

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business option is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(11) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming

Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 246

[DFARS Case 97-D326]

#### Defense Federal Acquisition Regulation Supplement; Warranties in Weapon System Acquisitions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 847 of the National Defense Authorization Act for Fiscal Year 1998. Section 847 repealed the requirement for contractor guarantees on major weapon systems.

**EFFECTIVE DATE:** February 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131. Telefax (703) 602-0350. Please cite DFARS Case 97-D326.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 847 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) repealed 10 U.S.C. 2403, which required contractor guarantees on major weapon systems. This final rule removes the DFARS language that implemented 10 U.S.C. 2403.

##### B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97-D326 in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule imposes no 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 246

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 246 is amended as follows:

1. The authority citation for 48 CFR Part 246 continues to read as follows:

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

### PART 246—QUALITY ASSURANCE

2. Section 246.703 is revised to read as follows:

#### 246.703 Criteria for use of warranties.

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

#### 246.704 [Amended]

3. Section 246.704 is amended by removing paragraph (1) and redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

#### 246.770 through 246.770-8 [Removed].

4. Sections 246.770 through 246.770-8 are removed.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 961204340-7087-02; I.D. 020298B]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

**SUMMARY:** NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic