3. The American Radio Relay League, Inc. (ARRL)
4. AMTECH Corporation (AMTECH)
5. CellNet Data Systems, Inc. (CellNet)
6. Connectivity for Learning Coalition
7. Hughes Transportation Management Systems (Hughes)
8. Intelligent Transportation Society of America (ITSA)
9. Metricom, Inc. and Southern California Edison Company (Metricom/SCE)
10. MobileVision, L.P. (MobileVision)
11. The New Jersey Highway Authority, the New Jersey Turnpike Authority, the New York State Thruway Authority, the Pennsylvania Turnpike Commission, the Metropolitan Transportation Authority Bridges and Tunnels, the Port Authority of New York and New Jersey, the South Jersey Transportation Authority and the Delaware River Port Authority (''the Interagency Group'').
12. The Part 15 Coalition (Part 15 Coalition)
13. Pinpoint Communications (Pinpoint)
14. Rand McNally & Company (Rand McNally)
15. Safetran Systems Corporation (Safetran)
16. Southwestern Bell Mobile Systems, Inc. (SBMS)
17. Texas Instruments, Inc. and MFS Network Technologies, Inc. (TI/MFS)
18. Uniplex Corporation (Uniplex)
19. UTC
20. Wireless Transactions Corporation (Wireless Transactions)

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DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 96–D309]

Defense Federal Acquisition Regulation Supplement; Pricing for Sales of Defense Articles

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement statutory provisions which require that foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to acquisitions of like items purchased by DoD for its own use.

DATES: *Effective date:* April 30, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 1, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 96–D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 225.73 to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107), which amends Section 22 of the Arms Export Control Act (22 U.S.C. 2762) to require that foreign military sales of defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by DoD for its own use.

B. Regulatory Flexibility Act

This rule is not expected 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 DFARS Subpart 225.73 already requires pricing of foreign military sales contracts using the same general principles as are used in pricing other defense contracts. The only significant change in this rule relates to the allowability of independent research and development and bid and proposal costs in accordance with the cost principle at FAR 31.205–18. This change is not expected to significantly impact small entities, as most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require application of the FAR cost principles. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 96–D309 in correspondence.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements which 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 compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107), which became effective on April 12, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 225 continues to read as follows:

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

2. Section 225.7303 is amended by revising the title to read as follows:

225.7303 Pricing acquisitions for foreign military sales (FMS).

3. Section 225.7303–2 is amended by revising the introductory text of paragraphs (a) and (c) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, except as provided in 225.7303–5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

* * * * *

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205–18 do not apply to such contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for foreign military sales not wholly paid for from funds made available on a nonrepayable basis shall

be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such foreign military sales—

* * * * *

4. Section 225.7303–5 is added to read as follows:

225.7303–5 Aquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements, as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements will be allowable under such contracts. Indirect burden rates applicable to such direct costs shall be permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred to implement its offset agreement with a foreign government or international organization if the organization if the foreign military sale Letter of Offer and Acceptance is financed with funds made available on a nonrepayable basis.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 951227306–6117–02; I.D. 121295C]

Foreign Fishing; Pacific Coast Groundfish Fishery; Annual Specifications; and Correction

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

ACTION: Final 1996 groundfish fishery specifications for Pacific whiting and correction.

SUMMARY: NMFS announces the 1996 fishery specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch (ABC) and harvest guideline, including the distribution between domestic and foreign fishing operations. The intended effect of this action is to establish allowable harvest levels of Pacific whiting based on the best available scientific information. Corrections are also made to Table 1 in the annual specifications and management measures for the Pacific coast groundfish fishery.

EFFECTIVE DATE: May 15, 1996, until the effective date of the 1997 annual specifications and management measures, which will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that harvest guidelines or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the harvest guidelines or quotas be published in the Federal Register and made effective by January 1, the beginning of the fishing year. This was done for the 1996 groundfish fishery (61 FR 279, January 4, 1996), with one exception, Pacific whiting (whiting). Final specifications for whiting were not announced because the Pacific Fishery Management Council (Council), which makes management recommendations to NMFS, decided to delay its consideration until 1995 hydroacoustic survey information could be included in the assessment on whiting and the new results reviewed. Consequently, preliminary specifications for whiting were announced concurrent with the final specifications for other groundfish species. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

In 1994, the ABC for whiting was substantially higher than in previous years, primarily because it was based on data from the 1992 hydroacoustic survey that utilized new, more sensitive equipment, and extended farther offshore and farther north to encompass the species' range. To provide for cautious exploitation until the 1992 survey results could be confirmed, a conservative harvest rate policy was adopted in 1994 and 1995 to minimize the risk to the resource if the ABC is later found to be too high. Because initial results of the recent 1995 survey were favorable, the Council initially supported resumption of the moderate exploitation rate in 1996. When applied to the previous year's stock assessment, this resulted in a preliminary ABC recommendation of 123,000 metric tons (mt) for the U.S. and Canada combined. The Council also recommended that the preliminary U.S. harvest guideline continue at 80 percent (98,400 mt) of the ABC. When the preliminary specifications were announced, NMFS indicated that the final specifications could be higher or lower, depending on the information resulting from the new survey and stock assessment on whiting.

At its March 1996 meeting in Portland, OR, the Council reviewed the new stock assessment, which indicated that the biomass of 3-year-old whiting was 60 percent greater than expected, and that a moderate abundance of 2-year-old fish will be recruited to the fishery in 1996. However, the Council recommended delaying the return to the moderate exploitation rate until resolution of new questions concerning the correct hydroacoustic target strength used in estimating biomass. The target strength calibrates the hydroacoustic survey data into absolute biomass of whiting. Even so, by applying the conservative exploitation rate to the new stock assessment, the Council's final ABC recommendation (U.S. and Canadian combined) of 265,000 mt is 42,000 mt higher than the 1995 ABC of 223,000 mt and more than double the preliminary ABC of 123,000 mt. (Under the new stock assessment, a moderate exploitation rate would have led to a 1996 ABC of 369,000 mt.)

The Council also confirmed its preliminary recommendation to set the U.S. harvest guideline at 80 percent of the U.S.-Canadian ABC. Therefore, the final U.S. harvest guideline is 212,000 mt for 1996. If Canada adopts the same ABC and calculates its share as 30 percent of the total catch, as in the recent past, the U.S.-Canadian ABC will be exceeded by about 14 percent. These overages have not caused a biological problem, particularly given the large increase in the ABC in 1994 and use of the conservative exploitation rate in 1994–96. The total harvest will not reach the overfishing level. Bilateral discussions with Canada are expected to continue.

The whiting harvest guideline in 1996 is designated entirely for domestic harvesting and processing, and there is no surplus for joint venture or foreign fishing operations.

Public comments on the preliminary whiting specifications were requested through February 5, 1996, but none were received. Whiting caught in 1996