

pursuant to paragraph (c)(5)(iii)(C)(2) of this section within no more than one week of the change. Providers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

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[FR Doc. 2011-7798 Filed 4-1-11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11-54, RM-11624; DA 11-499]

Television Broadcasting Services; Augusta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Southern Media Holdings, Inc. ("SMH"), the licensee of station WFXG, Augusta, Georgia, requesting the substitution of channel 51 for channel 31 at Augusta. SMH seeks this channel substitution as it cannot obtain the credit necessary to construct the channel 31 facility and states that the money required to construct the channel 31 facility will instead be used to serve other aspects of the public interest.

DATES: Comments must be filed on or before May 4, 2011, and reply comments on or before May 19, 2011.

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: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, joyce.bernstein@fcc.gov, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11-54, adopted March 15, 2011, and released March 16, 2011. 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 Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

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.

Federal Communications Commission.

Barbara A. Kreisman,
Chief, Video Division, Media Bureau.

Proposed Rule

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, and 339.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments

under Georgia, is amended by adding channel 51 and removing channel 31 at Augusta.

[FR Doc. 2011-7787 Filed 4-1-11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 32, 45, 49, 52, and 53

[FAR Case 2010-009; Docket 2010-0009; Sequence 1]

RIN 9000-AL95

Federal Acquisition Regulation; Government Property

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify reporting, reutilization, and disposal of Government property and the contractor requirements under the Government property clause.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before June 3, 2011, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2010-009 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010-009" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010-009." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010-009" on your attached document.

- *Fax:* (202) 501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010-009, 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 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 2010-009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to clarify current FAR policy with respect to the proper disposition of contractor inventory. However, a number of other changes were made, aimed at enhancing the management of Government contract property in the hands of contractors. The changes are the result of questions raised by contractors and Government personnel, Government and industry exchanges, and lessons learned. In addition, some comments from the previous FAR Case 2008-011, published in the **Federal Register** at 75 FR 38675 on July 2, 2010, that were deemed to be outside the scope of that case, are addressed in this case.

The revisions include the following:

1. Clarify that FAR part 45 and FAR 52.245-1 does not apply to Government property incidental to the place of performance at a Government site or installation. See FAR 45.000.
2. Add new definitions for "loss of Government property" and "unit acquisition cost" in FAR part 45 and FAR 52.245-1, delete the definition of "acquisition cost," and move the definition of "surplus property" from part 45 to part 2.
3. Update FAR subpart 45.6 to clarify and align with the Federal Management Regulation; and
4. Revise language based on comments received in response to, but outside the scope of, FAR Case 2008-011.

II. Executive Order 12866

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.

III. Regulatory Flexibility Act

The proposed changes may 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 affects the method of managing some Government property in the hands of contractors, particularly scrap. However, as the rule reduces the burden on all businesses by removing the reporting of production scrap, it should have a positive effect on small businesses. An Initial Regulatory Flexibility Act (IRFA) analysis has been prepared and is summarized as follows.

This Initial Regulatory Flexibility Analysis has been prepared consistent with Section 603, Title 5, of the United States Code.

1. Description of the reasons why action by the agency is being considered.

DoD, GSA, and NASA are proposing to revise FAR parts 45 and 52. The focus of this effort is to clarify FAR subpart 45.6, Reporting, Reutilization, and Disposal, and the contractor requirements under the clause at FAR 52.245-1.

The revisions include technical corrections to align the FAR with the requirements of the Federal Management Regulation (FMR). For example, the new language is now consistent with current property reutilization priorities, abandonment and destruction determinations, and surplus sales policy. Moreover, the language has been edited for clarity and placed in proper process sequence. Also included is new and expanded policy language on the disposal of scrap.

Notwithstanding the proposed rule's overall focus on FAR subpart 45.6 and the associated contractor requirements under FAR 52.245-1, additional revisions include new language at FAR 45.104 for contracting officers on depositing monies received from contractors for property that is lost, damaged, destroyed or stolen.

In essence, the rule does not result in new requirements on contractors; it clarifies existing policies and procedures. The rule will simplify compliance for contractors and enable consistent Government oversight.

2. Succinct statement of the objectives of, and legal basis, for, the proposed rule.

Title 40 U.S.C. 524, Public Buildings, Property, and Works requires, in part, that executive agencies account for Government property, determine when such property is excess, and dispose of excess Government property promptly. This proposed rule amends the FAR to revise the policies for the disposition of contractor inventory. The objective of this case is to substantially revise, clarify, and improve current policy.

3. Description of, and, where feasible, estimate of the number of small entities to which the proposed rule will apply.

It is estimated that approximately 5000 contractors have Federal property in their possession. DoD has approximately 3000 contractors with potential contract-property reporting requirements. Approximately 60 percent of all DoD contractors are small businesses. Given that property in the possession of contractors is overwhelmingly DoD property, it is estimated the DoD ratio of small business to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, it is estimated that approximately 3000 small

businesses have Government property in their possession.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report of record.

FAR Case 2004-025 streamlined the requirements concerning property management in FAR part 45. FAR Case 2008-011 continued that philosophy. This new proposed rule seeks continuous improvement to property management by streamlining and clarifying the policies for the disposition of contractor inventory. DoD, GSA, and NASA believe the rule will have a positive effect on small businesses in that it further streamlines the process and reduces the paperwork burden.

It should be noted that these recommended changes are consistent with the Office of the Under Secretary of Defense, Acquisition, Technology and Logistics, recent statements emphasizing the need to improve the productivity of the defense industry and remove Government impediments to efficiency.

There are four reports currently required. These reports are required to assure appropriate use and disposition of contract property. These reports are—

- SF 1423, Inventory Verification Survey.
- SF 1424, Inventory Disposal Report.
- SF 1428, Inventory Disposal Schedule.
- SF 1429, Inventory Disposal Schedule Continuation Sheet.

All of these forms are available online and may be submitted by the contractor using electronic means. It should be noted that DoD no longer requires the use of the SF 1428 and 1429 forms and instead DoD uses the web-enabled Plant Clearance Automated Reutilization and Reporting System (PCARRS). NASA and other Federal agency contractors use PCARRS when their contracts are delegated to DCMA for plant clearance. Use of PCARRS reduces burden on small businesses as well other businesses by providing an easily accessible web-based reporting mechanism.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The Federal Property Management Regulation (FPMR) and the FMR published by the General Services Administration provide property management guidance to Government personnel. Some of the requirements of the FMR are implemented by the FAR in regard to contracts awarded to Federal contractors. The FPMR and FMR do not duplicate, overlap, or conflict with the proposed rule.

6. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

There are no known alternatives to this proposed rule. However, the proposed rule should not have a significant adverse economic impact on a substantial number of

small entities. In fact, the current impact to both large and small contractors will be reduced. For example, the current FAR requires Government approval of contractor scrap procedures prior to allowing the contractor to dispose of ordinary production scrap. In addition, the current practice of requiring contractors (without approved scrap procedures) to submit inventory schedules or scrap lists for production scrap assumes that such practice is economically or otherwise justified in all cases. This practice unnecessarily burdens small contractors that generate only small amounts of scrap.

This proposed rule removes the requirement for Government approvals of contractor scrap procedures and submitting inventory schedules and scrap lists, thus easing the burden on large and small contractors alike. It should be noted that contractor procedures would still be required and evaluated by the agency responsible for contract administration, as a normal part of contract property administration. The new rule will also result in more consistent levels of Government oversight, further easing the burden on small entities.

The information required by the proposed rule has been reduced to the minimum necessary to assure compliance with the Government's statutory accountability requirements.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010-009) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a revised information collection requirement concerning Government Property to the Office of Management and Budget.

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average .32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

- Respondents:* 4,875.
- Responses per respondent:* 910.26.
- Total annual responses:* 4,437,518.
- Preparation hours per response:* .32.
- Total response burden hours:* 1,420,006.

V. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 3, 2011 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000-00XX, Government Property, in correspondence.

List of Subjects in 48 CFR Parts 2, 31, 32, 45, 49, 52, and 53

Government procurement.

Dated: March 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 31, 32, 45, 49, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 2, 31, 32, 45, 49, 52, and 53 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. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Surplus property" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). See 41 CFR 102-36.40.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Amend section 31.205-19 by revising paragraphs (e)(2)(iv) introductory text, (e)(2)(iv)(A), and (e)(2)(iv)(C) to read as follows:

31.205-19 Insurance and indemnification.

