

204.602 General.

See PGI 204.602 for additional information on the Federal Procurement Data System (FPDS) and procedures for resolving technical or policy issues relating to FPDS.

204.604 Responsibilities.

(1) The process for reporting contract actions to FPDS should, where possible, be automated by incorporating it into contract writing systems.

(2) Data in FPDS is stored indefinitely and is electronically retrievable. Therefore, the contracting officer may reference the contract action report (CAR) approval date in the associated Government contract file instead of including a paper copy of the electronically submitted CAR in the file. Such reference satisfies contract file documentation requirements of FAR 4.803(a).

(3) By December 15th of each year, the chief acquisition officer of each DoD component required to report its contract actions shall submit to the Director, Defense Procurement and Acquisition Policy, its annual certification and data validation results for the preceding fiscal year in accordance with the DoD Data Improvement Plan requirements at <http://www.acq.osd.mil/dpap/pdi/eb>. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated DoD annual certification to the Office of Management and Budget by January 5th of each year.

204.606 Reporting data.

In addition to FAR 4.606, follow the procedures at PGI 204.606 for reporting data to FPDS.

204.670 [Removed]

■ 3. Section 204.670 is removed.

■ 4. Section 204.902 is revised to read as follows:

204.902 General.

(b) DoD uses the Federal Procurement Data System (FPDS) to meet these reporting requirements.

204.7203 [Amended]

■ 5. Section 204.7203 is amended by removing paragraph (c).

PART 219—SMALL BUSINESS PROGRAMS

■ 6. Section 219.001 is amended by revising paragraph (2)(iv) to read as follows:

219.001 Definitions.

* * * * *

(2) * * *

(iv) Reporting contract actions with SDB concerns in the Federal Procurement Data System (FPDS).

■ 7. Section 219.202–5 is amended by revising the introductory text to read as follows:

219.202–5 Data collection and reporting requirements.

Determine the premium percentage to be entered in the Federal Procurement Data System (FPDS) as follows:

* * * * *

PART 253—FORMS**253.204 and 253.204–70 [Removed]**

■ 8. Sections 253.204 and 253.204–70 are removed.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System**

48 CFR Parts 204, 236, 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: Final rule.

SUMMARY: DoD has issued a final rule amending 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: *Effective Date:* July 29, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2007–D020.

SUPPLEMENTARY INFORMATION:**A. Background**

This final 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. Related changes are made in Parts 204, 236, 237, 239, and 252. The following table summarizes the DFARS changes in this rule:

DFARS citation	Changes made by this rule
204.7003	Removed “facilities contracts” from the list of contract types, consistent with the removal of references to facilities contracts from the FAR.
237.7003	Updated the reference to the applicable FAR Government Property clause.
239.7402	Updated and clarified the text in paragraphs (b)(3) and (4).
245.104	Updated and relocated the text to 245.105.
245.301	(1) Updated the definition of “facilities project” and relocated it to 237.7501. (2) Relocated the definition of “mapping, charting, and geodesy” to 245.101 without change. (3) Removed the definition of “provide,” since this term is now defined in FAR 45.101. (4) Removed the definitions of “agency-peculiar property,” “industrial plant equipment,” and “other plant equipment,” as they are no longer considered necessary.
245.302–1(a)	Revised to eliminate text addressing responsibilities for approval of facilities projects, as these responsibilities are addressed DoD Directive 4275.5. The remaining text is relocated to 237.7502, with cross-references added at 236.275 and 245.102(3).
245.302–1(b) and DD Form 1419 ..	Removed. The specified equipment screening procedures have become obsolete.
245.302–2 and 245.302–7	Removed. The separate procedures for facilities contracts are no longer necessary.
245.303–2	Updated and relocated to 245.102(2).
245.307–2	Removed. The corresponding FAR text has been removed.

DFARS citation	Changes made by this rule
245.310	Updated and relocated to 245.102(1).
245.310–70	Relocated to 245.107–70.
245.401	Removed as unnecessary.
245.403	Relocated to 245.302(2).
245.405	Updated and relocated to 245.302(1) and (3).
245.407	Removed as unnecessary.
Subpart 245.5	Removed as unnecessary.
Part 252	Updated references and clause titles.

DoD published a proposed rule at 73 FR 55007 on September 24, 2008, to address the DFARS changes. Three sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent recommended retaining the definition of “agency peculiar property”.

DoD Response: The term “agency peculiar property” is no longer used in DFARS Part 245. Therefore, the definition has been excluded from the final rule.

2. *Comment:* One respondent recommended that the term “facilities” be defined and included within DFARS Part 245.

DoD Response: The term “facilities” is defined in DoD Directive 4275.5, Acquisition and Management of Industrial Resources. The rule contains a reference to Directive 4275.5 in Subpart 237.75.

3. *Comment:* One respondent suggested the addition of text at 245.105 to specify that the administrative contracting officer will perform property administration in the absence of an assigned property administrator.

DoD Response: DoD considers the additional text unnecessary, since the performance of contract property administration is already a contracting officer function listed in FAR 42.302(26). However, for clarity, the term “property administrator” has been revised to “assigned property administrator” at 245.105.

4. *Comment:* One respondent stated that the proposed text at 245.301(2) elevates the level of approval required for certain non-Government use of Government-owned equipment beyond that specified in the FAR, since FAR 45.301 assigns this responsibility to the head of the contracting activity whereas the proposed DFARS rule requires assistant Secretary or agency head approval.

DoD Response: This text has been excluded from the final rule. FAR 45.301 adequately addresses use and rental policy.

5. *Comment:* One respondent suggested the phrase “only if” be replaced with the term “provided” at

DFARS 245.302(1)(i), with regard to the conditions placed on contracting officer approval of contractor use of Government property on work for foreign governments or international organizations.

DoD Response: The text at DFARS 245.302(1)(i) has been revised to replace the term “only if” with the term “provided.” Additionally, to preserve contracting officer flexibility, the word “shall” has been replaced with the word “may” in that same paragraph.

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 makes no significant change to DoD policy regarding the management of Government property in the possession of contractors.

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, 236, 237, 239, 245, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 236, 237, 239, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 204, 236, 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 as follows:

■ a. In paragraph (a)(3)(iii) by removing “facilities contracts,”; and

■ b. By revising paragraph (a)(3)(v) to read as follows:

204.7003 Basic PII number.

(a) * * *

(3) * * *

(v) Reserved—E

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 3. Section 236.275 is added to read as follows:

236.275 Construction of industrial resources.

See Subpart 237.75 for policy relating to facilities projects.

PART 237—SERVICE CONTRACTING

■ 4. 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.

■ 5. Subpart 237.75 is added to read as follows:

Subpart 237.75—Acquisition and Management of Industrial Resources

Sec.

237.7501 Definition.

237.7502 Policy.

Subpart 237.75—Acquisition and Management of Industrial Resources

237.7501 Definition.

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

237.7502 Policy.

(a) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing requests for facilities projects.

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

- (1) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and
- (2) 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.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 6. 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) 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

■ 7. 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.

Mapping, charting, and geodesy property, as used in this subpart, is defined in the clause at 252.245–7000, Government-Furnished Mapping, Charting, and Geodesy Property.

245.102 Policy.

(1) *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.

(2) *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.

(3) *Acquisition and management of industrial resources*. See Subpart 237.75 for policy relating to facilities projects.

245.105 Contractor's property management system compliance.

The assigned 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

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 may grant approval, provided—

(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 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]

- 8. Subparts 245.4 and 245.5 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.217–7005 [Amended]**

- 9. Section 252.217–7005 is amended as follows:
- a. By revising the clause date to read “(JUL 2009)”; and
 - b. In paragraph (e)(7) by removing “(Fixed-Price Contracts)”.

252.217–7010 [Amended]

- 10. Section 252.217–7010 is amended as follows:
- a. By revising the clause date to read “(JUL 2009)”; and
 - b. In paragraph (c)(3) by removing “(Fixed Price Contracts)”.

252.242–7004 [Amended]

- 11. Section 252.242–7004 is amended as follows:
- a. By revising the clause date to read “(JUL 2009)”; 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]

- 12. Section 252.245–7000 is amended in the introductory text by removing “245.310–70” and adding in its place “245.107–70”.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 207, 235, and 252**

RIN 0750–AF96

Defense Federal Acquisition Regulation Supplement; Protection of Human Subjects in Research Projects (DFARS Case 2007–D008)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for the protection of human subjects involved in research projects. The rule contains a

clause for use in contracts that include or may include research involving human subjects.

DATES: *Effective Date:* July 29, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2007–D008.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule adds DFARS policy addressing statutory and regulatory requirements for the ethical treatment of human subjects involved in research projects. The rule contains a clause for use in contracts involving human subjects in research, to inform contractors of their responsibilities for compliance with 32 CFR Part 219; DoD Directive 3216.02; applicable DoD component policies; 10 U.S.C. 980; and, when applicable, Food and Drug Administration policies and regulations.

DoD published a proposed rule at 73 FR 63666 on October 27, 2008. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was 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 reinforcement of existing requirements and obligations that apply with regard to the protection of human subjects involved in research projects.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not contain any new 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 Parts 207, 235, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

- Therefore, 48 CFR parts 207, 235, and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 207, 235, and 252 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

- 2. Section 207.172 is added to read as follows:

207.172 Human research.

Any DoD component sponsoring research involving human subjects—

(a) Is responsible for oversight of compliance with 32 CFR Part 219, Protection of Human Subjects; and

(b) Must have a Human Research Protection Official, as defined in the clause at 252.235–7004, Protection of Human Subjects, and identified in the DoD component’s Human Research Protection Management Plan. This official is responsible for the oversight and execution of the requirements of the clause at 252.235–7004 and shall be identified in acquisition planning.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

- 3. Section 235.072 is amended by adding paragraph (e) to read as follows:

235.072 Additional contract clauses.

* * * * *

(e) Use the clause at 252.235–7004, Protection of Human Subjects, in solicitations and contracts that include or may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). The clause—

(1) Applies to solicitations and contracts awarded by any DoD component, regardless of mission or funding Program Element Code; and

(2) Does not apply to use of cadaver materials alone, which are not directly regulated by 32 CFR Part 219 or DoD Directive 3216.02, and which are governed by other DoD policies and applicable State and local laws.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Section 252.235–7004 is added to read as follows:

252.235–7004 Protection of Human Subjects.

As prescribed in 235.072(e), use the following clause: