ensure that unpriced change orders are definitized in accordance with this subsection; and

(b) Include in the Consolidated UCA Management Report required by 217.7405, each unpriced change order with an estimated value exceeding \$5 million.

[FR Doc. E9–17955 Filed 7–28–09; 8:45 am]

**BILLING CODE 5001–08–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 224**

[Docket No. 0906221082–91083–01]

RIN 0648–XQ03

**Listing Endangered and Threatened Species and Designating Critical Habitat: Notice of Finding on a Petition To List the Largetooth Sawfish (*Pristis perotteti*) as an Endangered or Threatened Species Under the Endangered Species Act**

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

**ACTION:** Notice of finding, request for information, and initiation of status review

**SUMMARY:** We, NMFS, announce a 90 day finding on a petition to list largetooth sawfish (*Pristis perotteti*) as endangered or threatened under the Endangered Species Act (ESA). We find that the petition presents substantial scientific and commercial information indicating the petitioned action may be warranted. We will conduct a status review of largetooth sawfish to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data regarding this species (see below).

**DATES:** Information and comments on the subject action must be received by September 28, 2009.

**ADDRESSES:** You may submit comments, identified by the code 0648–XQ03, addressed to: Shelley Norton, Natural Resource Specialist, by any of the following methods:

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

- *Facsimile (fax):* 727–824–5309
- *Mail:* NMFS, Southeast Regional Office, 263 13th Avenue South, St Petersburg, FL 33701

- *Hand delivery:* You may hand deliver written comments to our office during normal business hours at the street address given above.

Instructions: All comments received are a part of the public record and may be posted to <http://www.regulations.gov> without change. All personally identifiable 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. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Shelley Norton, NMFS, Southeast Region, (727) 824–5312; or Sean Ledwin, NMFS, Office of Protected Resources, (301) 713–1401.

**SUPPLEMENTARY INFORMATION:****Background**

On April 24th, 2009, we received a petition from WildEarth Guardians requesting that the Secretary of Commerce (Secretary) list largetooth sawfish (*P. perotteti*) as endangered or threatened throughout its range and designate critical habitat concurrent with listing. We identified largetooth sawfish as a candidate species under the ESA on June 23, 1999 (64 FR 33466). On November 30, 1999, we received a petition from the Center for Marine Conservation (now the Ocean Conservancy) requesting that we list the North American populations of largetooth and smalltooth sawfish (*P. pectinata*) as endangered. On March 10, 2000 (65 FR 12959), we found that there was not substantial evidence to warrant initiation of a status review of North American populations of largetooth sawfish, on the basis that the petition did not contain substantial scientific or commercial information to indicate the present existence of such a population eligible for listing. WildEarth Guardians' current petition also requests that the Secretary re-examine and reverse the March 10, 2000, negative 90–day finding to list the North American population of largetooth sawfish as endangered. We will consider the petitioner's request as a request to consider a North American Distinct Population Segment (DPS), should we determine that a 90–day “may be warranted” finding regarding the species throughout its range is not warranted.

**ESA Statutory Provisions and Policy Considerations**

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species “presents substantial scientific or commercial information indicating the petitioned action may be warranted.” ESA implementing regulations define substantial information as the “amount