Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Williamson Creek	Approximately 1,000 feet upstream of Wilson Road (State Road 1540).	+2,105	Unincorporated Areas of Transylvania County.
	Approximately 1,000 feet upstream of the confluence of Camp Creek.	+2,116	
Wilson Mill Creek	Approximately 1,900 feet upstream of the confluence with Catheys Creek.	+2,148	Unincorporated Areas of Transylvania County.
	Approximately 1,900 feet upstream of Forest Road	+2,398	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Brevard
Maps are available for inspection at the City of Brevard Planning Department, 95 West Main Street, Brevard, NC.

Unincorporated Areas of Transylvania County
Maps are available for inspection at the Transylvania County Inspections Department, 98 East Morgan Street, Brevard, NC.

Walworth County, Wisconsin, and Incorporated Areas FEMA Docket No.: B–7755

Eagle Spring Lake	All flooding affecting County	+822	Unincorporated Areas of Walworth County.
Mukwonago River	Approximately 1,700 feet North of the intersection of Marsh Road and County Highway J.	+799	Unincorporated Areas of Walworth County.
	Approximately 1.2 miles Northeast of the intersection of County Highway J and County Highway E.	+806	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Walworth County
Maps are available for inspection at the Office of Emergency Management, 1770 County Road NN, Elkhorn, WI 53121.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 11, 2009.

Deborah S. Ingram,

Deputy Acting Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–11513 Filed 5–15–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 952 and 970

RIN 1991–AB71

Acquisition Regulation: Security Clause

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to revise the security clause used in all contracts and subcontracts involving access authorizations to specifically require background reviews, and tests for the absence of any illegal drug, as defined in DOE regulations of uncleared personnel (employment applicants and current employees), who will require access authorizations. Background reviews would not be required for applicants for DOE access authorization who possess a current access authorization from another Federal agency.

DATES: *Effective Date:* June 17, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Langston at 202–287–1339 or *Richard.Langston@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Many DOE contractor and subcontractor employees require access authorizations for access to classified information (restricted data, formerly restricted data, or national security information) or certain quantities of special nuclear material in order to perform official duties. On February 19, 2008, DOE published a notice of proposed rulemaking to revise the Department of Energy Acquistion (DEAR) regulations to require the security clause used in certain contracts and subcontracts to specifically require contractors and subcontractors to conduct background checks and tests for illegal drugs of uncleared applicants and employees who will require DOE access authorizations (73 FR 9071). Under the proposed rule, the background check included the

collection and review by the contractor of items such as credit checks, and contacts with personal references and certain past employers. It then required contractors to assess the ''job qualifications and suitability'' of uncleared applicants and employees before assigning them to positions requiring an access authorization and before requesting that DOE process the individual for an access authorization. A contractor would determine ''suitability'' by assessing the possible impact of ''adverse information'' found in the background check and deciding whether it is ''confident'' that an individual would pass the rigorous background investigation conducted by DOE for a position requiring an access authorization. A contractor's assessment of the information would be guided by the criteria set forth in 10 CFR 710.8, used by the federal government to assess an individual's eligibility for an access authorization.

After considering public comments, DOE today revises several sections of the proposed rule, including amending Section 952.204–2(h)(2) to eliminate the requirement that a contractor consider the criteria in 10 CFR 710.8 in determining whether to select an individual for a position requiring an access authorization. In particular, the requirement that a contractor determine an applicant's ''suitability'' for an access authorization has been removed. Rather, a contractor must conduct a background check (now defined in the final rule as a ''review'' or ''background review'') of such individuals prior to selection, evaluate the individual based on its own processes and consistent with applicable law, and then send specified information set out in the rule to DOE.

Other changes to the proposed rule include revising Section 904.404 to add a requirement in paragraph (d)(1) that the security clause is required in any contract that will involve contractor employees' access to special nuclear material. That requirement reflects past DOE practice and is being added to make the instruction clear and complete. Section 952.204–2, Security, is revised by changing the title of the section to ''Security'' and by revising its introductory text to conform to the more recent Federal Acquisition Regulation format. As a matter of administrative convenience, in addition to the provisions regarding the review of employees and applicants, the rule includes provisions implementing certain technical changes to the format of the DEAR provisions at issue here. Some of the requirements at 970.2201–1–2, are appropriate to other types of contracts if access authorizations are required, so language at 970.2201–1–2 is being restated in the security clause.

II. Comments and Responses

Comments were received from three organizations, two of which were from DOE National Laboratories and another from an aircraft manufacturer.

