

**List of Subjects in 48 CFR Part 207**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

**Interim Rule Adopted as Final Without Change**

■ Accordingly, the interim rule amending 48 CFR Part 207, which was published at 68 FR 43331 on July 22, 2003, is adopted as a final rule without change.

[FR Doc. 04-6238 Filed 3-22-04; 8:45 am]

**BILLING CODE 5001-08-P**

**DEPARTMENT OF DEFENSE****48 CFR Parts 216 and 217**

[DFARS Case 2003-D097]

**Defense Federal Acquisition Regulation Supplement; Contract Period for Task and Delivery Order Contracts**

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 843 of the National Defense Authorization Act for Fiscal Year 2004. Section 843 provides that the contract period of a task or delivery order contract awarded pursuant to 10 U.S.C. 2304a may cover a total period of not more than 5 years.

**DATES:** *Effective date:* March 23, 2004.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before May 24, 2004, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@osd.mil](mailto:dfars@osd.mil). Please cite DFARS Case 2003-D097 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D097.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, (703) 602-0326.

**SUPPLEMENTARY INFORMATION:****A. Background**

This interim rule amends DFARS Subparts 216.5 and 217.2 to implement section 843 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 843 amends the general authority for task and delivery order contracts at 10 U.S.C. 2304a to specify that task or delivery order contracts entered into under that section may cover a total period of not more than 5 years. The rule clarifies that the total period includes all options or modifications.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized as follows: This interim rule applies to all new DoD solicitations for supplies or services that will result in a task or delivery order contract awarded pursuant to 10 U.S.C. 2304a. It may affect businesses interested in submitting offers for such contracts. The impact on small entities is uncertain. 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 2003-D097.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary to implement section 843 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136), which provides that the contract period of a task or delivery order contract awarded pursuant to 10 U.S.C. 2304a may cover a total period of not more than 5 years. Comments received in response to this

interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Parts 216 and 217**

Government procurement.

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■ Therefore, 48 CFR Parts 216 and 217 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 216 and 217 continues to read as follows:

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

**PART 216—TYPES OF CONTRACTS**

■ 2. Section 216.501-2 is added to read as follows:

**216.501-2 General.**

(a) *See* 217.204(e) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

**PART 217—SPECIAL CONTRACTING METHODS**

■ 3. Section 217.204 is added to read as follows:

**217.204 Contracts.**

(e) Notwithstanding FAR 17.204(e), the period of a task order or delivery order contract, including all options or modifications, awarded by DoD pursuant to 10 U.S.C. 2304a shall not exceed 5 years.

[FR Doc. 04-6289 Filed 3-22-04; 8:45 am]

**BILLING CODE 5001-08-P**

**DEPARTMENT OF DEFENSE****48 CFR Part 217**

[DFARS Case 2002-D041]

**Defense Federal Acquisition Regulation Supplement; Multiyear Contracting Authority Revisions**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 820 of the National Defense Authorization Act for Fiscal Year 2003. Section 820 restricts the use of multiyear contracts for supplies to only those for complete and usable end items, and restricts the use of advance procurement to only those long-lead items necessary in order

to meet a planned delivery schedule for complete major end items.

**EFFECTIVE DATE:** March 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2002-D041.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD published an interim rule at 68 FR 50474 on August 21, 2003. The rule amended DFARS Subpart 217.1 to implement Section 820 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 820 amended the multiyear contracting authority at 10 U.S.C. 2306b(i) to specify that DoD may obligate funds for procurement of an end item under a multiyear contract only if the item is a complete and usable end item; and that DoD may obligate funds for advance procurement of property only for those long-lead items necessary to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

DoD received no comments on the interim rule. Therefore, DoD is adopting the interim rule as a final rule without change.

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 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.*, because the rule primarily pertains to DoD planning and budget considerations with regard to multiyear contracts.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 217**

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

**Interim Rule Adopted as Final Without Change**

■ Accordingly, the interim rule amending 48 CFR part 217, which was published at 68 FR 50474 on August 21, 2003, is adopted as a final rule without change.

[FR Doc. 04-6237 Filed 3-22-04; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 229**

[Docket No. 030221039-4096-08; I.D. 031804B]

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)**

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

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,894 square nautical miles (nm<sup>2</sup>) (6,496.2 km<sup>2</sup>) in March and 1,230 nm<sup>2</sup> (4,218.8 km<sup>2</sup>) in April, east of Chatham, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** Effective beginning at 0001 hours March 25, 2004, through 2400 hours April 8, 2004.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast

Region, 978-281-9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-1401.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

**Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably