DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3025 and 3052

[Docket No. DHS–2009–0081]

RIN 1601–AA57

Revision of Department of Homeland Security Acquisition Regulation; Restrictions on Foreign Acquisition (HSAR Case 2009–004)

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Interim rule with requests for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its Homeland Security Acquisition Regulation (HSAR) parts 3025 and 3052 to reflect a statutory change limiting the acquisition of products containing textiles from sources outside the United States.

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

Comment Date: Comments and related material submitted electronically must be submitted to the Federal eRulemaking Portal *http://www.regulations.gov* on or before September 16, 2009. Comments and related material submitted by mail must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch at the address shown below on or before September 16, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments identified by DHS docket number DHS–2009–0081, using any one of the following methods:

(1) Via the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, ATTN: Jeremy Olson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, (202) 447–5197.

SUPPLEMENTARY INFORMATION:

I. Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. Comments and related materials should be organized by HSAR Part, and indicate the specific section or sections of the interim rule that is being commented on. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *See* **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. You may submit comments either by mail or via the Internet as identified in the **ADDRESSES** section above; but to avoid duplication, DHS requests that you submit comments and materials by only one method. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and materials received during the comment period. We may change the final rule in view of them.

Viewing comments and documents: To view comments and read background documents related to this rulemaking, go to *http://www.regulations.gov,* type the docket number for this rulemaking, DHS–2009–0081, into the ''Search Documents'' field and click on ''Go>>.'' Individuals without Internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting DHS at the **FOR FURTHER INFORMATION CONTACT** information above.

II. Background

The American Recovery and Reinvestment Act of 2009 (''Recovery Act''), Public Law 111–5, 123 Stat. 115, 165–166 (Feb. 17, 2009), contains restrictions on the Department's acquisition of certain foreign textile products. Specifically, the Recovery Act at section 604, codified as 6 U.S.C. 453b, limits the Department's acquisition of foreign textile products under DHS contract actions entered into on or after August 16, 2009, using funds appropriated or otherwise made available to DHS on or before February 17, 2009, the date of the Act. DHS may not use those funds for the procurement of certain clothing and other textile items directly related to the national security interests of the United States if such items are not domestically grown, reprocessed, reused, or produced.

Section 604 does, however, contain exceptions. The law requires DHS to apply these restrictions in a manner consistent with United States obligations under international agreements (such as free trade agreements and the World Trade Organization Agreement on Government Procurement). Moreover, restrictions on some of the covered textile items do not apply to commercial item acquisitions. Also, the Recovery Act's restriction on the Department's acquisition of covered foreign textiles does not apply to purchases for amounts not greater than the simplified acquisition threshold (SAT) (currently $100,000), when covered items of satisfactory quality and sufficient quantity cannot be procured as needed at United States market prices, when a covered item contains less than 10% non-compliant fibers, when the procurement is made by vessels in foreign waters, or for emergency procurements outside of the United States.

This interim rule makes amendments to the Homeland Security Acquisition Regulation (HSAR) to add solicitation provisions, contract clauses and related policy statements implementing these requirements and exceptions for certain DHS contracts, option exercises and orders.

III. Discussion of Interim Rule

This rulemaking revises 48 CFR part 3025, Foreign Acquisitions, and part 3052, Solicitation Provisions and Contract Clauses, to limit acquisition of covered items for certain DHS acquisitions above the simplified acquisition threshold, unless DHS determines that such items qualify for a statutory exception. The rulemaking also implements the aspect of the law that requires that the restriction be applied in a manner consistent with United States obligations under international agreements.

The ''Buy American'' restriction in Section 604 of the Recovery Act only covers items ''directly related to the national security interests of the United States.'' The Act does not further define this qualifying phrase and the related congressional committee reports shed no further light on the scope, boundaries, or intention behind the phrase itself. The House of Representatives Conference Report describes section 604 generally by stating: ''The conferees include and modify a provision, as proposed by the House, related to the procurement of apparel and textile products by the Department of Homeland Security. This language is modeled after the Berry Amendment (10 U.S.C. 2533a), which

has required the Department of Defense to purchase domestically-manufactured textiles and apparel.'' H. Conf. Rep. No. 111–116, p. 438 (Feb 12, 2009). The Berry Amendment, however, does not employ the same ''national security interests'' phrase. Moreover, other Recovery Act acquisition restrictions, including section 1605 (which contemporaneously provided Government-wide restrictions on the use of Recovery Act funds to construct, alter, maintain, or repair public buildings or works unless all iron, steel, and manufactured goods that are used are produced in the United States) likewise do not contain this phrase.

Remarks from the floor of the House of Representatives concerning section 604 suggest deep concern ''that we could have people crossing the border illegally wearing [U.S. Customs and Border Protection] or [Transportation Security Administration] uniforms manufactured in foreign countries.'' 155 Cong. Rec. H620, H723 (Jan 28, 2009) (remarks of Committee on Homeland Security Chairman Hon. Bennie G. Thompson upon introduction of the Kissell amendment, which, with some adjustments, became section 604); *cf.* 153 Cong. Rec. H4646–H4655, H4651 (May 9, 2007) (remarks of Congressman Hayes, who in debate on a proposed, similarly worded amendment in the previous Congress said it ''* * * provides the assurance that the Department of Homeland Security officials who work on the front lines of national security are the only people wearing these sensitive uniforms.'').

Many different and diverse statutes, regulations and executive orders define the expressions ''national security'' and ''national security interests.'' The most common of these, used in connection with classification of information and personnel and facilities security, defines these terms to mean pertaining to ''the national defense or foreign relations of the United States.'' *See, e.g.,* Executive Order 12958, section 6.1(y) (term defined for order on classified national security information); 10 U.S.C. 801(16) (term defined for purposes of the Code of Military Justice). Other statutes employ other usages and definitions for these terms, which, when standing alone or when used with other words, fit the context and purpose of the particular statute. *See, e.g.,* 8 U.S.C. 1189(d)(2) (when used to determine threats posed by foreign terrorist organizations, ''means the national defense, foreign relations, or economic interests of the United States''); 39 CFR 233.3 (when used with respect to authorizing the use of U.S. Postal mail covers, ''protection of national security'' means to protect the United States from actual or potential threats to its security by a foreign power or its agents, including an attack or other grave, hostile act; sabotage, or international terrorism; or clandestine intelligence activities, including commercial espionage).

DHS considered employing the most common definition of the expression—pertaining to the national defense or foreign relations of the United States—but, with the exception of possible isolated applications to the Coast Guard, found this definition imprecise and an awkward fit for DHS functions that acquire textiles because, in many instances, those DHS components are not designated by law as national defense or foreign relations agencies. DHS considered covering all items acquired by DHS as ''directly related to the national security interests of the United States,'' but ultimately rejected that approach because to do so would render the statutory words ''directly related to national security interests of the United States'' superfluous (*i.e.,* omission of the qualifying phrase by lawmakers would have achieved the same result). DHS also notes that lawmakers are not reluctant to employ the expression ''homeland security'' to define the reach of a statute, and chose not do so in this instance. *See, e.g.,* 6 U.S.C. 468 (''homeland security missions'' of the Coast Guard defined), 6 U.S.C. 482 (''homeland security information'' defined). Moreover, applying the expression to the entirety of textile items purchased by DHS, irrespective of function or use, would include any number of activities that, while worthwhile, would render the expression ''national security interests'' patently overbroad, equating it with any activity that contributes to the strength of the Nation by promoting the general welfare. *See Cole* v. *Young,* 351 U.S. 536, 544 (1956). In addition, the previously mentioned congressional floor remarks discussed the statute as principally pertaining to border and transportation security, with a potential for later expansion.

DHS thus defines items ''directly related to national security interests'' at 48 CFR 3025.7001(e) as items ''intended for use in a Department of Homeland Security action protecting the nation from internal or external threats.'' This definition includes the following elements:

- ''Intended for use''—if an item is not acquired with the intention of being used in a manner related to national security interests, it is not covered, regardless of its eventual actual use;
- ''Use in a DHS action''— if an item will not be used in a protective action performed by DHS, it is not covered (for example, drapes for a DHS action office would likely not qualify, but textile body armor likely would qualify);
- ''Protecting the nation from internal or external threats''—the intended DHS action must be a protective action (for example, patrolling the border is a protective action; parading for dignitaries is not).

So defined, the interim regulatory provisions capture only the relevant aspects of the Recovery Act ''national security interests'' requirement, and in a manner consonant with the known legislative intent and DHS functions. The expression captures items, among other items, used in actions by DHS components with border, transportation, and maritime security functions, and any other DHS component, where ready access by hostile foreign State, organized non-State, or criminal actors to the items, their manufacturing method, or supply chain, would pose a significant risk of circumvention or cooption of a DHS protective action.

Other provisions of the interim regulations reflect the Recovery Act's coverage of some textile items regardless of whether they are a commercial or a noncommercial item and other textile items only if they are noncommercial items. Interim 3025.7002–1(a)(1)–(2), consistent with sections 604(b) and (f), cover the following textile items regardless of whether they are commercial or noncommercial:

- *3025.7002–1(a)(1)*—clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof); or
- *3025.7002–1(a)(2)*—tents, tarpaulins, covers, textile belts, bags, protective equipment (including but not limited to body armor), sleep systems, load carrying equipment (including but not limited to fieldpacks), textile marine equipment, parachutes, or bandages.

Interim 3025.7002–1(b), consistent with Recovery Act sections 604(b) and (f), only covers noncommercial textile items as follows:

- *3025.7002–1(b)*—cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or any item of individual equipment manufactured

from or containing such fibers, yarns, fabrics, or materials.

The interim regulations at 3025.7002–2 also reflect the circumstances wherein the Recovery Act excludes textile items from coverage or exempts covered items from the acquisition limitations; including,

- Acquisitions at or below the simplified acquisition threshold (currently $100,000), as expressed and defined in the Federal Acquisition Regulation (FAR).
- Acquisition of items not directly related to national security interests of the United States, as discussed above.
- Acquisitions of any of the items otherwise covered by (HSAR) 48 CFR 3025.7002–1, if the Chief Procurement Officer determines, based on procedures described in the interim regulation, that the item grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at United States market prices.
- Acquisitions of items listed as ''nonavailable articles'' in (FAR) 48 CFR 25.104, as provided in the ''availability exception'' at Recovery Act section 604(c).
- Emergency acquisitions by activities located outside the United States, as stated in the Recovery Act.
- Acquisitions by vessels in foreign waters, as stated in the Recovery Act.
- Acquisitions of incidental amounts of cotton, other natural fibers, wool or other item covered by (HSAR) 48 CFR 3025.7002–1(a)-(b) incorporated in an end product. This is an amount for which the estimated value of the covered item is not more than 10 percent of the total price of the end product, as stated in the Recovery Act.
- As discussed more fully below, acquisitions of textile items otherwise covered by (HSAR) 48 CFR 3025.7002–1(a)-(b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements.

Applicability of International Agreements

The Recovery Act at section 604(k) requires that DHS implement the section ''consistent with United States obligations under international agreements.'' This means that to the extent that DHS and its components are subject to the various United States bilateral and plurilateral free trade agreements (FTAs) and the WTO Government Procurement Agreement (GPA), DHS textile acquisitions must be consistent with those obligations.

The list of United States trade agreements relevant for procurement appear in the FAR at 48 CFR 25.400 (a)(1) and (2). The FAR at 48 CFR 25.003 lists the signatories to the various free trade agreements in the definition of ''Free Trade Agreement country'' and lists the signatories to the GPA in the definition of ''World Trade Organization Government Procurement Agreement (WTO GPA) country.'' Items from a Free Trade Agreement country or a WTO GPA country are ''eligible products.''

The United States has no obligations with respect to DHS procurements under the U.S.-Oman Free Trade Agreement. Procurements by the Transportation Security Administration (TSA) are excluded from all United States obligations, except with respect to the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement. Accordingly, for all DHS components, except TSA as noted above, the interim requirements of new (HSAR) 48 CFR 3025.225 would be inapplicable to items that are eligible products under (FAR) 49 CFR Subpart 25.4. This means that TSA, except with regard to products from Canada, Chile or Mexico, would not use (FAR) 48 CFR Subpart 25.4 in its procurements to exempt an item from a designated country from the requirements of the Act, but all other DHS components would do so.

The interim regulations provide that covered DHS components must apply (FAR) 48 CFR Subpart 25.4 to exempt eligible products from qualified countries if the procurement exceeds the GPA threshold or the relevant FTA threshold, noting that the Recovery Act foreign textiles acquisition limitation does not apply to procurements below the simplified acquisition threshold ($100,000). To the extent a procurement is for an eligible product from a country with a trade agreement threshold beneath the SAT (*e.g.,* $67,826), the trade agreement and (FAR) 48 CFR Subpart 25.4 would apply to all procurements over the trade agreement threshold, and the requirements of HSAR 3025.70 would not apply.

The Recovery Act foreign textiles acquisition limitation applies to covered items from countries that are not GPA or FTA countries regardless of which DHS component makes the acquisition. The interim HSAR subpart applies for all DHS components if the country of origin for an item is not a WTO GPA country or a Free Trade Agreement country (*see* (FAR) 48 CFR 25.003 definitions). Under the interim regulations, DHS components cannot procure a covered textile item from a non-designated country unless one of the other Recovery Act exceptions applies to the acquisition. Even if such exception applies, however, the acquisition may still be covered by the Buy American Act.

IV. Regulatory Requirements

A. Small Entity Analysis

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Federal Procurement Data System (FPDS) shows that during FY 2008, DHS awarded 1,283 contract actions for textile products totaling $74,132,846. Of the 322 businesses that received these awards, 249 (77%) were small businesses and 73 were identified as being ''other than small business.'' The total number of awards for products that originated in the United States was approximately 97% of the total number of awards. The total number of awards to small businesses for products that originated in the United States was approximately 98% (958 awards) of the total number of awards to small entities for textile products (981). FPDS data show only 23 awards were made to small businesses for textiles originating outside of the United States. Even if all of those awards for products that originated outside the United States would have been awarded to a small business that did not provide products originating in the United States, it would impact a very small proportion of awards to small businesses (2.3%). Also, based on this FPDS data, we estimate that these 23 awards were made to 12 unique small businesses. FPDS further informs us that the majority of these 23 awards made to 12 unique small businesses were made because of ''domestic nonavailability.'' As items determined to be unavailable in the United States are excluded from the scope of this rule, we estimate that fewer than 5 small businesses would have an award (or awards) impacted by this rule. Accordingly, the number and proportion of small entities potentially impacted by this rule are small and the amount of impact is not significant.

Based on this analysis, DHS does not believe this interim rule will have a significant economic impact on a

substantial number of small entities and that, other than the alternative interpretations discussed above related to national security interests, there are no additional significant alternatives to the interim rule that would minimize the impact of the interim rule on small entities. There are also no relevant Federal rules that duplicate, overlap, or conflict with the interim rule. DHS will, however, consider comments from small entities concerning the affected HSAR parts 3015, 3016, 3025, and 3052. Interested parties should submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (HSAR Case 2007–004) in the comments.

B. Executive Order 12866 (Regulatory Planning and Review)

This interim rule is a significant regulatory action under section 3(f) of Executive Order 12866 and the Office of Management and Budget has reviewed it under that Order. An assessment of potential costs and benefits under section 6(a)(3) of that Order is included within the Small Entity Analysis, Section A., above.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the interim rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by DHS employees, call 1–888–REG–FAIR (1–888–734–3247). The DHS will not retaliate against small entities that question or complain about this interim rule or any DHS policy.

D. Collection of Information

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the interim rule contains no information collection requirements. Accordingly, the Department will not submit a change request for any burdens concerning this interim rule to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the DHS Chief Procurement Officer that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. *See* 41 U.S.C. 418b(d); Department of Homeland Security Delegation No. 0700 (II.)(b). This action is necessary because the American Recovery and Reinvestment Act of 2009 became effective on enactment on February 17, 2009, and the DHS foreign textile acquisition limitations become applicable to contracts entered into after August 16, 2009. Timely compliance with the Act is not possible if a final rule is promulgated after a thirty-day public comment period. Moreover, without effective HSAR provisions in place by August 16, 2009, there is an increased risk of inconsistent application of the Recovery Act section 604 requirements and a potential lack of public understanding and transparency as to the processes and procedures for complying with the statute. Pursuant to Public Law 98–577 and FAR 1.501, however, the Department will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 3025 and 3052

Government procurement.

Richard Gunderson,

Acting Chief Procurement Officer, Department of Homeland Security.

■ Accordingly, DHS amends (HSAR) 48 CFR chapter 30 as follows:

CHAPTER 30—DEPARTMENT OF HOMELAND SECURITY

■ 1. Add part 3025 to read as follows:

PART 3025—FOREIGN ACQUISITION

Subpart 3025.70—American Recovery and Reinvestment Act Restrictions on Foreign Acquisition

Sec.

Authority: 41 U.S.C. 418b(a) and (b).

3025.7000 Scope of subpart.

This subpart contains restrictions on the acquisition of certain foreign textile products imposed by the American Recovery and Reinvestment Act of 2009 on contracts, exercising of an option and orders entered into on or after August 16, 2009 with funds appropriated or otherwise provided on or before February 17, 2009.

3025.7001 Definitions.

As used in this subpart—

(a) ''Commercial,'' as applied to an item described in (HSAR) 48 CFR 3025.7002–1, means an item of supply, whether an end product or component, that meets the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(b) ''Component'' means any item supplied to the Government as part of an end product or of another component.

(c) ''End product'' means supplies delivered under a line item of a contract.

(d) ''Non-commercial,'' as applied to an item described in (HSAR) 48 CFR 3025.7002–1, means an item of supply, whether an end product or component, that does not meet the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(e) ''Item directly related to national security interests'' means an item intended for use in a Department of Homeland Security action protecting the nation from internal or external threats, including protecting the nation's borders, transportation system, maritime domain or critical infrastructure, as determined by the contracting officer.

3025.7002 Restrictions on clothing, fabrics, and related items.

3025.7002–1 Restrictions.

The following restrictions implement section 604 of the American Recovery and Reinvestment Act of 2009 and they apply to all types of actions, orders, exercising of an option and contracts. Except as provided in subsection (HSAR) 48 CFR 3025.7002–2, do not acquire, either as end products or components, any item listed in paragraphs (a) or (b) of this section, if the item is directly related to the national security interests of the United States and the item has not been grown, reprocessed, reused, or produced in the United States:

(a) Commercial or non-commercial items—(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof); or (2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems (sleeping bags), load carrying equipment (such as

fieldpacks), textile marine equipment, parachutes or bandages.

(b) Non-commercial items—

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (b).

3025.7002–2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in (HSAR) 48 CFR 3025.7002–1:

(a) Acquisitions at or below the simplified acquisition threshold.

(b) Acquisition of items not directly related to national security interests of the United States.

(c) Acquisitions of any of the items otherwise covered by (HSAR) 48 CFR 3025.7002–1, if the Chief Procurement Officer determines that the item grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at United States market prices. When this exception is used—

(1) Only the DHS Chief Procurement Officer is authorized to make the domestic nonavailability determination.

(2) The DHS Component, not later than 7 days after the award of the contract, must post a notification that the exception has been applied on the Government-wide point of entry, which may be combined with any synopsis of award.

(3) The supporting documentation for the CPO determination prepared by the DHS Component(s) shall include—

(i) An analysis of alternatives that would not require a domestic nonavailability determination; and

(ii) A written justification by the requiring activity, with specificity, why such alternatives are unacceptable.

(d) Acquisitions of items listed in FAR 48 CFR 25.104.

(e) Emergency acquisitions by activities located outside the United States.

(f) Acquisitions by vessels in foreign waters.

(g) Acquisitions of incidental amounts of cotton, other natural fibers, wool or other item covered by (HSAR) 48 CFR 3025.7002–1(a)-(b) incorporated in an end product, for which the estimated value of the item so covered is not more than 10 percent of the total price of the end product.

(h) Acquisitions of items otherwise covered by (HSAR) 48 CFR 3025.7002–1(a) and (b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements. Acquisitions of products that are eligible products per (FAR) 48 CFR Subpart 25.4 are not covered by these restrictions; see (HSAR) 48 CFR 3025.7003–2 for specific application of trade agreements.

3025.7002–3 Specific application of trade agreements.

(a) For covered items entitled to non-discriminatory treatment under the World Trade Organization Agreement on Government Procurement (WTO GPA), or any Free Trade Agreement (FTA) listed in (FAR) 48 CFR Subpart 25.4, this subpart is applied as follows—

(1) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value that is both above the simplified acquisition threshold, and below the applicable trade agreement threshold in (FAR) 48 CFR 25.402, apply (HSAR) 48 CFR 3025.7002–1. Section 3025.7002–2(h) will exclude eligible products of designated countries with FTA thresholds beneath the simplified acquisition threshold from coverage of section 604.

(2) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value exceeding $194,000 (or the superseding threshold upon updating of (FAR) 48 CFR 25.402), (HSAR) 48 CFR 3025.7002–1 does not apply if the items are eligible products per FAR 48 CFR Subpart 25.4; follow (FAR) 48 CFR part 25 instead.

(3) For solicitations, orders, exercising of an option and contracts issued by TSA in which any covered items will be procured with a value exceeding the simplified acquisition threshold, (HSAR) 48 CFR 3025.7002 applies to all covered items except those from Mexico, Canada or Chile because TSA is listed as a covered governmental entity in the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement but TSA is excluded from all other trade agreements.

(b) For covered items from a country that is not entitled to non-discriminatory treatment under the WTO GPA, or any FTA listed in (FAR) 48 CFR subpart 25.4, apply the restrictions of (HSAR) 48 CFR 3025.7002 to all solicitations, orders, exercising of an option and contracts exceeding the simplified acquisition threshold in place of the Buy America Act policies at (FAR) 48 CFR Subpart 25.1.

3025.7003 Contract clauses.

Unless an exception under (HSAR) 48 CFR 3025.7002–2(a), (b), (e) or (f) applies, insert the clause at (HSAR) 48 CFR 3052.225–70, Requirement for Use of Certain Domestic Commodities, in solicitations, exercising of an option, contract modifications that add new items (or which make a cardinal change) and contracts with a value exceeding the simplified acquisition threshold when procuring any item covered under (HSAR) 48 CFR 3025.7002–1(a) or (b).

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority citation for part 3052 continues to read as follows:

Authority: 41 U.S.C. 418b(a) and (b).

■ 3. Add section 3052.225–70 to read as follows:

3052.225–70 Requirement for Use of Certain Domestic Commodities.

As prescribed in (HSAR) 48 CFR 3025.7003, use the following clause:

Requirement for Use of Certain Domestic Commodities (AUG 2009)

(a) *Definitions.* As used in this clause—

(1) ''Commercial,'' as applied to an item described in subsection (b) of this clause, means an item of supply, whether an end product or component, that meets the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(2) ''Component'' means any item supplied to the Government as part of an end product or of another component.

(3) ''End product'' means supplies delivered under a line item of this contract.

(4) ''Non-commercial,'' as applied to an item described in subsections (b) or (c) of this clause, means an item of supply, whether an end product or component, that does not meet the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(5) ''Qualifying country'' means a country with a memorandum of understanding or international agreement with the United States under which DHS procurement is covered.

(6) ''United States'' includes the possessions of the United States.

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof; or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems, load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (c).

(d) This clause does not apply—

(1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool is not more than 10 percent of the total price of the end product; or

(3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause.)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

[Docket No. FWS–R3–NSR–2009–0007] [32579–1261–0000–4A]

RIN 1018–AW48

2009–2010 Hunting and Sport Fishing Regulations for the Upper Mississippi River National Wildlife and Fish Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) amends the regulations for the Upper Mississippi River National Wildlife and Fish Refuge (refuge) that pertain to existing programs for migratory game bird hunting, upland game hunting, and big game hunting. These changes take effect with the 2009–2010 season, implement portions of the Comprehensive Conservation Plan for the refuge approved in 2006, and amend other regulations. We also make amendments to reflect recent OMB approval of new hunting and fishing application forms and activity reports for national wildlife refuges.

DATES: This rule is effective August 17, 2009.

FOR FURTHER INFORMATION CONTACT: Rick Frietsche, (507) 452–4232; Fax (507) 452–0851.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997 (16 U.S.C. 668dd–668ee), authorizes the Secretary of the Interior (Secretary) to allow uses of refuge areas, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

The law requires the Secretary to prepare a Comprehensive Conservation Plan (CCP) for each refuge and to manage each refuge in a manner consistent with the CCP. Each CCP is guided by the overarching requirement that refuges are to be managed to fulfill the purposes for which they were established and the mission of the Refuge System. In addition, we must administer the Refuge System to provide for the conservation of fish, wildlife and plant resources and their habitat and to ensure their biological integrity, diversity, and environmental health. Each CCP must identify and describe the refuge's purposes; fish, wildlife, and plant populations; cultural resources; areas for administrative or visitor facilities; significant problems affecting resources and actions necessary; and opportunities for compatible wildlife-dependent recreation. Each CCP must also be developed through consultation with the States, other Federal agencies, and the public, and be coordinated with applicable State conservation plans.

Upper Mississippi River National Wildlife and Fish Refuge

The Upper Mississippi River National Wildlife and Fish Refuge (refuge) encompasses 240,000 acres in a more-or-less continuous stretch of 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. Congress established the refuge in 1924 to provide a refuge and breeding ground for migratory birds, fish, other wildlife, and plants. The refuge is perhaps the most important corridor of habitat in the central United States due to its species diversity and abundance and is the most visited refuge in the United States with 3.7 million annual visitors. Approximately 187,000 acres of the refuge is open to all hunting, and approximately 140,000 acres of surface water is open to year-round fishing.

On July 11, 2006, we published a notice of availability of our Final Environmental Impact Statement (EIS) and CCP for the refuge (71 FR 39125), and we accepted public comments on the Final EIS for 30 days. On August 24, 2006, the Regional Director of the Midwest Region of the Fish and Wildlife Service signed the Record of Decision that documented the selection of Alternative E, the Preferred Alternative presented in the Final EIS. We published a notice of availability of that Record of Decision on November 2, 2006 (71 FR 64553). In accordance with the Record of Decision, we prepared a CCP based on Alternative E. The CCP was approved on October 24, 2006. The Final EIS and CCP are available at *http://www.fws.gov/midwest/planning/uppermiss/*.

We developed the CCP for the refuge in accordance with all requirements including the consultation and public involvement provisions of the National Wildlife Refuge System Improvement Act. These include new compatibility determinations for hunting and fishing, which are referenced and listed in Appendix E of the Final EIS (which includes recreational and commercial fishing, migratory bird and big game hunting, wildlife observation and photography). We completed hunting and fishing regulations in 2007 to implement the goals, objectives, and strategies described in the CCP pertaining to hunting and fishing and related uses. We published a proposed rule in the **Federal Register** on June 28, 2007 (72 FR 35380), and a final rule was