The first DOE National Laboratory offered 4 comments.

Comment 1.

This comment regards the contract clause entitled Security at 952.204–2, specifically (2) Job Qualifications and Suitability.

This section directs contractors to assess the possible impact of adverse information found during the course of a background check relative to the individual's suitability for a position requiring an access authorization and act accordingly. Criteria cited following this statement are the access authorization criteria found in 10 CFR 710.8, however criteria referenced earlier in the section cites background checks are being used to determine employment suitability in accordance with the contractor's personnel policies.

It is unclear as to what is required to be determined, suitability for employment or suitability for an access authorization. Suitability for an access authorization in accordance with 10 CFR 710.8 is an adjudicative decision rendered by a federal employee who has been designated and trained to perform this function. Is it expected that the contractor, after assessing the impacts of adverse information in accordance with 10 CFR 710.8, refuse to submit an individual for an access authorization even though the individual has been determined eligible for employment in accordance with the contractor's personnel policies?

Under what adjudicative authority is this determination authorized?

Response 1.

DOE is revising Section 952.204–2(h)(2) to eliminate: (1) the requirement that a contractor apply the criteria at 10 CFR 710.8 in determining whether to select an uncleared applicant or uncleared employee for a position requiring an access authorization; and (2) any requirement that a contractor determine the ''suitability'' of an individual for an access authorization. The rule has been revised to clarify that it only requires a contractor to collect information and conduct a review of an uncleared applicant or uncleared employee, prior to selecting an individual for a position requiring an access authorization, to evaluate that individual pursuant to the contractor's personnel policies and applicable law, and then to send to the head of the cognizant local DOE Security Office the information set out in the regulation at Section 952.204–2(h)(2)(vi) for selected individuals. Under this rule, a decision as to whether an individual is eligible for an access authorization remains a DOE or Federal security decision.

Comment 2.

For individuals under contract who require an access authorization or small companies where the company owners are the employees, are background checks required? Who renders the determination? What suitability is being determined and under what criteria—employment or access authorization?

Response 2.

An individual's status as an employee, manager or owner has no bearing on DOE's determination as to whether to grant the individual an access authorization.

Comment 3.

This comment regards paragraph (j) Foreign Ownership, Control or Influence (FOCI) of the Security clause.

DOE facility clearance requirements as promulgated in DOE M 470.4–1, Chg. 1, require processing of facility clearances for circumstances that do not involve access authorizations (i.e., Cat IV SNM, possession of hazardous materials that present radiological/toxicological/biological sabotage threats and possession of DOE property greater than five million dollars in value). Foreign Ownership, Control or Influence requirements only apply when access authorizations are required. The comment recommends that this paragraph's applicability be qualified.

Response 3.

Generally, only contracts involving restricted data or national security information or access to special nuclear material and thus requiring access authorizations would require use of the Security clause. DOE M 470.4–1, Chg. 1, at paragraph 5.b.2., requires Foreign Ownership, Control or Influence coverage in any contract containing the Security clause. DOE does not believe any further applicability guidance is necessary. In the situation where a Foreign Ownership, Control or Influence determination and a facility clearance are required, but access authorizations will not be required for the employees of the contractor, the pre-employment review and drug tests that are described in the security clause are not required since these requirements are only applicable to positions requiring access authorizations.

Comment 4.

This comment relates to paragraph (l), Flow down to subcontracts, of the security clause.

Given the applicability of the facility clearance requirements, flow down to only those contracts that require access authorizations appears to be inconsistent. In addition, the criteria relative to employment eligibility identified in Part 970 apply to DOE management and operating (M&O) contractors. What criteria are to be used for contractors who are not M&O contractors?

Response 4.

This rule does not specify criteria that a DOE M&O or a non-M&O contractor must use in assessing the eligibility for *employment* of an individual that the contractor is considering for a position requiring an access authorization. Nor is the rule limited to M&O contractors. Rather, it incorporates changes to both Parts 952 and 970. Paragraph (l) of the security clause at 952.204–2 correctly states that the rule is applicable to all contracts and subcontracts which involve restricted data, national security information, or special nuclear material.

Facility clearances are the subject of a separate clause at 952.204–73 and involve the assessment of a *facility,* not the assessment of *individuals* for access to restricted data, national security information, or possession of special nuclear material, which is the subject of this rulemaking. Moreover, a facility clearance may be required for reasons other than restricted data, national security information, or possession of special nuclear material. For example, a facility clearance may be required where a contractor has possession of unusually valuable Government property. Not all individual contractor employees at a facility that hold a facility clearance are required to have access authorizations. Only the individual contractor employees at such facilities who require access to restricted data, national security information, or possession of special nuclear material at sites with facility clearances need access authorizations.

The second DOE National Laboratory offered 1 comment.

Comment 5.

Paragraph (h)(2) of the proposed security clause amendment contains the following statement:

''Contractors must propose personnel to work in positions requiring access authorizations only if they are confident that the individuals will pass the rigorous background review that DOE will conduct.''

DOE's rigorous background review is based on criteria found at 10 CFR 710.8. Those criteria include references to a person's likely place of origin (e), illness or mental condition (h), alcohol dependence (j), bankruptcy—pattern of financial irresponsibility (l), among others. While the proposed rule represents an understandable aspiration, the proposed rule places contractors in an untenable position. Contractors would be required to violate anti-discrimination laws, the Americans with Disabilities Act, and the bankruptcy laws, among others. This situation is not one contractors relish. The Government alone is traditionally authorized to make decisions involving trade-offs between the Government's legitimate goals of treating its citizens fairly and its national security interests. If a contractor refused to hire or retain an individual for one of the reasons above, the contractor would open the door to litigation; litigation that would not arise if the Government exercises its inherent functions.

DOE Response 5.

DOE has removed all references to the criteria found at 10 CFR 710.8, and will, under this rule, require contractors to comply with all laws, regulations, and Executive Orders in processing an individual's information and in considering whether to select an individual for a position requiring an access authorization.

The aircraft manufacturer offered 7 comments.

Comment 6.

The reviewer noted that the proposed Security clause at page 9073 was dated 2007 and suggested that it should be changed.

Response 6.

DOE agrees and the rule will specify the correct month and year of the clause's effective date in this final rule.

Comment 7.

Subparagraph (a) of the proposed security clause contains references to the terms ''classified information,'' ''classified documents,'' ''classified matter,'' and ''classified materials,'' which are confusing. We believe that the terms ''classified matter'' at lines 16 and 21, ''material'' at line 25, and ''matter'' at line 30 of the clause should all be revised to the terms ''classified documents'' or ''classified articles.''

Response 7.

DOE has made clarifying changes in response to this comment. DOE is revising the second sentence to read ''The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material), which is in the contractor's possession in connection with the performance of work under this contract, against sabotage, espionage, loss or theft.'' Additionally, DOE is changing ''material'' to ''matter'' where it is used in the fourth sentence, and is changing ''matter'' in the fifth sentence to ''classified matter.'' The two uses of ''classified matter'' in the third and fourth sentences are correct because classified matter can be any combination of classified documents or other classified material.

Comment 8.

Under the terms of subparagraph (h)(2) of the proposed security clause, the contractor is responsible for conducting the background investigation and forwarding the results to DOE. This would seem risky because it necessitates two investigations, one by the contractor and another by DOE to verify what the contractor submitted. Also, at subparagraph (h)(2), DOE should revise ''afforded access to classified information or matter'' to ''afforded access to classified information, classified documents, or classified articles.''

Response 8.

The rule has been revised to clarify that the review required by the security clause is for the purpose of gathering information to be considered by the contractor before selecting an individual for a position that requires a DOE access authorization. It is not the equivalent of the background investigation that will be conducted by the federal government prior to the granting or denial of an access authorization request. With respect to the suggested language change, DOE believes the proposed language—''afforded access to classified information or matter''—is technically correct, and therefore, is not adopting the suggestion.

Comment 9.

At subparagraph (h)(3)(i) of the proposed clause, revise the term ''classified information'' in lines 5 and 6 to ''classified information and classified documents.''

Response 9.

The Department does not adopt this recommendation because it would be inappropriate for this prohibition to apply only when both classified information and classified documents are disclosed to the same, unauthorized person. The term ''classified information'' is inclusive in that documents, parts, audible conversation, matter in cyber (electronic) or other form, etc. all become classified on the basis of their containing, revealing, or embodying classified information.

Comment 10.

At subparagraph (j) ''Foreign Ownership, Control or Influence,'' failure to satisfy the requirements of the clause is grounds for termination for default per paragraph (j)(4). We believe

what is intended is default for failure to comply with subparagraph (j)(1). We believe the term ''this clause'' should be revised to read paragraph (j)(1).

Response 10.

DOE does not wish to limit its right to terminate to just paragraph (j)(1).

Comment 11.

Subparagraph (k), ''Employment announcements'' requires a contractor to include a detailed notification in a written vacancy announcement. Failing to follow this requirement explicitly should not be a justification for the contracting officer to terminate the contractor for default. The requirement should be clarified as to whether it applies to internal announcements as well.

Response 11.

DOE will determine the appropriate remedy for failure to comply with the requirements for notice about reviews and drug testing requirements in vacancy announcements on a case-by-case basis. This final rule does not cover language included in an announcement that is internal to the contractor's workplace.

Comment 12.

The reviewer suggests that subparagraph (k) be revised to require that applicants be told that a background check, drug testing, etc., will be required rather than requiring contractors to include this detail in the vacancy announcement. The reviewer questions the benefit from including the detail in the vacancy announcement and is concerned it simply announces to the world that the employer does classified work for the United States Government.

Response 12.

DOE is retaining the requirement that advance notice be given to potential applicants as part of the written vacancy announcement. This ensures that all applicants are given the same advance notification of the requirements before time and effort are expended by the applicant and employee.

III. Procedural Requirements.

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or that it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have a significant economic impact on a substantial number of small entities. The rule would not have a significant economic impact on small entities because it imposes no significant burdens. Any costs incurred by DOE contractors complying with the rule would be reimbursed under the contract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required and none has been prepared.

D. Review Under the Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements. Information collection or recordkeeping requirements mentioned in this rule relative to the facility clearance and access authorization processes have been previously cleared under Office of Management and Budget (OMB) paperwork clearance package number 0704–0194 for facility clearances processed by the Department of Defense for Standard Form (SF) 283, or package number 3206–0007 processed by the Office of Personnel Management for personnel access authorizations using SF 86.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt state law and does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to state, local or tribal governments, or to the private sector, of $100 million or more in any single year. This rule does not impose a federal

mandate on state, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rule will have no impact on family well being.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516 note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

L. Approval by the Office of the Secretary of Energy.

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 48 CFR Parts 904, 952 and 970

Government procurement.

Issued in Washington, DC, on May 13, 2009.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, DOE amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below:

PART 904—ADMINISTRATIVE MATTERS

■ 1. The authority citations for parts 904 and 952 continue to read as follows:

Authority: 42 U.S.C. 7101, *et seq.*; 41 U.S.C. 418(b); 50 U.S.C. 2401, *et seq.*

■ 2. In section 904.401, add in alphabetical order, new definitions for ''applicant'' and ''review or background review'' and revise the definitions of ''classified information'' and ''restricted data'' to read as follows:

904.401 Definitions.

* * * * *

Applicant means an individual who has submitted an expression of interest in employment; who is under consideration by the contractor for employment in a particular position; and who has not removed himself or herself from further consideration or otherwise indicated that he or she is no longer interested in the position.

Classified information means information that is classified as restricted data or formerly restricted data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as national security information.

* * * * *

Restricted data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the restricted data category pursuant to Section 142, as amended, of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

* * * * *

Review or background review means a Contractor's assessment of the background of an uncleared applicant or uncleared employee for a position requiring a DOE access authorization prior to selecting that individual for such a position.

904.404 [Amended]

■ 3. Section 904.404 is amended by adding the words '', access to special nuclear materials or the provision of protective services'' after the words ''classified information'' at the end of the first sentence of paragraph (d)(1).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 952.204–2 is revised to read as follows:

952.204–2 Security.

As prescribed in 904.404(d)(1), the following clause shall be included in contracts entered into under section 31 (research assistance, 42 U.S.C. 2051), or section 41 (ownership and operation of production facilities, 42 U.S.C. 2061) of the Atomic Energy Act of 1954, and in other contracts and subcontracts which involve or are likely to involve classified information or special nuclear material.

SECURITY (JUNE 2009)

(a) *Responsibility.* It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by

the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations.* The Contractor agrees to comply with all security regulations and contract requirements of DOE in effect on the date of award.

(c) *Definition of Classified Information.* The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information,* as amended, or prior executive orders, which is identified as *National Security Information.*

(d) *Definition of Restricted Data.* The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of Formerly Restricted Data.* The term *''Formerly Restricted Data''* means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) Relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) *Definition of National Security Information.* The term ''*National Security Information''* means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of Special Nuclear Material.* The term ''special nuclear material'' means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Access authorizations of personnel.* (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must: Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those: (A) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR Part 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:

(A) The date(s) each Review was conducted;

(B) Each entity that provided information concerning the individual;

(C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

(D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

(E) The results of the test for illegal drugs.

(i) *Criminal liability*. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794).

(j) *Foreign Ownership, Control, or Influence*. (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing

to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR Part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require Subcontractor employees to possess access authorizations. Additionally, the Contractor must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in DEAR 952.204–73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any Subcontractor at any tier and the term ''Contracting Officer'' means the DOE Contracting Officer. When this clause is included in a subcontract, the term ''Contractor'' shall mean Subcontractor and the term ''contract'' shall mean subcontract.

(End of Clause)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 5. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

970.0470–1 [Amended]

■ 6. Section 970.0470–1(b) is amended by revising both mentions of ''Directives System'' to read ''Directives Program.''

970.2201–1 [Amended]

■ 7. Section 970.2201–1–1 is amended by removing the term ''guidance'' and adding in its place ''requirements.''

■ 8. In section 970.2201–1–2, paragraphs (a)(1)(i), (ii) and (iii) are revised and paragraphs (a)(1)(iv), (v) and (vi) are added to read as follows:

970.2201–1–2 Policies.

(a)(1) * * *

(i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, age, disability, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant's or uncleared employee's background, and test the individual for illegal drugs, as part of its determination to select that individual for a position requiring a DOE access authorization.

(A) A review must: Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the contractor is located; and conduct a credit check and other checks as appropriate.

(B) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(C) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee for a position requiring an access authorization, the contractor must comply with all applicable laws, regulations, and Executive Orders, including those:

(*1*) Governing the processing and privacy of an individual's information by employers, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and

(*2*) Prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(iii) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR Part 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence of any illegal drug.

(iv) When an uncleared applicant or uncleared employee is hired specifically for a position that requires a DOE access authorization, the contractor shall not place that individual in that position prior to the access authorization being granted by DOE, unless an approval has been obtained from the contracting officer, acting in consultation for these purposes with the head of the cognizant local security office. If an uncleared employee is placed in that position prior to an access authorization being granted by the contracting officer, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until the contracting officer notifies the employer that an access authorization has been granted.

(v)(A) The contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:

(*1*) The date(s) each review was conducted;

(*2*) Each entity contacted that provided information concerning the individual;

(*3*) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

(*4*) A certification that all information collected during the review was reviewed and evaluated in accordance with the contractor's personnel policies; and

(*5*) The results of the test for illegal drugs.

When a DOE access authorization will be required, the aforementioned review must be conducted and the required information forwarded to DOE before a request is made to DOE to process the individual for an access authorization.

(vi) Management and operating contractors and other contractors operating DOE facilities shall include the requirements set forth in this subsection in subcontracts (appropriately modified to identify the parties) wherein subcontract employees will be required to hold DOE access authorizations in order to perform on-site duties, such as protective force operations.

* * * * *

[FR Doc. E9–11522 Filed 5–15–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XN93

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish, Pacific Ocean Perch, and Pelagic Shelf Rockfish in the Western Regulatory Area and West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the Western Regulatory Area and West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the sideboard limits of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish established for catcher vessels in the Western Regulatory Area and West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2009, through 2400 hrs, A.l.t., July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 sideboard limits established for catcher vessels subject to sideboard limits in the Central GOA Rockfish Program in the West Yakutat District are 32 metric tons (mt) for Pacific ocean perch and 4 mt for pelagic shelf rockfish. In addition, the 2009 sideboard limits established for catcher vessels subject to sideboard limits under the Central GOA Rockfish Program in the Western Regulatory Area are 0 mt for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. The sideboard limits are established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.82(d)(7)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that these sideboard limits are insufficient to support a directed fishing allowance for Pacific ocean perch and pelagic shelf rockfish in the West Yakutat District, as well as insufficient to support a directed fishing allowance for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Western Regulatory Area. Therefore, the Regional Administrator is setting a directed fishing allowance of 0 mt for each of these sideboard species in the West Yakutat District and Western Regulatory Area. Consequently, pursuant to § 679.82(d)(7)(ii) NMFS is prohibiting directed fishing for Pacific ocean perch and pelagic shelf rockfish in the West Yakutat District and for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Western Regulatory Area by catcher vessels subject to sideboard limits in the Central GOA Rockfish Program, effective 1200 hrs, A.l.t, July 1, 2009, through 2400 hrs, A.l.t., July 31, 2009.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Notice and comment is unnecessary because the closure is non–discretionary; pursuant to § 679.82(d)(7)(ii), the Regional Administrator has no choice but to prohibit directed fishing once it is determined that the directed fishing sideboard limit has been attained.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.82 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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