

■ 7. Revise section 252.244–7000 to read as follows:

**252.244–7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).**

As prescribed in 244.403, use the following clause:

**SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (AUG 2011)**

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items clause of this contract (Federal Acquisition Regulation 52.244–6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(a) 252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).

(b) 252.225–7039, Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110–181, as amended by section 853 of Pub. L. 110–417 and sections 831 and 832 of Pub. L. 111–383).

(c) 252.236–7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (JAN 2009) (Pub. L. 110–329, Division E, Section 108).

(d) 252.237–7010 Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

(e) 252.237–7019 Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108–375).

(f) 252.246–7003 Notification of Potential Safety Issues (JAN 2007).

(g) 252.247–7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(h) 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 209 and 252**

RIN 0750–AG92

**Defense Federal Acquisition Regulation Supplement; Identification of Critical Safety Items (DFARS Case 2010–D022)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper risk-based surveillance can be performed.

**DATES:** *Effective Date:* August 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703–602–1302.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule at 76 FR 14641 on March 17, 2011, to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper risk-based surveillance can be performed. One public comment was received in response to the proposed rule.

**II. Discussion and Analysis of the Public Comment**

*Comment:* The respondent noted that the DFARS case specifically addresses aviation and ship critical safety items, but states that protective personal equipment, such as body armor and helmets, can also have catastrophic results if they fail. The respondent asked how DoD ensures that contract administration activities apply increased surveillance procedures in these types of contracts.

*Response:* The additional risk-based surveillance required for aviation and ship critical safety items is mandated by law (section 802 of the National Defense Authorization Act for Fiscal Year 2004 and section 130 of the National Defense Authorization Act for Fiscal Year 2007). There is no equivalent statutory requirement for protective personal equipment, and instituting such a requirement is outside the scope of this case. However, the respondent's comment has been forwarded to the Defense Contract Management Agency for future consideration.

The respondent also asked about the process that ensures that contract administration activities apply increased surveillance procedures when aviation and ship critical safety items have been identified. The process was summarized in the preamble to the proposed rule published at 76 FR 14642 on March 17, 2011. Briefly, the combination of the actions of the design control activities, joint agency instructions (e.g., Management of Aviation Critical Safety Items), limitations on contracting with sources that have not been approved by the design control activity, and focus on

contract administration will ensure the proper surveillance for these critical items.

The respondent did not recommend changes to the DFARS text or clause, and the final rule does not revise the DFARS text or clause from that published in the proposed rule.

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Department of Defense certifies that this final rule will not 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.* Its purpose is internal to the Government only by alerting Government quality-assurance activities to existing heightened surveillance requirements that are imposed by DoD requiring activities. The process for identifying an item as a critical safety item occurs entirely outside the acquisition process, as does the process of approving a source for production of a critical safety item. No comments from small entities were received in response to publication of the proposed rule.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 209 and 252**

Government procurement.

**Ynette R. Shelkin,**  
*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 209 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 209—CONTRACTOR QUALIFICATIONS**

■ 2. Add section 209.270–5 to read as follows:

##### **209.270–5 Contract clause.**

The contracting officer shall insert the clause at 252.209–7010, Critical Safety Items, in solicitations and contracts when the acquisition includes one or more items designated by the design control activity as critical safety items.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Add section 252.209–7010 to read as follows:

##### **252.209–7010 Critical Safety Items.**

As prescribed in 209.270–5, use the following clause:

##### **CRITICAL SAFETY ITEMS (AUG 2011)**

###### *(a) Definitions.*

*Aviation critical safety item* means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause—

- (i) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;
- (ii) An unacceptable risk of personal injury or loss of life; or
- (iii) An uncommanded engine shutdown that jeopardizes safety.

*Design control activity.* (i) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, in which an aviation critical safety item is to be used; and

(ii) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment, in which a ship critical safety item is to be used.

*Ship critical safety item* means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause—

- (i) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or
- (ii) An unacceptable risk of personal injury or loss of life.

(b) *Identification of critical safety items.* One or more of the items being procured under this contract is an aviation or ship

critical safety item. The following items have been designated aviation critical safety items or ship critical safety items by the designated design control activity:

*(Insert additional lines as necessary)*

(c) *Heightened quality assurance surveillance.* Items designated in paragraph (b) of this clause are subject to heightened, risk-based surveillance by the designated quality assurance representative.

(End of clause)

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#### **DEPARTMENT OF DEFENSE**

#### **Defense Acquisition Regulations System**

#### **48 CFR Parts 201, 245, and 252**

#### **RIN Number 0750–AG38**

#### **Defense Federal Acquisition Regulation Supplement; Government Property (DFARS Case 2009–D008)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) regarding Government Property, to reflect the recent revisions to Government Property elsewhere in the Code of Federal Regulations.

**DATES:** *Effective Date:* August 19, 2011. **FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703–602–1302.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD is revising subparts 245.6 and 245.7 to be consistent with the changes to FAR subparts 45.6 and 45.7, published in the **Federal Register** at 72 FR 27364 on May 15, 2007. A proposed DFARS rule was published in the **Federal Register** at 75 FR 75444 on December 3, 2010. The public comment period for the proposed rule closed February 1, 2011. Comments were received from three respondents. A discussion and analysis of the comments is provided in section II of this notice. Any revisions to the final rule based on public comments are addressed in the DoD responses to the comments received.

##### **II. Discussion and Analysis**

Comments received in response to the proposed rule are organized into six

categories and are discussed in the paragraphs that follow.

##### *A. Clarifying Responsibilities*

*Comment:* A respondent recommended that “\* \* \* or the head of the contract administration office” be added to DFARS 201.670(a).

*DoD response:* DFARS 201.670(a) has been revised to specify that the appropriate agency authority may delegate contract administration functions to the cognizant contract administration office, in which case the contract administration office appoints the property administrators and plant clearance officers in writing. This language was formerly found at DFARS 245.70.

*Comment:* A respondent recommended that DFARS 252.245–70XX(i) be revised to make the contractor’s responsibility for compliance with export control law and regulations a “due diligence responsibility.”

*DoD Response:* In the context of surplus sales, it is the buyer’s responsibility to adhere to export control laws and regulations. Therefore, the referenced paragraph has been deleted and a new paragraph (g) has been inserted to specify that disposition shall be in accordance with foreign and U.S. laws and regulations, including regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements, and that the contractor’s responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of the information provided by the clause. The new language is consistent with the respondent’s recommendation and current DFARS language at 252.204–7008.

##### *B. Inventory Schedules*

*Comment:* A respondent stated that the requirement at DFARS 245.602–1 for “obtaining bills of material and reviewing recent purchases, and stock record entries” is not a part of the disposal process. The respondent commented that these duties require the plant clearance officer to have a working knowledge of every contract and that the process will drive up costs.

*DoD Response:* The proposed language at 245.602–1 exists today in the current DFARS at 245.7201. The proposed rule moved 245.7201 to subpart 245.6, and renamed the subpart Reporting, Reutilization, and Disposal, to conform with the FAR; however, the language at DFARS 245.602–1 has been