

*Director, NPFC* means the head of the U.S. Coast Guard National Pollution Funds Center (NPFC).

*Double hull* has the meaning set forth in 33 CFR part 157.

*Single hull* means any hull other than a double hull.

#### **§ 138.230. Limits of liability.**

(a) Vessels. The OPA 90 limits of liability for vessels are—

(1) For a tank vessel greater than 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of \$3,200 per gross ton or \$23,320,000;

(2) For a tank vessel greater than 3,000 gross tons with a double hull, the greater of \$2,000 per gross ton or \$19,960,000.

(3) For a tank vessel less than or equal to 3,000 gross tons with a single hull, including a single-hull vessel fitted with double sides only or a double bottom only, the greater of \$3,200 per gross ton or \$6,360,000.

(4) For a tank vessel less than or equal to 3,000 gross tons with a double hull, the greater of \$2,000 per gross ton or \$4,240,000.

(5) For any other vessel, the greater of \$1,000 per gross ton or \$848,000.

(b) Deepwater ports. The OPA 90 limits of liability for deepwater ports are—

(1) Generally. For any deepwater port other than a deepwater port with a limit of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)) and set forth in paragraph (b)(2) of this section, \$371,000,000;

(2) For deepwater ports with limits of liability established by regulation under Section 1004(d)(2) of OPA 90 (33 U.S.C. 2704(d)(2)):

(i) For the Louisiana Offshore Oil Port (LOOP), \$86,924,000; and

(ii) [Reserved].

(c) [Reserved].

#### **§ 138.240 Procedure for calculating limit of liability adjustments for inflation.**

(a) Formula for calculating a cumulative percent change in the Annual CPI-U. The Director, NPFC, calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year, using the escalation formula described in Fact Sheet 00-1, U.S. Department of Labor Program Highlights, "How to Use the Consumer Price Index for Escalation", September 2000. This cumulative percent change value is rounded to one decimal place.

(b) Significance threshold. Every three years from the year a limit of liability was established, or last adjusted by statute or regulation, whichever is later, the Director, NPFC, will evaluate whether the cumulative percent change in the Annual CPI-U since that date has reached a significance threshold of 3 percent or greater. For any three-year period in which the cumulative percent change in the Annual CPI-U is less than 3 percent, the Director, NPFC, will publish a notice of no adjustment to the limit of liability in the **Federal Register**. If this occurs, the Director, NPFC, will recalculate the cumulative percent change in the Annual CPI-U since the year in which the limit of liability was most recently established or last adjusted by statute or regulation, whichever is later, each year thereafter until the cumulative percent change equals or exceeds the threshold amount of 3 percent. Once the 3-percent threshold is reached, the Director, NPFC, will increase the limit of liability by an amount equal to the cumulative percent change in the Annual CPI-U.

(c) Formula for calculating inflation adjustments. The Director, NPFC, calculates adjustments to the limits of liability in § 138.230 of this part for inflation using the following formula:  
 New limit of liability = Current limit of liability value + (Current limit of liability value × percent change in the Annual CPI-U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year), then rounded to the closest \$100.

(d) [Reserved].

Dated: September 17, 2008.

**Craig A. Bennett,**

*Director, National Pollution Funds Center,  
 United States Coast Guard.*

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**BILLING CODE 4910-15-P**

## **DEPARTMENT OF DEFENSE**

### **Defense Acquisition Regulations System**

#### **48 CFR Parts 204, 237, 239, 245, and 252**

**RIN 0750-AF92**

#### **Defense Federal Acquisition Regulation Supplement; Government Property (DFARS Case 2007-D020)**

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

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

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing management of Government property in the possession of contractors. The DFARS changes are consistent with changes made to the Federal Acquisition Regulation (FAR).

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 24, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2007-D020, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2007-D020 in the subject line of the message.

*Fax:* 703-602-7887.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

*Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, 703-602-0302.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

This proposed rule updates and reorganizes DFARS Subparts 245.1, 245.3, 245.4, and 245.5 for consistency with FAR changes addressing management of Government property in the possession of contractors, published at 72 FR 27364 on May 15, 2007. Minor related changes are made in Parts 204, 237, 239, and 252. The following table summarizes the proposed DFARS changes:

Existing DFARS citation	Proposed change
204.7003 .....	Remove "facilities contracts" from the list of contract types, consistent with the removal of references to facilities contracts from the FAR.
237.7003 .....	Update the reference to the applicable FAR Government Property clause.
239.7402 .....	Update terminology and FAR references.
245.104 .....	Update and relocate to 245.105.
245.301 .....	(1) Update the definition of "facilities project" and relocate to 245.101. (2) Relocate the definition of "mapping, charting, and geodesy" to 245.101 without change. (3) Remove the definition of "provide," since this term is now defined in FAR 45.101. (4) Remove the definitions of "agency-peculiar property," "industrial plant equipment," and "other plant equipment," as they are no longer considered necessary.
245.302-1(a) .....	Update and relocate to 245.102.
245.302-1(b) and DD Form 1419	Remove. The specified equipment screening procedures have become obsolete.
245.302-2 and 245.302-7 .....	Remove. The separate procedures for facilities contracts are no longer necessary.
245.303-2 .....	Update and relocate to 245.102(3).
245.307-2 .....	Remove. The corresponding FAR text has been removed.
245.310 .....	Update and relocate to 245.102(2).
245.310-70 .....	Relocate to 245.107-70.
245.401 .....	Update and relocate to 245.301(1).
245.403 .....	Relocate to 245.302(2).
245.405 .....	Update and relocate to 245.302(1) and (3).
245.407 .....	Update and relocate to 245.301. The dollar threshold for requiring descriptive information on items of Government property for which a contractor requests non-Government use is increased from \$25,000 to \$100,000. The item unique identification (IUID) number and the item condition are added to the types of information to be provided.
Subpart 245.5 and DD Form 1342.	Remove as unnecessary.
Part 252 .....	Update references and clause titles.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule makes no significant change to DoD policy regarding the management of Government property in the possession of contractors. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007-D020.

**C. Paperwork Reduction Act**

The information collection requirements of DFARS Part 245 have been approved by the Office of Management and Budget under Control Number 0704-0246.

**List of Subjects in 48 CFR Parts 204, 237, 239, 245, and 252**

Government procurement.

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

Therefore, DoD proposes to amend 48 CFR parts 204, 237, 239, 245, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 237, 239, 245, and 252 continues to read as follows:

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

**PART 204—ADMINISTRATIVE MATTERS**

2. Section 204.7003 is amended by revising paragraph (a)(3)(v) to read as follows:

**204.7003 Basic PII number.**

(a) \* \* \*

(3) \* \* \*

(v) Reserved-E

\* \* \* \* \*

**PART 237—SERVICE CONTRACTING**

3. Section 237.7003 is amended by revising paragraph (c) to read as follows:

**237.7003 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(c) Use the clause at FAR 52.245-1, Government Property, with its Alternate I, in solicitations and contracts that include port of entry requirements.

**PART 239—ACQUISITION OF INFORMATION TECHNOLOGY**

4. Section 239.7402 is amended by revising paragraphs (b)(3) and (4) to read as follows:

**239.7402 Policy.**

\* \* \* \* \*

(b) \* \* \*

(3) Except as provided in paragraph (b)(4) of this section, contractors and subcontractors shall normally provide all required property, to include telecommunications security equipment or related devices, in accordance with FAR 45.102. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) When the contractor or subcontractor does not meet ownership eligibility conditions, the head of the agency may authorize provision of the necessary property as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.102(b) are met.

\* \* \* \* \*

**PART 245—GOVERNMENT PROPERTY**

5. Subparts 245.1 and 245.3 are revised to read as follows:

**Subpart 245.1—General**

Sec.  
245.101 Definitions.  
245.102 Policy.

245.105 Contractor's property management system compliance.

245.107-70 Contract clause.

### Subpart 245.1—General

#### 245.101 Definitions.

As used in this part—

*Facilities project* means a Government project to provide, modernize, or replace real property for use by a contractor in performing a Government contract or subcontract.

*Mapping, charting, and geodesy (MC&G) property* is defined in the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property.

#### 245.102 Policy.

(1) *Facilities projects.*

(i) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing requests for facilities projects. Submit the request for approval to—

(A) The Secretary of the military department concerned, or the director of the defense agency concerned, if the project—

(1) Is a research and development funded effort not exceeding \$3 million per fiscal year;

(2) Is funded from procurement appropriations, is approved on a location basis, and does not exceed \$5 million for all property efforts during one fiscal year; or

(3) Is in support of a major system or subsystem (including ammunition-related projects) and the total investment will not exceed \$25 million during the projected acquisition or maintenance effort; or

(B) The Deputy Under Secretary of Defense (Industrial Affairs and Installations) if the project exceeds the limitations in paragraph (1)(i)(A) of this section.

(ii) Departments and agencies shall submit reports of facilities projects to the House and Senate Armed Services Committees—

(A) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and

(B) In advance of starting construction for a facilities project regardless of cost. Use DD Form 1391, FY\_\_ Military Construction Project Data, to notify congressional committees of projects that are not included in the annual budget.

(2) *Mapping, charting, and geodesy property.* All Government-furnished mapping, charting, and geodesy (MC&G) property is under the control of the Director, National Geospatial Intelligence Agency.

(i) MC&G property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer shall—

(A) Contact the Director, National Geospatial Intelligence Agency, 4600 Sangamore Road, Bethesda, MD 20816-5003, for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for property to be returned to the Government.

(3) *Government supply sources.* When a contractor will be responsible for preparing requisitioning documentation to acquire Government-furnished property from Government supply sources, include in the contract the requirement to prepare the documentation in accordance with DoD 4000.25-1-M, Military Standard Requisitioning and Issue Procedures (MILSTRIP). Copies are available from the address cited at PGI 251.102.

#### 245.105 Contractor's property management system compliance.

The property administrator shall perform property administration in accordance with department or agency procedures.

#### 245.107-70 Contract clause.

Use the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

#### Subpart 245.3—Authorizing the Use and Rental of Government Property

Sec.

245.301 Use and rental.

245.302 Contracts with foreign governments or international organizations.

#### Subpart 245.3—Authorizing the Use and Rental of Government Property

##### 245.301 Use and rental.

(1) *Government use*, as used in this subpart, includes use on contracts for foreign military sales. Also see 245.302.

(2) *Authorizing non-Government use.*

(i) Non-Government use of Government-owned equipment exceeding 25 percent of the total use for Government and commercial work requires prior approval of the—

(A) Assistant Secretary of the Army (AL&T);

(B) Assistant Secretary of the Navy (RD&A);

(C) Assistant Secretary of the Air Force (Acquisition); or

(D) Director, Defense Logistics Agency.

(ii) The authority in paragraph (2)(i) of this section may be delegated to the head of a contracting activity. Any redelegation requires the approval of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

(iii) To determine the percentage of non-Government use—

(A) Compute the percentage of non-Government use on time available for use. Use the contractor's normal work schedule as represented by the scheduled production shift hours;

(B) Use a base time period that is neither less than three months nor more than one year; and

(C) Use may be averaged at a single plant for all items costing less than \$25,000.

(iv) Contractors should submit requests for non-Government use of Government-owned equipment to the contract administration office at least six weeks before the projected use. The request shall include—

(A) The total number of items of Government equipment requested for use and the acquisition cost of each item; and

(B) For each item of Government equipment with an acquisition cost of \$100,000 or more, an itemized list including nomenclature, item unique identification (IUID) number if known, condition, year of manufacture, and acquisition cost.

(v) Approving officials shall retain for periodic review, documentation of the circumstances justifying non-Government use of Government property.

#### 245.302 Contracts with foreign governments or international organizations.

(1) *General.*

(i) *Approval.* A contractor may use Government property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer shall grant approval only if—

(A) The use will not interfere with foreseeable requirements of the United States;

(B) The work is undertaken as a DoD foreign military sale; or

(C) For a direct commercial sale, the foreign country or international organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(ii) *Use charges.*

(A) The Use and Charges clause is applicable on direct commercial sales to

foreign governments or international organizations.

(B) When a particular foreign government or international organization has funded the acquisition of specific production and research property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(2) *Special tooling and special test equipment.*

(i) DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. "Major defense equipment" is defined in DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Items, as any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than \$50 million or a total production cost of more than \$200 million.

(ii) When the cost thresholds in paragraph (2)(i) of this section are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause if administratively practicable.

(3) *Waivers.*

(i) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(ii) Requests for waiver or reduction of charges for the use of Government property on work for foreign governments or international organizations shall be submitted to the contracting officer, who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Cooperation Agency, for particular sales that are consistent with paragraph (1)(i)(C) of this section.

**Subparts 245.4 and 245.5 [Removed]**

6. Subparts 245.4 and 245.5 are removed.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.217–7005 [Amended]

7. Section 252.217–7005 is amended as follows:

a. By revising the clause date to read "(XXX 2008)"; and

b. In paragraph (e)(7) by removing "(Fixed-Price Contracts)".

### 252.217–7010 [Amended]

8. Section 252.217–7010 is amended as follows:

a. By revising the clause date to read "(XXX 2008)"; and

b. In paragraph (c)(3) by removing "(Fixed Price Contracts)".

### 252.242–7004 [Amended]

9. Section 252.242–7004 is amended as follows:

a. By revising the clause date to read "(XXX 2008)"; and

b. In paragraph (e)(9) introductory text, in the first sentence, by removing "Regardless of the provisions of FAR 45.505–3(f)(1)(ii), have" and adding in its place "Have".

### 252.245–7000 [Amended]

10. Section 252.245–7000 is amended as follows:

a. By revising the clause date to read "(XXX 2008)"; and

b. In the introductory text by removing "245.310–70" and adding in its place "245.107–70".

[FR Doc. E8–22419 Filed 9–23–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 080226310–81205–01]

RIN 0648–AU20

### Fisheries of the Exclusive Economic Zone Off Alaska; Revised Management Authority for Dark Rockfish in the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska

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

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

**SUMMARY:** NMFS issues a proposed rule that would implement Amendment 73

to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 77 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (collectively, Amendments 73/77). If approved, Amendments 73/77 would remove dark rockfish (*Sebastes ciliatus*) from both fishery management plans (FMPs). The State of Alaska (State) would then assume management of dark rockfish catch by State-permitted vessels in the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska. This action is necessary to allow the State of Alaska to implement more responsive, regionally based management of dark rockfish than is currently possible under the FMPs. This action would improve conservation and management of dark rockfish and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

**DATES:** Comments must be received no later than November 17, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AU20, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendments 73/77 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory