

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WSYX Licensee, LLC (“WSYX”), the licensee of station WSYX-DT, DTV channel 13, Columbus, Ohio. WSYX requests the substitution of DTV channel 48 for channel 13 at Columbus.

DATES: Comments must be filed on or before August 21, 2009, and reply comments on or before August 31, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Clifford M. Harrington, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: David J. Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Notice of Proposed Rulemaking, MB Docket No. 09–124, adopted July 13, 2009, and released July 15, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to

this proceeding. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Ohio, is amended by adding DTV channel 48 and removing DTV channel 12 at Columbus.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–18261 Filed 8–5–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 15, 32, 42, 45, and 52

[FAR Case 2008–011; Docket 2009–0029; Sequence 1]

RIN 9000–AL41

Federal Acquisition Regulation; FAR Case 2008–011; Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise coverage in regard to Government property and its associated clauses.

These changes are to add clarity and correction to the previous FAR rule for Part 45, Government Property, published under Federal Acquisition Circular 2005–17, FAR case 2004–025.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before October 5, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2008–011 by any of the following methods:

• Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008–011” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2008–011. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2008–011” on your attached document.

• Fax: 202–501–4067.

• Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2008–011 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta A. Parnell, Procurement Analyst, at (202) 501–4082 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2008–011.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council revised Federal Acquisition Regulation (FAR) contract property management requirements as a final rule under Federal Acquisition Circular 2005–17 (72 FR 27364, May 15, 2007). The new regulation amended, updated and revised the FAR Part 45, Government Property, and associated clauses related to the management and disposition of Government property in

the possession of contractors. The final rule replaced outmoded regulations that were essentially unchanged for many years.

After publication of the final rule in May 2007, DoD received feedback on the FAR revisions. An Ad Hoc team comprised of members from DoD, GSA, and the Defense Contract Management Agency (DCMA) was formed to review comments from industry, academia and Government sources. As a result of the Ad Hoc team recommendations, FAR case 2008–011 was established to address the recommendations.

The proposed changes include the following:

(1) 2.101 Definitions.

The definitions of “plant clearance officer” and “special tooling” were clarified.

(2) 4.705–3 Acquisition and supply records.

Paragraph (h) “Property records” was added to the list of acquisition and supply records.

(3) 15.404–4 Profit.

Language was added to FAR 15.404–4(a)(3) as follows—“Unless the contractor acquired property is a deliverable under the contract, no profit or fee shall be permitted on the cost of the property.”

(4) 42.302(a)(30) Contract administration functions.

(A) In paragraph (iii), “approve use” was changed to “evaluate the use.”

(B) Paragraph (v) was deleted in its entirety and replaced with “modify contracts to reflect addition of Government furnished property and ensure appropriate consideration.”

(5) 45.101 Definitions.

(A) The definitions of “cannibalize,” “equipment,” “Government furnished property,” “Government property,” “material,” and “real property” were clarified.

(B) The definition of “property records” was added.

(C) The definition of “plant equipment” was deleted in its entirety.

(6) 45.102(d) Policy.

Language was added to paragraph (d) to the effect that property furnished under contracts for maintenance and modification as well as property furnished for repair or overhaul are exceptions from the requirements of FAR 45.102(b).

(7) 45.104 Responsibility and liability for Government property, and 45.105 Contractors’ property management system compliance.

All references to “loss, damage, destruction, or theft” are changed to “loss, theft, damage, or destruction.”

(8) 45.201 Solicitation.

(A) Paragraph (a)(4), the term “unique-item identifier” was changed to “item unique identifier.”

(B) Paragraph (d) was revised to delete “when use of property on more than one contract is anticipated.”

(9) 45.402 Title to contractor-acquired property.

The first sentence of this subsection is deleted and the second sentence is modified to include that “title vests in the Government for all property ...”

(10) 45.502 Subcontractor and alternate prime contractor locations.

(A) Paragraph (a) was revised to delete existing language and replace with new language to make clear the need for prime contractor approval when support property administration at subcontractor locations is necessary.

(B) Paragraph (b) was edited to state that the prime property administrator shall “advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor’s property management system.”

(C) Paragraph (c) was added.

(D) Section title has been changed.

(11) 45.602–3(b) Screening.

Paragraph (b)(3) is revised to correct the address for the Public Printer.

(12) 45.604–3 Sale of surplus personal property.

(A) The reference to CFR Part 101–45 is changed to CFR Part 102–38.

(B) Section title has been changed.

(13) 45.606–1 Contractor with an approved scrap procedure.

Paragraph (b) was reformatted to separate categories of property requiring preparation of an inventory disposal schedule into a new paragraph (c). Language was added for “all aircraft regardless of condition” and “flight safety critical aircraft parts.” In addition, scrap was revised to include “economically beneficial to recover” precious metals.

(14) 52.232–16, Progress Payments, and 52.232–32, Performance Based Payments.

(A) The clause at 52.232–16(d)(2)(ii) and the clause at 52.232–32(f)(2)(ii) are revised to delete the language “under any other clause of this contract.” This language is no longer necessary.

(B) The clause at 52.232–16(d)(3) and the clause at 52.232–32(f)(3) are revised to delete the language “or special tooling.” This language is no longer necessary.

(15) Loss, Damage, Theft, or Destruction.

All references to “loss, damage, destruction, or theft” are changed to “loss, theft, damage, or destruction” in the coverage in 32.503–16(a) and 32.1010(a) and the clauses at 52.232–16, 52.232–32 and 52.245–1.

(16) Clauses.

§ 52.245–1 Government Property.

(A) Definitions at 52.245–1(a) are changed to be consistent with the definitions in FAR 45.101.

(B) In paragraph (b)(2), “sale (as surplus property), or other” disposition was added.

(C) Paragraph (c) was reformatted and information regarding modifications or alterations of Government property was added to clarify that modifications or alterations must be reasonable and necessary due to the scope of work under this contract or its terms and conditions, required for normal maintenance, or otherwise authorized by the contracting officer. In addition, language was added to clarify when cannibalization occurs.

(D) Paragraph (e)(2)(ii) was revised to clarify title under fixed price contracts.

(E) The term “material” was changed to “property” in paragraphs (e)(2)(iii) and (f)(1)(i).

(F) Paragraphs (f)(1)(iii)(A)(4) and (f)(1)(vi)(B)(4) “Unique-item” identifier was revised to “Item unique” identifier.

(H) Paragraph (f)(1)(viii)(B), references to “property” were changed to “material.”

(I) Paragraph (g), Systems analysis, was revised to reflect the coverage in FAR 45.502 that provides for support property administration for subcontractors and prime contractor alternate locations.

(J) Paragraph (i) deleted the language “the right to an equitable adjustment shall be the Contractor’s exclusive remedy.”

(K) Paragraph (j)(1)(i)(B) was reformatted into paragraphs (B) and (C) to separate categories of property requiring preparation of an inventory disposal schedule. Language was added for “all aircraft regardless of condition” and “flight safety critical aircraft parts.” In addition, scrap was revised to include “economically beneficial to recover” precious metals.

(L) Paragraph (j)(3)(iii)(E), the phrase “in raw or bulk form” was added.

(M) Paragraph (j)(3)(iv) was revised to add a list of items for which additional descriptive information is required during disposition.

(N) Paragraph (j)(3)(v) was revised to delete the language “describe the property in sufficient detail to permit an understanding of its intended use.”

(O) Paragraph (j)(3)(vi) was added.

(P) Paragraph (j)(7)(ii) was revised to change “facility” to “area.”

(Q) Paragraph (j)(8)(ii) was revised to add “unless otherwise directed by the contracting officer or by the plant clearance officer the Contractor shall

remove and destroy any Government affixed markings...”

(R) Alternate I, 52.245–1, paragraph (h)(1) and 52.245–2 (b) were revised to change the reference from “loss, damage, destruction, or theft” to “loss, theft, damage, or destruction.”

52.245–9 Use and Charges.

The clause at 52.245–9 was revised to delete definitions contained in 52.245–1 and to include language that definitions applicable to this contract are provided in the clause at 52.245–1. 52.245–9 may only be used when 52.245–1 is included in the contract.

52.251–1 Government Supply Sources.

The clause at 52.251–1 was revised to update the reference to the clause at 52.245–1.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule 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 the rule does not impose any additional requirements on small businesses. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 15, 42, 45, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2008–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 15, 32, 42, 45, and 52

Government procurement.

Dated: July 30, 2009.

Al Matera,
Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 15, 32, 42, 45, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 15, 32, 42, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101, in paragraph (b)(2), by removing from the definition “Plant clearance officer” the words “contractor-operator plants, and Federal installations” and adding “contractor-operator plants, Federal installations and Federal and non-Federal industrial operations”, in its place; and removing from the definition “Special tooling” the words “test equipment, and” and adding “tooling, and” in its place.

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.705–3 by adding paragraph (h) to read as follows:

4.705–3 Acquisition and supply records.
* * * * *

(h) Property records (see 45.101 and 52.245–1): Retain 4 years.

PART 15—CONTRACTING BY NEGOTIATION

4. Amend section 15.404–4 by adding a sentence to the end of paragraph (a)(3) to read as follows:

15.404–4 Profit.

(a) * * *

(3) * * * Unless the contractor acquired property is a deliverable under the contract, no profit or fee shall be permitted on the cost of the property.
* * * * *

PART 32—CONTRACT FINANCING

32.503–16 [Amended]

5. Amend section 32.503–16 by removing from paragraph (a) “loss, theft, destruction, or damage to” and adding “lost, stolen, damaged, or destroyed” in its place.

32.1010 [Amended]

6. Amend section 32.1010 by removing from paragraph (a) “loss, theft, destruction, or damage to” and adding “lost, stolen, damaged, or destroyed” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

7. Amend section 42.302 by revising paragraphs (a)(30)(iii) and (a)(30)(v) to read as follows:

42.302 Contract administration functions.

(a) * * *
(30) * * *

(iii) Evaluate the use of Government property on a non-interference basis in accordance with the clause at 52.245–9, Use and Charges;

* * * * *

(v) Modify contracts to reflect addition of Government furnished property and ensure appropriate consideration.

* * * * *

PART 45—GOVERNMENT PROPERTY

8. Amend section 45.101 by—
a. Revising the definitions “Cannibalize”, “Equipment”, “Government-furnished property”, and “Government property”;

b. Removing from the definition “Material” the words “test equipment” and adding “test equipment or real property” in its place;

c. Removing the definition “Plant equipment”;

d. Adding the definition “Property records”;

e. Revising the definition “Real property.”

The revised and added text reads as follows:

45.101 Definitions.

* * * * *

Cannibalize means to remove parts from equipment, special tooling or special test equipment in order to install them on other property.
* * * * *

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material or real property.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract. Government-furnished property includes spares and property furnished for repair, maintenance, overhaul, or modification.

Government property means all property owned or leased by the

Government. Government property includes both Government-furnished property and contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property, and software.

* * * * *

Property records means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

* * * * *

Real property. See Federal Management Regulation 102-71.20 (41 CFR 102-71.20.)

* * * * *

9. Amend section 45.102 by revising paragraph (d) to read as follows:

45.102 Policy.

* * * * *

(d) *Exception.* Property provided under contracts for repair, maintenance, overhaul, or modification is not subject to the requirements of paragraph (b) of this section.

