

that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule amends DFARS 212.504 to remove the Trade Agreements Act (19 U.S.C. 2512) and the Buy American Act (41 U.S.C. 10) from the list of laws inapplicable to subcontracts for the acquisition of commercial items. Inclusion of these laws on the list is unnecessary, because the Government does not apply the restrictions of the Buy American Act or the Trade Agreements Act at the subcontract level. The prime contractor is responsible for providing an end product that meets the requirements of the Acts.

DoD published a proposed rule at 69 FR 8151 on February 23, 2004. DoD received one comment in response to the proposed rule, and that comment supported the rule. Therefore, DoD has adopted the proposed rule as a final rule, with the addition of a correction to a cross-reference in 212.504(a).

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 is a clarification of the Government's existing policy of not applying the Buy American Act or the Trade Agreements Act at the subcontract level.

## 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 212

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR part 212 is amended as follows:

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

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

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

### 212.504 [Amended]

■ 2. Section 212.504 is amended as follows:

■ a. By removing paragraphs (a)(xxiii) and (a)(xxiv);

■ b. By redesignating paragraph (a)(xxv) as paragraph (a)(xxiii); and

■ c. In newly designated paragraph (a)(xxiii), in the second sentence, by removing “225.7019–2(b)” and adding in its place “225.7009–2(b)”.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 231

[DFARS Case 2003–D036]

### Defense Federal Acquisition Regulation Supplement; Cost Principles and Procedures

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract cost principles. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective November 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D036.

### SUPPLEMENTARY INFORMATION:

#### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS

Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes—

- Delete the text at DFARS 231.205–10, Cost of money, because it is redundant of the text in DFARS Subpart 230.70, Facilities Capital Employed for Facilities in Use.

- Clarify the text at DFARS 231.205–22, Legislative lobbying costs, to specify that these costs are statutorily unallowable.

- Revise the text at DFARS 231.205–70, External restructuring costs, to—

1. Eliminate unnecessary references to fiscal years 1995, 1997, and 1998 legislation.

2. Delete text at 231.205–70(c)(1)(iv)(A) and (B) regarding business combinations that occurred on or before November 18, 1997. This text is unnecessary, because external restructurings normally must be initiated within 3 years of a business combination.

3. Delete text at 231.205–70(d), Procedures and ACO responsibilities. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A final rule addressing the purpose and structure of PGI is published elsewhere in this issue of the **Federal Register** under DFARS Case 2003–D090, Procedures, Guidance, and Information. PGI is available at <http://www.acq.osd.mil/dpap/dars/index.htm>.

DoD published a proposed rule at 69 FR 8154 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed 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 clarifies existing DFARS text, and deletes DFARS text that is redundant, outdated, or procedural, but makes no significant change to contracting policy.

## 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 231

Government procurement.

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

■ Therefore, 48 CFR part 231 is amended as follows:

■ 1. The authority citation for 48 CFR part 231 continues to read as follows:

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

#### PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

##### 231.205–10 [Removed]

■ 2. Section 231.205–10 is removed.

■ 3. Section 231.205–22 is revised to read as follows:

##### 231.205–22 Legislative lobbying costs.

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed also are unallowable (10 U.S.C. 2249).

■ 4. Section 231.205–70 is amended by revising paragraphs (a), (c), and (d) to read as follows:

##### 231.205–70 External restructuring costs.

(a) *Scope.* This subsection—

(1) Prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD; and

(2) Implements 10 U.S.C. 2325.

(c) *Limitations on cost allowability.*

(1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d) of this subsection; and

(iv) For business combinations that occur after November 18, 1997, the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy determines in writing that the audited projected

savings for DoD resulting from the restructuring will exceed either—

(A) The costs allowed by a factor of at least two to one; or

(B) The cost allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(2) The audit, review, certification, and determination required by paragraph (c)(1) of this subsection shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at PGI 231.205–70(d).

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 102504B]

##### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #12—Adjustment of the Commercial Salmon Fishery from Humbug Mountain, Oregon to the Oregon-California Border

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

**ACTION:** Modification of fishing season; request for comments.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from Humbug Mountain, OR to the Oregon-California Border was modified to be open September 1 through September 3, September 8 through September 10, and September 15 through September 30, or until the attainment of the 3,000 chinook quota, with a modified possession and landing limit of 50 chinook per day per vessel. This action was necessary to conform to

the 2004 management goals. The intended effect of this action is to allow the fishery to operate within the seasons and quotas as specified in the 2004 annual management measures.

**DATES:** Adjustment in the area from Humbug Mountain, OR to the Oregon-California Border effective 0001 hours local time (l.t.) September 1, 2004, until the chinook quota is taken, or 2359 hours l.t., September 30, 2004; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through November 16, 2004.

**ADDRESSES:** Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McLinnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the 2004salmonIA12.nwr@noaa.gov address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments and include the docket number in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** The Regional Administrator modified the season for the commercial salmon fishery in the area from Humbug Mountain, OR to the Oregon-California Border to be open September 1 through September 3, September 8 through September 10, and September 15 through September 30, or until the attainment of the 3,000 chinook quota, with a modified possession and landing limit of 50 chinook per day per vessel. On August 19, 2004, the Regional Administrator determined that the available catch and effort data indicated that the quota of 3,000 chinook may be achieved quickly, and that provisions to slow the catch were needed to avoid exceeding the quota.

All other restrictions remained in effect as announced for 2004 ocean