

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:

**PROTECTION OF HUMAN SUBJECTS
(JUL 2009)**

(a) *Definitions.* As used in this clause—

(1) *Assurance of compliance* means a written assurance that an institution will comply with requirements of 32 CFR Part 219, as well as the terms of the assurance, which the Human Research Protection Official determines to be appropriate for the research supported by the Department of Defense (DoD) component (32 CFR 219.103).

(2) *Human Research Protection Official (HRPO)* means the individual designated by the head of the applicable DoD component and identified in the component's Human Research Protection Management Plan as the official who is responsible for the oversight and execution of the requirements of this clause, although some DoD components may use a different title for this position.

(3) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information (32 CFR 219.102(f)). For example, this could include the use of human organs, tissue, and body fluids from individually identifiable living human subjects as well as graphic, written, or recorded information derived from individually identifiable living human subjects.

(4) *Institution* means any public or private entity or agency (32 CFR 219.102(b)).

(5) *Institutional Review Board (IRB)* means a board established for the purposes expressed in 32 CFR Part 219 (32 CFR 219.102(g)).

(6) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements (32 CFR 219.102(h)).

(7) *Research* means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of 32 CFR Part 219, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities (32 CFR 219.102(d)).

(b) The Contractor shall oversee the execution of the research to ensure compliance with this clause. The Contractor shall comply fully with 32 CFR Part 219 and DoD Directive 3216.02, applicable DoD component policies, 10 U.S.C. 980, and, when applicable, Food and Drug Administration policies and regulations.

(c) The Contractor shall not commence performance of research involving human subjects that is covered under 32 CFR Part 219 or that meets exemption criteria under 32 CFR 219.101(b), or expend funding on such effort, until and unless the conditions of either the following paragraph (c)(1) or (c)(2) have been met:

(1) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, an

assurance of compliance and IRB approval and receives notification from the Contracting Officer that the HRPO has approved the assurance as appropriate for the research under the Statement of Work and also that the HRPO has reviewed the protocol and accepted the IRB approval for compliance with the DoD component policies. The Contractor may furnish evidence of an existing assurance of compliance for acceptance by the HRPO, if an appropriate assurance has been approved in connection with previous research. The Contractor shall notify the Contracting Officer immediately of any suspensions or terminations of the assurance.

(2) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, a determination that the human research proposed meets exemption criteria in 32 CFR 219.101(b) and receives written notification from the Contracting Officer that the exemption is determined acceptable. The determination shall include citation of the exemption category under 32 CFR 219.101(b) and a rationale statement. In the event of a disagreement regarding the Contractor's furnished exemption determination, the HRPO retains final judgment on what research activities or classes of research are covered or are exempt under the contract.

(d) DoD staff, consultants, and advisory groups may independently review and inspect the Contractor's research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD procedures.

(e) Failure of the Contractor to comply with the requirements of this clause will result in the issuance of a stop-work order under Federal Acquisition Regulation clause 52.242-15 to immediately suspend, in whole or in part, work and further payment under this contract, or will result in other issuance of suspension of work and further payment for as long as determined necessary at the discretion of the Contracting Officer.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that 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). This clause does not apply to subcontracts that involve only the use of cadaver materials.

(End of clause)

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 217 and 252**

RIN 0750-AG29

Defense Federal Acquisition Regulation Supplement; Requirements Applicable to Unfixed Contract Actions (DFARS Case 2008-D029)

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 DoD management and oversight of unfixed contract actions, consistent with the provisions of Section 809 of the National Defense Authorization Act for Fiscal Year 2008.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-8383; facsimile 703-602-7887. Please cite DFARS Case 2008-D029.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 809 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) required DoD to issue guidance to ensure the implementation and enforcement of requirements applicable to unfixed contract actions. On August 29, 2008, the Director, Defense Procurement and Acquisition Policy, issued a memorandum to DoD departments and agencies as required by Section 809 of Public Law 110-181. This final rule amends the DFARS to address the requirements of the August 29, 2008 memorandum, specifically, requirements for DoD departments and agencies to submit semi-annual reports regarding unfixed contract actions exceeding \$5 million; for obligation of funds for the unfixed period consistent with the contractor's proposal for that period; and for compliance with existing DFARS policy relating to profit computation for unfixed contract actions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.