* * * * *

(e) * * *

(2) * * *

(iv) Costs of insurance for the risk of loss of Government property are allowable to the extent that—

(A) The contractor is liable for such loss;

* * * * *

(C) Such insurance does not cover loss of Government property that results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in FAR 52.245-1(h)(1)(ii)).

* * * * *

PART 32—CONTRACT FINANCING

4. Amend section 32.503-16 by revising the first sentence of paragraph (a) to read as follows:

32.503-16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk of loss of Government property for property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

5. Amend section 32.1010 by revising the first sentence of paragraph (a) to read as follows:

32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk of loss of Government property, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

PART 45—GOVERNMENT PROPERTY

6. Revise section 45.000 to read as follows:

45.000 Scope of part.

(a) This part prescribes policies and procedures for providing Government property to contractors; contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.

(b) It does not apply to—

- (1) Government property provided under any statutory leasing authority, except as to non-Government use of property under 45.301(f);
- (2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance based payments;
- (3) Disposal of real property;
- (4) Software and intellectual property;

or

(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.

7. Amend section 45.101 by—

- a. Removing the definition "Acquisition cost";
- b. Adding in alphabetical order the definitions "Loss of Government property", and "Production scrap";
- c. Removing the definition "Surplus property" and
- d. Adding in alphabetical order the definition "Unit acquisition cost".

The added text reads as follows:

45.101 Definitions.

* * * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage, or destruction of Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear, or manufacturing defects. Loss of Government property includes, but is not limited to—

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless

for its intended purpose or beyond economical repair.

* * * * *

Production scrap means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

* * * * *

Unit acquisition cost means—

- (1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and
- (2) For contractor-acquired property, the cost derived from the contractor's records that reflect consistently applied generally accepted accounting principles.

8. Amend section 45.102 by adding paragraph (e) to read as follows:

45.102 Policy.

* * * * *

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or equipment, shall not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the head of the contracting activity determines that such installation or construction is necessary and in the Government's interest.

9. Amend section 45.104 by—

- a. Revising the introductory text of paragraph (a);
- b. Revising paragraph (b); and
- c. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

45.104 Responsibility and liability for Government property.

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

* * * * *

(b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are noncompliant with contract requirements.

* * * * *

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, shall determine—

- (1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated lost property; and
- (2) The appropriate form and method of Government recovery (may include

repair, replacement, or other restitution).

(e) Any monies received as financial restitution shall be credited to the Treasury of the United States as miscellaneous receipts, unless otherwise authorized by statute (31 U.S.C. 3302(b)).

10. Amend section 45.105, by revising the first sentence of the introductory text of paragraph (b), and by revising paragraphs (b)(1) and (d) to read as follows:

45.105 Contractors' property management system compliance.

* * * * *

(b) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, shall request prompt correction of deficiencies, and shall request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. * * *

(1) Revocation of the Government's assumption of risk for loss of Government property; and/or

* * * * *

(d) When the property administrator determines that a reported case of loss of Government property is a risk assumed by the Government, the property administrator shall notify the contractor in writing that they are granted relief of stewardship responsibility and liability in accordance with FAR clause 52.245-1(f)(1)(vii). Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator shall request that the contracting officer hold the contractor responsible and liable.

11. Amend section 45.107 by—

- a. Revising paragraph (a)(1)(i);
- b. Removing from paragraph (b) "service contracts" and adding "fixed-price service contracts" in its place; and
- c. Removing from paragraph (d) "acquisition cost" and adding "unit acquisition cost" in its place.

The revised text reads as follows:

45.107 Contract clauses.

(a)(1) * * *

(i) All cost-reimbursement, time-and-material, and labor-hour type solicitations and contracts; and, when property is expected to be furnished for the labor-hour contracts.

* * * * *

12. Amend section 45.201 by—

- a. Removing from paragraph (a)(1) "tracking and/or" and adding "tracking and management, and/or" in its place;

b. Removing from paragraph (a)(4) “tracking); and” and adding “tracking and management); and” in its place; and
 c. Revising paragraph (c)(4).
 The revised text reads as follows:

45.201 Solicitation.

* * * * *

(c) * * *
 (4) A description of the offeror’s property management system and any customary commercial practices, voluntary consensus standards, or industry leading practices and standards to be used by the offeror in managing Government property.

* * * * *

45.202 [Amended]

13. Amend section 45.202 by removing from the first sentence of paragraph (a) “from the contractor” and adding “from an offeror or contractor” in its place.

14. Amend section 45.602–1 by—

a. Removing from paragraphs (b)(2) and (b)(3) “Require a contractor” and adding “Require the contractor” in its place;

b. Removing from paragraph (b)(4) “might entitle” and adding “may entitle” in its place;

c. Revising the introductory text of paragraph (c) and the introductory text of paragraph (c)(1);

d. Removing from paragraph (c)(1)(i) “acquisition cost” and adding “unit acquisition cost” in its place; and

e. Revising paragraph (c)(1)(iv).
 The revised text reads as follows:

45.602–1 Inventory disposal schedules.

* * * * *

(c) The contractor may request the plant clearance officer’s approval to remove the Government property from an inventory schedule.

(1) Plant clearance officers may approve removal of Government property from an inventory schedule when—

* * * * *

(iv) The contractor has requested continued use of the Government property, and the contracting officer has authorized its retention and further use.

* * * * *

15. Amend section 45.602–2 by—

a. Revising the introductory text and paragraph (a);

b. Removing paragraph (b);

c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively;

d. Removing from newly redesignated paragraph (b) “April 17, 1996,” and adding “April 17, 1996, and 15 U.S.C. 3710(i);” in its place;

e. Revising newly redesignated paragraph (c);

f. Adding new paragraphs (d) and (e).
 The revised and added text reads as follows:

45.602–2 Reutilization priorities.

Plant clearance officers shall initiate reutilization actions for all property not meeting the abandonment or destruction criteria of 45.603(b). Authorized methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the owning agency;
 * * * * *

(c) Report to GSA for reuse within the Federal Government or donation as surplus property;

(d) Dispose of the following property in accordance with agency procedures without reporting to GSA:

(1) Property determined appropriate for abandonment or destruction (see FMR 102–36.305, 41 CFR 102–36.305).

(2) Property furnished to nonappropriated fund activities property (see FMR 102–36.165, 41 CFR 102–36.165).

(3) Foreign excess personal property (see FMR 102–36.380, 41 CFR 102–36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste or toxic and hazardous materials.

(8) Controlled substances.

(9) Property dangerous to public health and safety.

(10) Classified items or property determined to be sensitive for reasons of national security; and

(e) Dispose of nuclear materials (see 45.603–3(b)(5)) in accordance with the Nuclear Regulatory Commission (NRC), applicable state licenses, applicable Federal regulations, and agency regulations.

16. Revise section 45.603 to read as follows:

45.603 Abandonment or destruction of personal property.

(a) When contractor inventory is processed through the reutilization screening process prescribed in 45.602–2 without success, and provided the property has no commercial value, does not require demilitarization, and does not constitute a danger to public health or welfare, plant clearance officers or other authorized officials may without further approval—

(1) Direct the contractor to destroy the property;

(2) Abandon non-sensitive property at the contractor’s or sub-contractor’s premises; or

(3) Abandon sensitive property at the contractor’s or sub-contractor’s premises, with contractor consent.

(b) Provided a Government reviewing official at least one level higher than the plant clearance officer or other agency authorized official approves, plant clearance officers or other agency authorized officials may authorize the abandonment, or order the destruction of other contractor inventory at the contractor’s or sub-contractor’s premises, in accordance with FMR 102–36–305 through 325 and consistent with the following:

(1) The property is not considered sensitive, does not require demilitarization, has no commercial value or reutilization, transfer or donation potential, and does not constitute a danger to public health or welfare.

(2) The estimated cost of continued care and handling of the property (including advertising, storage and other costs associated with making the sale), exceed the estimated proceeds from its sale.

(c) In lieu of abandonment or its authorized destruction, the plant clearance officer or authorized official may authorize the donation of property including unsold surplus property to public bodies, provided that the property is not sensitive property, does not require demilitarization, and it does not constitute a danger to public health or welfare. The Government will not bear any of the costs incident to such donations.

(d) Unless the property qualifies for one of the exceptions under FMR 102–36.330 (41 CFR 102–36.330), the plant clearance officer or requesting official will ensure prior public notice of such actions of abandonment or destruction consistent with FMR 102–36.325 (41 CFR 102–36.325).

