licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

103. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules recommended for adoption in this NPRM.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

104. The rules proposed in the NPRM require telecommunications carriers to establish policies and procedures governing the conduct of officers and employees who are engaged in surveillance activity. Those proposed rules require telecommunications carriers to maintain records of all interceptions of communications and call identification information. Further, those proposed rules require telecommunications carriers classified as Class A companies pursuant to 47 U.S.C. § 32.11 to file individually with the Commission a statement of its processes and procedures used to comply with the systems security rules promulgated by the Commission. Telecommunications carriers classified as Class B companies pursuant to 47 U.S.C. § 32.11 may elect to either file a statement describing their security processes and procedures or to certify that they observe procedures consistent with the security rules promulgated by the Commission.

105. We tentatively conclude that a substantial number of telecommunications carriers, who have been subjected to demands from law enforcement personnel to provide lawful interceptions and call-identifying information for a period time preceding CALEA, already have in place practices for proper employee conduct and recordkeeping. We seek comment on this tentative conclusion. As a practical matter, telecommunications carriers need these practices to protect themselves from suit by persons who claim they were the victims of illegal surveillance. By providing general guidance regarding the conduct of carrier personnel and the content of records in this Further NPRM, the Commission permits telecommunications carriers to use their existing practices to the maximum extent possible. Thus, we tentatively conclude that the additional cost to most telecommunications carriers for conforming to the Commission regulations contained in this Further NPRM, should be minimal. We seek comment on this tentative conclusion.

Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

106. As we noted in Part I of this IRFA, *supra*, the need for the proposed regulations is mandated by Federal legislation. The legislation is specific on the content of employee conduct and recordkeeping regulations for telecommunications carriers, which removes from Commission discretion the consideration of alternative employee conduct and recordkeeping regulations for smaller telecommunications carriers. The legislation, however, provides for Commission discretion to formulate compliance reporting requirements for telecommunications carriers that favor smaller telecommunications carriers, and in the NPRM the Commission exercised that discretion by proposing rules that allow smaller carriers the option to file a certification of compliance with the Commission instead of a statement of the policies, processes and procedures they use to comply with the CALEA regulations.

Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

107. As we noted in Part I of this IRFA, *supra*, the need for the proposed regulations is mandated by Federal legislation. The purpose of CALEA was to empower and require the Federal Communications Commission and the Department of Justice to craft regulations pursuant to specific statutory instructions. Because there were no other Federal Rules in existence before CALEA was enacted, there are no duplicate Federal Rules. In addition, there are no overlapping, duplicating, or conflicting Federal Rules to the Federal Rules proposed in this proceeding.

Ordering Clauses

108. Accordingly, pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. sections 151, 154, 229, 301, 303, 332, and 1006(b), *it is ordered* that this Further Notice of Proposed Rulemaking is hereby adopted. *It is further ordered* that the Petition for Rulemaking filed by the Cellular Telecommunications Industry Association on July 16, 1997 *is dismissed* as moot. *It is further ordered* that the Petition for Rulemaking filed by the Center for Democracy and Technology *is dismissed* without prejudice to the extent the petition seeks relief under section 109 of CALEA, 47 U.S.C. section 1008. *It is further ordered* that the Commission *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30552 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Application of Earned Value Management (EVM)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would effect a change to the NASA FAR Supplement relative to the application of Earned Value Management (EVM) at NASA. The proposed change would establish NASA-wide clauses and provisions compatible with those used by DoD. Specifically, the change would clarify the role of the Defense Contract Management Command (DCMC) with

respect to its responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria, and with NASA Policy Directive 9501.3, Earned Value Performance Management, and DoD 5000.2-R.

DATES: Comments should be submitted on or before January 15, 1999.

ADDRESSES: Interested parties should submit written comments to Kenneth A. Sateriale, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to kenneth.sateriale@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358-0491.

SUPPLEMENTARY INFORMATION:

Background

EVM is a commonly used performance (i.e. cost, schedule, and technical) measurement tool for program managers in the aerospace industry. NASA and DoD are major customers in the Government sector of the aerospace industry, and cooperate to align their business practices wherever practicable in order to realize cost and resource efficiencies. Therefore, they have collaborated closely over the last several years to align their approaches to the use of EVM. This change completes that alignment process.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes do no more than align NASA practices with those already in place at DoD, which shares essentially the same industry sector. This proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1842 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Subpart 1842.3 is added to read as follows:

Subpart 1842.3—Contract Administration Office Functions

§ 1842.302 Contract administration functions. (NASA supplements paragraph (a))

(a) In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria is normally delegated to DCMC.

3. Section 1842.7003 is added to read as follows:

1842.7003 Modified cost performance report.

(a) Modified cost performance reporting is required for RDT&E contracts with values between $25 million and $60 million, and production contracts with values less than $250 million. Modified cost performance reporting for RDT&E contracts with values of $25 million or less may be required at the discretion of the contracting officer.

(b) The contracting officer shall insert the clause at 1852.242–76, Modified Cost Performance Report, in solicitations and contracts, other than for firm-fixed-price, time-and-materials, or labor-hour, when modified cost performance reporting is required.

(c) The contracting officer shall insert the provision at 1852.242–77, Modified Cost Performance Report Plans, in solicitations for contracts, other than firm-fixed-price, time-and-materials, or labor-hour, when modified cost performance reporting is required.

4. Subpart 1842.74 is added to read as follows:

Subpart 1842.74—Earned Value Management

1842.7401 Earned Value Management Systems (EVMS).
1842.7402 Solicitation provision and contract clause.

Subpart 1842.74—Earned Value Management

1842.74 Earned Value Management Systems (EVMS).

(a) Earned value is a management technique that relates resource planning to schedules and to technical cost and schedule requirements. All work is planned, budgeted, and scheduled in time-phased ''planned value'' increments constituting a cost and schedule measurement baseline. There are two major objectives of an earned value system: to encourage contractors to use effective internal cost and schedule management control systems; and to permit the customer to be able to rely on timely data produced by those systems for determining product-oriented contract status. Any system used by the contractor in planning and controlling the performance of significant contracts shall be certified as meeting the NASA EVM Criteria (the Criteria), unless waived by the NASA Chief Financial Officer (CFO).

(b) Criteria-based EVMS is required in RDT&E contracts with a total estimated final value of $60 million or more, with a period of performance in excess of one year, and production contracts with a total value of $250 million or more. On RDT&E contracts with a total anticipated value greater than $25 million but less than $60 million, or production contracts less than $250 million, the Criteria normally is not applied. However, noncriteria-based EVM is required on these contracts, and is optional on contracts valued at $25 million or less at the discretion of the contracting officer. NASA Center CFO's have been delegated the authority to waive this requirement for contracts meeting the thresholds established for noncriteria contracts.

(c) When an offeror or contractor is required to provide an EVMS plan to the Government, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO) to obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

1842.7402 Solicitation provision and contract clause.

When the Government requires Earned Value Management, the contracting officer shall insert:

(a) The provision at 1852.242–74, Notice of Earned Value Management System, in solicitations; and

(b) The clause at 1852.242–75, Earned Value Management System, in solicitations and contracts.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 1852.242–74, 1852.242–75, 1852.242–76, and 1852.242–77 are added to read as follows:

1852.242–74 Notice of Earned Value Management System.

As prescribed in 1842.7402(a), insert the following provision:

Notice of Earned Value Management System

(XXX)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of NASA Policy Directive (NPD) 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the successful offeror shall submit a plan for compliance with the NASA EVM criteria as described in NPD 9501.3.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and evaluate the successful offeror's plan for EVMS, including the selection of subcontracted effort to which EVMS would be applied, within sixty days following contract award.

(c) Offerors shall identify in their proposals the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of EVMS.

(End of Provision)

1852.242–75 Earned Value Management Systems.

As prescribed at 1842.7402(b), insert the following clause:

Earned Value Management System

(XXX)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria or the Contractor does not have an existing cost schedule control system (C/SCS) that has been accepted by the Government, the Contractor shall apply that system to the contract and be prepared to demonstrate to the ACO that its EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, the exercise of significant contract options, or the incorporation of major contract modifications. The objectives of the integrated baseline review are for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO and the NASA CO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: (Insert list of applicable subcontractors)

(End of clause)

1852.242–76 Modified Cost Performance Report.

As prescribed in 1842.7003(b), insert the following clause:

Modified Cost Performance Report

(XXX)

(a) The Contractor shall use management procedures in the performance of this contract that provide for:

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the Modified Cost Performance Report (M/CPR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phase budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after obtaining prior written approval of the NASA Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and a projected-at-completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, the exercise of significant contract options, or the incorporation of major modifications. The objectives of the integrated baseline review are for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the M/CPR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the M/CPR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish M/CPR in each case where the subcontract is other than firm-fixed-price, time-and-materials, or labor-hour, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be identified by either the Government or the Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's M/CPR.

(End of clause)

1852.242–77 Modified Cost Performance Report Plans.

As prescribed in 1842.7003(c), insert the following provision;

Modified Cost Performance Plans

(XXX)

(a) The offeror shall submit in its proposal a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 1852.242–74 Modified CostPerformance Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

[FR Doc. 98–30554 Filed 11–13–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List the Redband Trout in the Great Basin as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (the U.S. Fish and Wildlife Service) announce a 90-day finding for a petition to list the redband trout (*Oncorhynchus mykiss* ssp.) in the Great Basin as an endangered or threatened species throughout its range, pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing at the level of the Great Basin population of redband trout as a whole or at the level of each of the six sub-populations may be warranted. We are initiating a status review to determine if listing any or all of the subpopulations is warranted. All further reference in this notice to redband trout in the Great Basin will identify this fish as the Great Basin redband trout.

DATES: The finding announced in this document was made on November 6, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by January 15, 1999.

ADDRESSES: Information, written comments and materials, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Antonio Bentivoglio, biologist, at the above address or telephone 503–231–6179.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the status of the species if one has not already been initiated under our internal candidate assessment process.

We have made a 90-day finding on a petition to list the Great Basin redband trout (*Oncorhynchus mykiss* ssp.). The petition, dated September 4, 1997, was submitted by the Oregon Natural Desert Association, Oregon Trout, Native Fish Society, and Oregon Council of Trout Unlimited, and was received by us on September 8, 1997. The petition requests the listing of the indigenous redband trout in the Great Basin as endangered or threatened throughout its range in southeastern Oregon, northeastern California, and northwestern Nevada, in particular the redband trout populations in Catlow, Fort Rock (Silver Lake), Harney (Malheur Lake), Goose Lake, Warner, and Chewaucan (Lake Abert/Summer Lake) basins (together these six closed basins make up the Great Basin as described in the petition). The petition also requests the designation of critical habitat concurrent with listing. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, threats, and past and present distribution of the Great Basin redband trout.

The petition, supporting documentation, and other information available in our files have been reviewed to determine if substantial information is available to indicate that the requested action may be warranted. On the basis of the best scientific and commercial information available, we find the petitioned action may be warranted for the Great Basin redband trout because of threats to existing populations and declines in population numbers. A status review will be commenced in accordance with the final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) published on May 8, 1998.

At the time the petition was received, we were operating under the final listing priority guidance for fiscal year 1997, published December 5, 1996 (61 FR 64475), and the extension of that listing priority guidance published October 23, 1997 (62 FR 55268). The fiscal year guidance clarified the order in which we would continue to process the backlog of rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6); and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995, and April 1996. Based on biological considerations, the guidance established a ''multi-tiered approach that assigned relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act'' (61 FR 64479). The guidance called for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions, and lowest priority (Tier 4) to preparation of proposed or final critical habitat designations, and processing delistings and reclassifications from endangered to threatened status. On November 10, 1997, we notified the petitioners that based on the listing priority guidance for fiscal year 1997, the processing of their petition fell under Tier 3. We further indicated that our Oregon State Office (which was assigned the