

asked by some clients to prepare and file their individual income tax returns for compensation, but A expects that the number of people who do ask him to provide this service will be no more than seven in 2012. In fact, A actually prepares and files six paper Form 1040 (U.S. Individual Income Tax Return) returns in 2012. Due to a growing client base, and based upon his experience in 2012, A expects that the number of individual income tax returns he will prepare and file in 2013 will at least double, estimating he will prepare and file 12 Form 1040 returns in 2013. A does not qualify as a specified tax return preparer for 2012 because A reasonably expects to file 10 or fewer (seven) in 2012. Consequently, A is not required to electronically file the individual income tax returns he prepares and files in 2012. He does not qualify as a specified tax return preparer for that year because A reasonably expects to file 10 or fewer returns (seven) in 2012. A's expectation is reasonable based on his business projections, individual income tax return filing history, and staffing decisions. A is a specified tax return preparer in 2013, however, because based on those same factors A reasonably expects to file more than 10 individual income tax returns (12) during that calendar year. A, therefore, must electronically file all individual income tax returns that A prepares and files in 2013 that are not otherwise excluded from the electronic filing requirement.

*Example 2.* Same facts as in *Example 1*, except three of Tax Return Preparer A's clients specifically chose to have A prepare their individual income tax returns in paper format in 2012 with the clients mailing their respective returns to the IRS. A expects that these three clients will similarly choose to have him prepare their returns in paper format in 2013, with the clients being responsible for mailing their returns to the IRS. A is not required to electronically file these three returns in 2013 because the taxpayers chose to file their returns in paper format, and A obtained a dated written statement from each of those taxpayers, indicating that they chose to file their returns in paper format. These three individual income tax returns are not counted in determining how many individual income tax returns A reasonably expects to file in 2013. Because the total number of individual income tax returns A reasonably expects to file in 2013 (nine) does not exceed 10, A is not a specified tax return preparer for calendar year 2013, and A is not required to electronically file any individual income tax return that he prepares and files in 2013.

*Example 3.* Tax Return Preparer B is a solo general practice attorney in a small county. Her practice includes the preparation of wills and assisting executors in administering estates. As part of her practice, B infrequently prepares and files Forms 1041 (U.S. Income Tax Return for Estates and Trusts) for executors. In the past three years, she prepared and filed an average of five Forms 1041 each year and never exceeded more than seven Forms 1041 in any year. Based on B's prior experience and her estimate for 2012, made prior to the time she first files an individual income tax return in 2012, she

reasonably expects to prepare and file no more than five Forms 1041 in 2012. Due to the unforeseen deaths of several of her clients in late 2011, B actually prepares and files 12 Forms 1041 in 2012. B does not find out about these deaths until after she has already filed the first Form 1041 in 2012 for another client. B is not required to electronically file these returns in 2012. She does not qualify as a specified tax return preparer for calendar year 2012 because prior to the time she filed the first Form 1041 in 2012, she reasonably expected to file 10 or fewer individual income tax returns in 2012.

*Example 4.* Same facts as *Example 3*, except, in addition to the five Forms 1041 that she expects to prepare and file in 2012, Tax Return Preparer B also expects to prepare and file 10 paper Forms 1040 (U.S. Individual Income Tax Return) in 2012, based upon the requests that she has received from some of her clients. Because the total number of individual income tax returns B reasonably expects to file in 2012 (fifteen) exceeds 10, B is a specified tax return preparer for calendar year 2012, and B must electronically file all individual income tax returns that B prepares and files in 2012 that are not otherwise excluded from the electronic filing requirement.

*Example 5.* Firm X consists of two tax return preparers, Tax Return Preparer C who owns Firm X, and Tax Return Preparer D who is employed by C in Firm X. Based upon the firm's experience over the past three years, C and D reasonably expect to file nine and ten individual income tax returns for compensation, respectively, in 2012. Both C and D must electronically file the individual income tax returns that they prepare in 2012, unless the returns are otherwise excluded from the electronic filing requirement, because they are members of the same firm and the aggregated total of individual income tax returns that they reasonably expect to file in 2012 (nineteen), exceeds 10 individual income tax returns.

(f) *Additional guidance.* The IRS may implement the requirements of this section through additional guidance, including by revenue procedures, notices, publications, forms and instructions, including those issued electronically.

(g) *Proposed effective/applicability dates.* This section is proposed to be effective and applicable on January 1, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 201, 245, and 252

RIN Number 0750-AG38

### Defense Federal Acquisition Regulation Supplement; Government Property (DFARS Case 2009-D008)

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise DFARS part 245, Government Property, to reflect the recent revisions to FAR part 45, Government Property.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before February 1, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2009-D008, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Internet. Follow the instructions provided at the "Submit a Comment" screen. Please include "DFARS Case 2009-D008".

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D008 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Please cite DFARS Case 2009-D008.

Comments received generally will be posted without change, including any personal information provided. Please check <http://www.regulations.gov> approximately two to three days after electronic submission to verify posting—allow 30 days for posting of comments submitted by mail.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Overstreet, 703-602-0311.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This rule proposes to update and reorganize DFARS subparts 245.6 and 245.7 for consistency with FAR changes published at 72 FR 27364 on May 15, 2007, that address management of Government property in the possession of contractors, as well as the related

DFARS changes published at 74 FR 37645 on July 29, under DFARS Case 2007–D020. Minor related changes are proposed in part 201 and subparts 245.1 and 245.5. The rule also proposes to add a new property disposal clause at 252.245–70XX, Reporting, Reutilization, and Disposal. The following table summarizes the proposed rule revisions.

DFARS Citation	Changes made by this rule
201.670 .....	Updated and relocated from 245.70.
245.107–70 .....	Redesignated as 245.107 and added reference to DFARS clause 252.245–70XX.
245.5 .....	Added subpart to address support of Government property administration.
245.570 .....	Updated and relocated from 245.612.
245.6 .....	Renamed subpart as Reporting, Reutilization and Disposal.
245.601 .....	Deleted section and relocated updated definitions under DFARS clause 252.245–70XX.
245.602 .....	Added section to address reutilization of Government property.
245.602–1 .....	Added subsection, updated, and relocated from 245.606–3 and 245.7201.
245.602–3 .....	Added subsection, updated, and relocated from 245.608–1 and 245.608–2.
245.602–70 .....	Added subsection to address plant clearance procedures.
245.603 .....	Deleted section heading.
245.603–70 .....	Deleted subsection.
245.603–71 .....	Deleted subsection. Updated and relocated requirements under DFARS clause 252.245–70XX.
245.604 .....	Updated and relocated policy under DFARS clause 252.245–70XX. Renamed section as “Disposal of surplus property” to conform to FAR.
245.604–3 .....	Updated and relocated from 245.73.
245.606 .....	Deleted section.
245.606–3 .....	Deleted subsection. Updated and relocated to 245.602–1.
245.606–5 .....	Deleted subsection. Updated and relocated under DFARS clause 252.245–70XX.
245.606–70 .....	Deleted subsection.
245.607 .....	Deleted section heading.
245.607–1 .....	Deleted subsection. Updated and relocated subsection under DFARS clause 252.245–70XX.
245.607–2 .....	Deleted subsection.
245.607–70 .....	Deleted subsection. Updated and relocated subsection under DFARS clause 252.245–70XX.
245.608 .....	Deleted section heading.
245.608–1 .....	Deleted subsection. Updated and relocated to 245.602–3.
245.608–2 .....	Deleted subsection. Updated and relocated to 245.602–3.
245.608–5 .....	Deleted subsection.
245.608–7 .....	Deleted subsection.
245.608–70 .....	Deleted subsection.
245.608–71 .....	Deleted subsection.
245.608–72 .....	Deleted subsection.
245.609 .....	Deleted section.
245.610 .....	Deleted section. Updated and relocated under DFARS clause 252.245–70XX.
245.612 .....	Deleted section. Updated and relocated in 245.570.
245.613 .....	Deleted section.
245.70 .....	Deleted subpart. Updated and relocated to 201.670.
245.71 .....	Deleted subpart. Updated and relocated to 245.70.
245.72 .....	Deleted subpart. Updated and relocated to 245.602–1 and DFARS Procedures, Guidance, and Information.
245.73 .....	Deleted subpart. Updated and relocated to 245.604–3.
252.245–7000 .....	Added reference to 245.107.
252.245–70XX .....	Added clause.

## II. Executive Order 12866

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

## III. Regulatory Flexibility Act

DoD does 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 proposed rule imposes no new requirements on small businesses. It makes no significant change to DoD policy regarding the management of Government property in the possession of contractors. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD

invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2009–D008.

## IV. Paperwork Reduction Act

The information collection requirements of the Defense Federal Acquisition Regulation Supplement (DFARS) part 245, Government Property, related clauses in DFARS part 252, and related forms in DFARS part 253, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0246. No new information collection

requirements are imposed by this proposed rule.

## List of Subjects in 48 CFR Parts 201, 245, and 252

Government procurement.

**Ynette R. Shelkin,**  
*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 201, 245, and 252 as follows:

1. The authority citation for 48 CFR parts 201, 245, and 252 continues to read as follows:

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

## PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Add section 201.670 to read as follows:

**201.670 Appointment of property administrators and plant clearance officers.**

(a) The head of a contracting activity shall appoint or terminate (in writing) property administrators and plant clearance officers.

(b) In appointing qualified property administrators and plant clearance officers, the appointment authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

**PART 245—GOVERNMENT PROPERTY****245.107–70 [Redesignated as 245.107]**

3. Redesignate section 245.107–70 as 245.107 and revise to read as follows:

**245.107 Contract clauses.**

(a) 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.

(b) Use the clause at 252.245–70XX, Reporting, Reutilization and Disposal, in solicitations and contracts that contain the clause at—

(1) FAR 52.245–1, Government Property; or

(2) FAR 52.245–2, Government Property Installation Operation Services.

4. Add subpart 245.5 to read as follows:  
Sec.

**Subpart 245.5—Support Government Property Administration****245.570 Storage at the Government's expense.**

All storage contracts or agreements shall be separately priced and shall include all costs associated with the storage.

5. Revise subpart 245.6 to read as follows:

**Subpart 245.6—Reporting, Reutilization, and Disposal**

Sec.

245.602 Reutilization of Government property.

245.602–1 Inventory disposal schedules.

245.602–3 Screening.

245.602–70 Plant clearance procedures.

245.604 Disposal of surplus property.

245.604–3 Sale of surplus property.

**Subpart 245.6—Reporting, Reutilization, and Disposal****245.602 Reutilization of Government property.**

**245.602–1 Inventory disposal schedules.**  
Plant clearance officers shall verify inventory schedules to determine the following:

(1) *Allocability.*

(i) Review contract requirements, delivery schedules, bills of material, and other pertinent documents to determine whether schedules include property that—

(A) Is appropriate for use on the contract; or

(B) Exceeds the quantity required for completion of the contract, but could be diverted to other commercial work or Government use.

(ii) Review the contractor's—

(A) Recent purchases of similar material;

(B) Plans for current and scheduled production;

(C) Stock record entries; and

(D) Bills of material for similar items.

(2) *Quantity.* While a complete physical count of each item may not be required, take adequate measures to provide reasonable assurance that available inventory is in accordance with quantities listed on the inventory schedules.

(3) *Condition.* Ensure the inventory condition matches that shown on the inventory schedules.

**245.602–3 Screening.**

Property will be screened DoD-wide, including the contracting agency, requiring agency and, as appropriate, the General Services Administration. The requiring agency shall have priority for retention of listed items. All required screening must be completed before any surplus contractor inventory sale can take place. The plant clearance officer shall arrange for inspection of property at the contractor's plant if requested by a prospective transferee, in such a manner as to avoid interruption of the contractor's operations.

**245.602–70 Plant clearance procedures.**

Follow the procedures at PGI 245.602–70 for establishing and processing a plant clearance case.

**245.604 Disposal of surplus property.****245.604–3 Sale of surplus property.**

Plant clearance officers shall use the following procedures for the sale of surplus property:

(1) *Informal bid procedures.* The plant clearance officer may direct the contractor to issue informal invitations for bid (orally, telephonically, or by other informal media), provided—

(i) Maximum practical competition is maintained;

(ii) Sources solicited are recorded; and

(iii) Informal bids are confirmed in writing.

(2) *Sale approval and award.*

(i) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(A) Knowledge or tests of the market;

(B) Current published prices for the property;

(C) The nature, condition, quantity, and location of the property; and

(D) Past sale history for like or similar items.

(ii) Approve award to the responsible bidder whose bid is most advantageous to the Government. The plant clearance officer shall not approve award to any bidder who is not eligible to enter into a contract with DoD due to inclusion on the Excluded Parties List System. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the contracting officer.

(iii) Notify the contractor of the bidder to whom an award will be made within five working days from receipt of bids.

(3) *Noncompetitive sales.*

(i) Noncompetitive sales include purchases or retention at less than cost by the contractor. Noncompetitive sales may be made when—

(A) The contracting department/agency or the plant clearance officer determines that this method is essential to expeditious plant clearance; and

(B) The Government's interests are adequately protected.

(ii) Noncompetitive sales shall be at fair and reasonable prices, not less than those reasonably expected under competitive sales.

(iii) Conditions justifying non-competitive sales are—

(A) No acceptable bids are received under competitive sale;

(B) Anticipated proceeds do not warrant competitive sale;

(C) Specialized nature of the property would not create bidder interest;

(D) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(E) Such action is essential to the Government's interests.

**Subpart 245.70—[Removed]**

6. Subpart 245.70 is removed.

7. Redesignate subpart 245.71 as 245.70, and revise to read as follows:

**Subpart 245.70—Plant Clearance Forms**

Sec.

245.7001 Forms.

245.7001–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

245.7001–2 DD Form 1149, Requisition and Invoice Shipping Document.

245.7001–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.

- 245.7001-4 DD Form 1640, Request for Plant Clearance.  
 245.7001-5 DD Form 1641, Disposal Determination/Approval.  
 245.7001-6 Defense Logistics Agency Form 1822, End Use Certificate.

### Subpart 245.70—Plant Clearance Forms

#### 245.7001 Forms.

Use the forms listed below in performance of plant clearance actions.

#### 245.7001-1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

#### 245.7001-2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory.

#### 245.7001-3 DD Form 1348-1, DoD Single Line Item Release/Receipt Document.

Use when authorized by the plant clearance officer.

#### 245.7001-4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

#### 245.7001-5 DD Form 1641, Disposal Determination/Approval.

Use to record rationale for the following disposal determinations:

- (a) Downgrade useable property to scrap.
- (b) Abandonment or destruction.
- (c) Noncompetitive sale of surplus property.

#### 245.7001-6 Defense Logistics Agency Form 1822, End Use Certificate.

Use when directed by the plant clearance officer.

### Subpart 245.72—[Removed]

8. Subpart 245.72 is removed.

### Subpart 245.73—[Removed]

9. Subpart 245.73 is removed.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Revise the introductory text of section 252.245-7000 to read as follows:

#### 252.245-7000 Government-Furnished Mapping, Charting, and Geodesy Property.

As prescribed in 245.107(a), use the following clause:

\* \* \* \* \*

11. Add section 252.245-70XX to read as follows:

#### 252.245-70XX Reporting, Reutilization and Disposal.

As prescribed in 245.107(b), use the following clause:

#### REPORTING, REUTILIZATION AND DISPOSAL (DATE)

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

(1) *Commerce Control List Item (CCLI)* means commodities and associated technical data (including software) subject to export controls by the Department of Commerce. (14 CFR 772)

(2) *Demilitarization* means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

(3) *Munitions List Items (MLI)* means commodities and associated technical data (including software) contained in the U.S. Munitions List (USML) that are subject to export controls by the Department of State. (22 CFR 121)

(4) *Scrap* means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable MLI or CCLI components, and parts are not "scrap."

(5) *Serviceable or usable property* means property with potential for reutilization or sale "as is" or with minor repairs or alterations; in Federal Condition Codes: A1, A2, A4, A5, B1, and B4.

(b) *Inventory disposal schedules.*

(1) The Contractor shall complete SF 1428, Inventory Schedule B, within the Plant Clearance Automated Reutilization Screening System (PCARSS). Information on PCARSS can be obtained from the plant clearance officer and at <http://www.dema.mil/ITCSO/CBT/PCARSS/index.cfm>. Instructions for completing the form are provided on the reverse side of the form.

(i) SF 1428 shall contain the following supply condition codes together with disposal codes 1 through 9, X, and S (e.g., A1, F7, SS):

(A) A—New, used, repaired, or reconditioned property; serviceable and issuable to all customers without limitations or restrictions; includes material with remaining shelf life of more than six months.

(B) B—New, used, repaired, or reconditioned property; serviceable and issuable or for its intended purpose but restricted from issue to specific units, activities, or geographical areas because of its limited usefulness or short service-life expectancy; includes material and remaining shelf life of three to six months.

(C) F—Economically repairable property which requires repair, overhaul or reconditioning; includes repairable items which are radioactively contaminated.

(D) H—Property which has been determined to be unserviceable and does not meet repair criteria.

(E) S—Property that has no value except for its basic material content.

(ii) The item description on the SF 1428 shall contain the following:

(A) The applicable Federal Supply Code (FSC) for all items, except items in scrap condition.

(B) The manufacturer name for all aircraft components under Federal Supply Group (FSG) 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(C) The manufacturer name, make, model number, model year and serial number for all aircraft under FSCs 1510 and 1520.

(iii) If the schedules are acceptable, the plant clearance officer shall complete and send the Contractor a DD Form 1637, Notice of Acceptance of Inventory.

(c) *Proceeds from sales of surplus property.*

(1) Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(i) Credited to the Government as part of the settlement agreement;

(ii) Credited to the price or cost of the contract;

(iii) Applied as otherwise directed by the Contracting Officer; or

(iv) Forwarded to the plant clearance officer.

(d) *Contractor inventory in foreign countries.*

The Contracting Officer may allow the contractor to dispose of inventory in foreign countries provided that—

(1) The proposed purchaser's name is not on the list of Parties Excluded from Procurement Programs;

(2) The sales contract or other document forbids exports by purchasers and subpurchasers to Communist areas (FAR 25.702) or other prohibited destinations; and

(3) Sale or other disposition of foreign inventory by the contractor, including sale to foreign governments, requires that the sales contract or other document transferring title include the following certificate:

"The Purchaser certifies that the property covered by this contract will be used in (name of country). In the event of resale or export by the Purchaser of any of the property acquired at a price in excess of U.S. \$1,000 or equivalent in other currency at the official exchange rate, the Purchaser agrees to obtain the approval of (name and address of Contracting Officer)."

(e) *Restrictions on purchase or retention of contractor inventory.*

(1) Contractors may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard;

(ii) Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

(iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2) The Contractor may conduct internet-based sales, to include use of a third-party.

(f) *Demilitarization.* Demilitarization of contractor inventory may be required to prevent the property (both serviceable and unserviceable) from being used for its originally intended purpose, or prevent the release of inherent design information that could be used against the United States. The Contractor shall demilitarize contractor inventory possessing offensive or defense characteristics, and not required within DoD, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoD 4160.21-M-1, edition in effect as of the date of this contract. The plant clearance officer may authorize the purchaser to perform the demilitarization provided the property is not inherently dangerous to public health and safety.

(g) *Classified contractor inventory.* The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the contracting officer.

(h) *Inherently dangerous inventory.* Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards are provided.

(i) *Compliance with export control requirements.* The Contractor is responsible for complying with export control laws and regulations. This includes ensuring necessary and appropriate reviews of potential surplus sales buyers of MLI and CCLI.

(j) *Disposal of scrap.*

(1) Contractor with an approved scrap procedure.

(i) The Contractor shall submit for approval to the property administrator a procedure for the untailability and management of scrap. The procedure shall, at a minimum, provide for the effective and efficient disposition of scrap so as to minimize costs and maximize sales proceeds; and contain the necessary internal controls for mitigating the improper release of non-scrap property. Government- and contractor-owned scrap may be commingled, with plant clearance officer concurrence, when determined to be effective and efficient.

(ii) Once approved by the property administrator, the plant clearance officer may authorize routine disposal of scrap.

(2) The property administrator may waive the requirement for an approved scrap procedure if the amount of scrap produced or to be produced is minimal and poses little risk.

(3) *Scrap warranty.*

(i) The Contractor shall require all buyers of scrap to sign a DD Form 1639, Scrap Warranty.

(ii) The Contracting Officer may release the Contractor from the terms of the scrap warranty in return for consideration paid to the Government. The consideration will represent the difference between—

(A) The sale price of the scrap; and

(B) A fair and reasonable price for the material if it had been sold for purposes other than scrap.

(iii) The Contractor shall pay the consideration to the Government and the Government may execute the release even

though the contract containing the warranty was not made directly with the Government.

(iv) If the scrap is resold to a second buyer, the first buyer shall obtain a scrap warranty from the second buyer. Upon receipt of the second buyer's scrap warranty, the Government will release the first buyer from liability under the original warranty.

(k) *Disposal of contractor inventory for NATO cooperative projects.*

(1) North Atlantic Treaty Organization (NATO) cooperative project agreements may include disposal provisions of jointly acquired property without regard to any applicable disposal laws of the United States.

(2) Disposal of such property includes transfer of U.S. interests in the property to one of the other governments participating in the agreements, or the sale of the property.

(3) Payment for the transfer or sale of any U.S. interest shall be made in accordance with the terms of the project agreement.

(l) *Sale of surplus contractor inventory.*

(1) The Contractor or its employees shall submit their bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(2) The Contractor shall solicit a sufficient number of bidders to obtain adequate competition and use formal invitations for bid, unless the plant clearance officer approves use of informal bid procedures. The Contractor shall include in its invitation for bids, the sales terms and conditions provided by the plant clearance officer.

(3) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect property and prepare bids.

(4) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(5) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the Contractor may (when the results are expected to justify the additional expense) display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice in appropriate trade journals or magazines and local newspapers.

(6) When the acquisition cost of the property to be sold at one time, in one place, is \$250,000 or more, the Contractor shall send a notice of the proposed sale to FedBizOpps (<http://www.fbo.gov>).

(7) The plant clearance officer or representative will witness the bid opening. Within two working days after bid opening, the Contractor will submit to the plant clearance officer, either electronically or manually, two copies of the bid abstract.

(8) When demilitarization of property is required, whether on or off contractor or Government premises, the sales contract must include the following provisions:

(i) *Demilitarization.* Item(s) \_\_\_ require demilitarization by the Purchaser. Insert item number(s) and specific demilitarization requirements for item(s) shown in Defense Demilitarization Manual, DoD 4160.21-M-1, edition in effect as of the date of this contract.

(ii) *Demilitarization on Government or non-Government premises.* Property requiring demilitarization shall be demilitarized by the Purchaser under the

supervision of qualified Department of Defense personnel. Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative. Demilitarization will be accomplished as specified in the contract. The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(iii) *Failure to demilitarize.* If the Purchaser fails to demilitarize the property as specified in the contract, the Contractor may, upon giving ten days written notice from date of mailing to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(C) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(End of clause)

[FR Doc. 2010-30285 Filed 12-2-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**49 CFR Parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241**

[Docket No. FRA-2006-25274, Notice No. 3]

RIN 2130-ZA00

### Revised Proposal for Revisions to the Schedules of Civil Penalties for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order; Reopening and Extending the Comment Period

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).