10. Amend section 45.104 by revising the introductory text of paragraph (a) to read as follows:

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss, theft, damage, or destruction of Government property under the following types of contracts:

* * * * *

11. Amend section 45.105 by revising paragraph (b)(1); and removing from paragraph (d) “damage, destruction, or theft” and adding “theft, damage, or destruction” in its place. The revised text reads as follows:

45.105 Contractors’ property management system compliance.

* * * * *

(b) * * *

(1) Revocation of the Government’s assumption of risk for loss, theft, damage, or destruction; and/or

* * * * *

45.201 [Amended]

12. Amend section 45.201 by removing from paragraph (a)(4) “Unique-item” and adding “Item unique” in its place; and removing from paragraph (d) “When use of property on more than one contract is anticipated, any” and adding “Any” in its place.

13. Amend section 45.402 by revising paragraph (a) to read as follows:

45.402 Title to contractor-acquired property.

(a) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

* * * * *

14. Revise section 45.502 to read as follows:

45.502 Subcontractor and alternate prime contractor locations.

(a) To ensure subcontractor compliance with Government property administration requirements, and with prime contractor consent, the property administrator assigned to the prime contract may request support property administration from another contract administration office. If the prime contractor does not provide consent to support property administration at subcontractor locations, the property administrator shall refer the matter to the contracting officer for resolution.

(b) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor’s property management system.

(c) Prime contractor consent is not required for support delegations involving prime contractor alternate locations.

45.602-3 [Amended]

15. Amend section 45.602-3 by removing from paragraph (b)(3) “North Capitol and H Streets” and adding “732 North Capitol Street” in its place.

16. Revise section 45.604-3 to read as follows:

45.604-3 Sale of surplus personal property.

Policy for the sale of surplus personal property is contained in the Federal Management Regulations, at Part 102-38 (41 CFR Part 102-38). Agencies may specify implementing procedures.

17. Amend section 45.606-1 by revising paragraph (b) and adding paragraph (c) to read as follows:

45.606-1 Contractor with an approved scrap procedure.

* * * * *

(b) For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).

(c) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—

- (1) Requires demilitarization;
- (2) Is a classified item;
- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals that are economically beneficial to recover; or
- (6) Is dangerous to the public health, safety, or welfare.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.232-16 [Amended]

18. Amend section 52.232-16 by—
a. Removing from the clause heading “(JUL 2009)” and adding “(DATE)” in its place;

b. Removing from paragraph (d)(2)(ii) “under any other clause of this contract”;

c. Removing from paragraph (d)(3) “or special tooling”; and

d. Removing from paragraph (e) “is damaged, lost, stolen, or” and adding “is lost, stolen, damaged, or” in its place.

52.232-32 [Amended]

19. Amend section 52.232-32 by—
a. Removing from the clause heading “(JAN 2008)” and adding “(DATE)” in its place;

b. Removing from paragraph (f)(2)(ii) “under any other clause of this contract”;

c. Removing from paragraph (f)(3) “or special tooling”; and

d. Removing from paragraph (g) “is damaged, lost, stolen, or” and adding “is lost, stolen, damaged, or” in its place.

20. Amend section 52.245-1 by—

a. Revising the date of the clause;

b. In paragraph (a) by—

1. Revising the definition “Cannibalize”;

2. Removing from the definition “Equipment” the word “asset” and adding the word “item” in its place; and adding a sentence to the end of the definition;

3. Adding a sentence to the end of the definition "Government-furnished property";

4. Adding a sentence to the end of the definition "Government property";

5. Adding the words "or real property" to the end of the definition "Material";

6. Removing the definition "Plant equipment";

7. Adding, in alphabetical order, the definition "Property records"; and

8. Revising the definition "Real property";

c. Revising the first sentence of paragraph (b)(2), (c), and (e)(2)(ii);

d. Removing from paragraphs (e)(2)(iii) and (f)(1)(i) the word "material" and adding the word "property" wherever it occurs (8 times);

e. Removing from paragraph (f)(1)(iii)(A)(4) the word "Unique-item" and adding the words "Item unique" in its place;

f. Revising paragraph (f)(1)(v)(A), introductory text of paragraph (f)(1)(vi), paragraphs (f)(1)(vi)(A), (f)(1)(vi)(B)(4), (f)(1)(vi)(B)(10), (f)(1)(vii)(A), (f)(1)(viii)(B), (f)(1)(x), (g), introductory text of paragraph (h)(1), the first sentence of paragraph (h)(1)(ii), (h)(1)(iii), the first sentence of paragraph (h)(2), paragraph (h)(3), the second sentence of paragraph (i), and paragraph (j)(1)(i)(B);

h. Add paragraph (j)(1)(i)(C);

i. Revise paragraphs (j)(3)(iii)(E), and (j)(3)(iv);

g. Add paragraphs (j)(3)(v), and (j)(3)(vi);

j. Remove from paragraph (j)(7)(ii) the word "facility" and add the word "area" in its place;

k. Revise paragraph (j)(8)(ii);

l. In Alternate I, revise the date of the alternate, and the first sentence of paragraph (h)(1).

The added and revised text reads as follows:

52.245-1 Government Property.

GOVERNMENT PROPERTY (DATE)

(a) * * *

Cannibalize means to remove parts from equipment, special tooling or special test equipment in order to install them on other property.

Equipment * * * Equipment does not include material or real property.

Government-furnished property * * * Government-furnished property includes spares and property furnished for repair, maintenance, overhaul, or modification.

Government property * * * Government property includes material,

equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property, and software.

Property records means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

Real property. See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property.

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(e) * * *

(2) * * *

(ii) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after

inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(f) * * *

(1) * * *

(v) * * *

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, theft, damage, or destruction of Government property).

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, theft, damage, or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, theft, damage, or destruction. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage, or destruction to the property administrator as soon as the facts become known or when requested by the Government.

(B) * * *

(4) Item unique Item Identifier (if available).

(10) A statement that the Government will receive any reimbursement covering the loss, theft, damage, or destruction in the event the Contractor was or will be reimbursed or compensated.

(vii) * * *

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage, or destruction of Government property;

(viii) * * *

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract

property closeout, to include reporting, investigating and securing closure of all loss, theft, damage, or destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(g) *Systems analysis.* (1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(h) (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage, or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies—

(ii) The loss, theft, damage, or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, theft, damage, or destruction, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, theft, damage, or destruction of Government property occurred while the Contractor had adequate property management

practices or the loss, theft, damage, or destruction of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage, or destruction.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage, or destruction of Government property.

(i) *Equitable adjustment.* However, the Government shall not be liable for breach of contract for the following:

- (j) (1) (i)

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures.)

(C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—

- (1) Requires demilitarization; (2) Is a classified item; (3) Is generated from classified items; (4) Contains hazardous materials or hazardous wastes; (5) Contains precious metals that are economically beneficial to recover; or (6) Is dangerous to the public health, safety, or welfare.

(3) (iii) (E) Precious metals in raw or bulk form;

(iv) The Contractor shall provide the information required by 52.245–1(f)(1)(iii) along with the following:

- (A) For special tooling and special test equipment, identify each part number with which the item is used. (B) For work-in-progress, the estimated percentage of completion. (C) For precious metals, the type of metal and estimated weight. (D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length.)

(F) Any additional information that may facilitate understanding of the property's intended use.

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(8) (ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any Government affixed markings identifying the property as U.S. Government-owned property prior to its disposal.

Alternate 1 (Date). (h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, theft, damage, or destruction of Government property upon its delivery to the Contractor as Government-furnished property.

20. Amend section 52.245–2 by revising the date of the clause, and the first two sentences of paragraph (b) to read as follows:

52.245–2 Government Property Installation Operation Services.

GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (DATE)

(b) The Government bears no responsibility for repair or replacement of any loss, theft, damage, or destruction of Government property. If any or all of the Government property is lost, stolen, damaged, or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense.

21. Amend section 52.245–9 by revising the date of the clause, and the introductory text of paragraph (a); and removing the definitions "Acquisition cost", "Government property", "Plant equipment", and "Real property". The revised text reads as follows:

52.245–9 Use and Charges.

USE AND CHARGES (DATE)

(a) *Definitions.* Definitions applicable to this contract are provided in the clause at 52.245–1, Government

Property. Additional definitions as used in this clause include:

* * * * *

23. Amend section 52.251-1 by revising the date of the clause, and the last sentence of the clause to read as follows:

52.251-1 Government Supply Sources.

* * * * *

GOVERNMENT SUPPLY SOURCES (DATE)

* * * The provisions of the clause entitled "Government Property," at 52.245-1, shall apply to all property acquired under such authorization.

(End of clause)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2009-0043]
[MO 9221050083]

Endangered and Threatened Wildlife and Plants; Initiation of Status Review for Mountain Whitefish (*Prosopium williamsoni*) in the Big Lost River, Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; initiation of status review and solicitation of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the initiation of a status review for mountain whitefish (*Prosopium williamsoni*) in the Big Lost River, Idaho. The status review will help us determine whether this population warrants listing as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). At the conclusion of the review, we will issue a 12-month finding on our determination as to whether listing is warranted. If listing is warranted, we will also determine whether or not to propose critical habitat for mountain whitefish in the Big Lost River.

DATES: To allow us adequate time to conduct this review, we request that you send us information on or before September 8, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket FWS-R1-ES-2009-0043 and then follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket FWS-R1-ES-2009-0043; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more information).

FOR FURTHER INFORMATION CONTACT:

Jeffery L. Foss, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; 208-378-5243; facsimile at 208-378-5262.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2006, we received a petition from the Western Watersheds Project requesting we list the population of mountain whitefish in the Big Lost River, Idaho, as a species, subspecies, or distinct population segment (DPS). The petitioner also requested that we designate critical habitat. On October 23, 2007, we published our 90-day finding (72 FR 59983), which found the petition failed to provide substantial information indicating that listing mountain whitefish in the Big Lost River may be warranted. This finding was based on a lack of information demonstrating the Big Lost River mountain whitefish may be a listable entity under the Act. For more information on the biology, habitat, and range of the mountain whitefish in the Big Lost River, please refer to our 90-day finding (72 FR 59983) published in the **Federal Register** on October 23, 2007.

On January 25, 2008, the Western Watersheds Project filed a complaint challenging our negative 90-day finding. On March 31, 2009, United States District Court (*Western Watershed Project vs. Dirk Kempthorne, et al.*, (Case No. CV07-409-S-EJL)) found the Service had considered information beyond the material in the petition such that the Service had effectively begun to conduct a status review. The Court directed the Service to proceed directly to a status review of the species and issue a 12-month finding by March 31, 2010.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires a 12-month finding to announce whether the

petitioned actions is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

To help inform our status review, we are soliciting new information on the status of, and potential threats to, mountain whitefish, in particular the population in the Big Lost River. We will base our determination as to whether listing is warranted on a review of the best scientific and commercial data available, including all such information received as a result of this notice.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the mountain whitefish. We will use the information gained during this process to evaluate, as appropriate, whether:

- The population of mountain whitefish in the Big Lost River is a species, subspecies, or a DPS (as described in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS Policy; 61 FR 4722; February 7, 1996)), and
- Listing of that entity as threatened or endangered is warranted under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*).

We request information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties on the status of mountain whitefish throughout its range. We are seeking information regarding:

(1) The historical and current status and distribution of the mountain whitefish, its population trend, taxonomy, genetics, biology, ecology, and habitat selection.

(2) Ongoing conservation measures for the species and its habitat.