17. Revise the section heading of 45.604 to read as follows:

45.604 Sale of surplus personal property.

* * * * *

18. Revise section 45.604–1 to read as follows:

45.604–1 Sales procedures.

Surplus personal property that has completed screening in accordance with 45.602–3(a) shall be sold in accordance with the policy for the sale of surplus personal property contained in the Federal Management Regulation, at Part 102–38 (41 CFR part 102–38). Agencies may specify implementing procedures.

45.604–2 [Removed]

19. Remove section 45.604–2.

45.604-3 and 45.604-4 [Redesignated as 45.604-2 and 45.604-3]

20A. Redesignate sections 45.604-3 and 45.604-4 as sections 45.604-2 and 45.604-3, respectively.

20B. Revise the newly redesignated section 45.604-2 to read as follows:

45.604-2 Use of GSA sponsored sales centers.

Agencies may use sales center services. Use of such centers for sale of surplus property is authorized when in the best interest of the Government, consistent with contract terms and conditions.

21. Add section 45.604-4 to read as follows:

45.604-4 Sale of property pursuant to the exchange/sale authority.

Agencies should consider the sale of property pursuant to the exchange/sale authority in FMR 102-39 (41 CFR part 102-39) when agencies are acquiring or plan to acquire similar products and other requirements of the authority are satisfied.

22. Revise section 45.605 to read as follows:

45.605 Inventory disposal reports.

The plant clearance officer shall promptly prepare an SF 1424, Inventory Disposal Report, following disposition of the property identified on an inventory disposal schedule and the crediting of any related proceeds. The report shall identify any lost or otherwise unaccounted for property and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule. The report shall be provided to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy to the property administrator.

23. Revise section 45.606-1 to read as follows:

45.606-1 Contractor scrap procedures.

(a) The property administrator should ensure that contractor scrap disposal processes, methods and practices allow for effective, efficient and proper disposition, and are properly documented in the contractor's property management procedures.

(b) The property administrator should determine the extent to which separate disposal processing or physical segregation for different scrap types is or may be required as early as possible, preferably during the solicitation phase. Such scrap may require physical segregation, unique disposal processing or separate plant clearance reporting.

For example, the scope of work may create scrap—

- (1) Consisting of sensitive items;
- (2) Containing hazardous materials or wastes;
- (3) Contaminated with hazardous materials or wastes;
- (4) That is classified or otherwise controlled;
- (5) Containing precious or strategic metals; or
- (6) That is dangerous to public health or safety.

(c) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

45.606-2 and 45.606-3 [Removed]

24. Remove sections 45.606-2 and 45.606-3.

PART 49—TERMINATION OF CONTRACTS

49.204 [Amended]

25. Amend section 49.204 by removing from paragraph (b) “destroyed, lost, stolen, or” and adding “lost or” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Amend section 52.232-16 by revising the date of the clause, and the last sentence of paragraph (e) to read as follows:

52.232-16 Progress Payments.

* * * * *

Progress Payments (Date)

* * * * *

(e) * * * The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

* * * * *

27. Amend section 52.232-32 by revising the date of the clause, and the last sentence of paragraph (g) to read as follows:

52.232-32 Performance-Based Payments.

* * * * *

Performance-Based Payments (Date)

* * * * *

(g) * * * If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor

shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

* * * * *

- 28. Amend section 52.245-1 by—
 - a. Revising the date of the clause;
 - b. Removing the definition “Acquisition cost” from paragraph (a);
 - c. Adding, in alphabetical order, the definitions, “Loss of Government property”, and “Production scrap” to paragraph (a);
 - d. Removing the definition “Surplus property” from paragraph (a);
 - e. Adding, in alphabetical order, the definition “Unit acquisition cost” to paragraph (a);
 - f. Revising paragraph (b)(1);
 - g. Removing from paragraph (b)(2) “, stolen, damaged, or destroyed”;
 - h. Adding paragraph (b)(4);
 - i. Removing from paragraph (f)(1)(ii) “property (document the receipt)” and adding “property and document the receipt” in its place;
 - j. Revising paragraphs (f)(1)(iii)(A)(1), (f)(1)(iii)(A)(10), (f)(1)(v)(A), (f)(1)(vi), and (f)(1)(vii);
 - k. Removing from paragraph (f)(1)(x) “loss, theft, damage, or destruction” and adding “loss of Government property” in its place;
 - l. Removing from paragraph (f)(2) “acquisitions” and adding “acquisitions, loss of Government property,” in its place;
 - m. Removing paragraph (f)(3);
 - n. Removing from paragraph (h)(1) introductory text “loss, theft, damage or destruction to the” and adding “loss of” in its place;
 - o. Revising paragraph (h)(1)(ii), (h)(1)(iii), (h)(2), and (h)(3);
 - p. Redesignating paragraph (h)(4) as paragraph (h)(5);
 - q. Adding new paragraph (h)(4);
 - r. Adding the words “or authorizing official” before the period at the end of the introductory text of paragraph (j);
 - s. Removing paragraph (j)(1);
 - t. Redesignating paragraphs (j)(2) through (j)(10) as paragraphs (j)(1) through (j)(9), respectively;
 - u. Revising newly redesignated paragraphs (j)(1)(i), (j)(1)(ii), the introductory text of paragraph (j)(2)(i), (j)(2)(i)(A), (j)(2)(ii), and (j)(2)(iii), (j)(2)(iv)(C), and (j)(3);
 - v. Removing from the first sentence of the newly redesignated paragraph (j)(6)(ii) the word “Government”;
 - w. Removing the newly redesignated paragraph (j)(7)(i);
 - x. Further redesignating newly redesignated paragraphs (j)(7)(ii) and (j)(7)(iii) as (j)(7)(i) and (j)(7)(ii), respectively;
 - y. Removing from the newly redesignated paragraph (j)(9) “paragraph

(j)(4)” and adding “paragraph (j)(3)” in its place;

z. Removing from paragraphs (k)(1) and (k)(2) “Government property”, respectively, and adding “property” in its place;

aa. Redesignating paragraph (k)(3) as paragraph (k)(4); and adding a new paragraph (k)(3);

bb. Removing from Alternate I “(Aug 2010)” and adding “(Date)” in its place; and removing from paragraph (h)(1) of Alternate I “loss, theft, damage, or destruction,” and adding “loss” in its place; and

cc. Removing from Alternate II “(June 2007)” and adding “(Date)” in its place; and removing from the first and second sentences of paragraph (e)(3) of Alternate II “having an” and adding “having a unit” in its place (two times).

The added and revised text reads as follows:

52.245-1 Government Property.

* * * * *

Government Property (Date)

(a) * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

* * * * *

Production scrap means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

* * * * *

Unit acquisition cost means—(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the contractor’s records that reflect consistently applied generally accepted accounting principles.

* * * * *

(b) * * *

(1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures,

records, and methodologies necessary for effective control of Government property. Prior to implementation, the Contractor shall disclose to the Property Administrator any significant changes to their property management system. The Contractor may employ customary commercial practices, voluntary consensus standards and/or industry-leading practices and standards that provide effective Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

* * * * *

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

* * * * *

- (f) * * *
- (1) * * *
- (iii) * * *
- (A) * * *

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as required in accordance with the terms and conditions of the contract.

* * * * *

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

* * * * *

(v) * * *

(A) The Contractor shall award subcontracts that clearly identify items to be provided or for fabricated items, the extent of any restrictions or limitations. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property.

* * * * *

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

(vii) *Relief of stewardship responsibility and liability.* The contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall report, upon recognition of loss of Government property, all such incidents of property loss, investigate and promptly furnish to the property administrator a written narrative of all incidents of such property loss as soon as the facts become known or when requested by the

Government. Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
- (2) The data elements required under paragraph (f)(1)(iii)(A) of this clause.
- (3) Quantity.
- (4) Accountable contract number.
- (5) A statement indicating current or future need.
- (6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.
- (7) All known interests in commingled material of which includes Government material.
- (8) Cause and corrective action taken or to be taken to prevent recurrence.
- (9) A statement that the Government will receive any reimbursement covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.
- (10) Copies of all supporting documentation.
- (11) Last known location.
- (12) A statement that the property did or did not contain sensitive, hazardous or toxic material, and if so, that the appropriate agencies were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when—

- (1) Such property is 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;
- (2) Property Administrator grants relief of responsibility and liability for loss of Government property;
- (3) Property is delivered or shipped from the Contractor’s plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or
- (4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

* * * * *

- (h) * * *
- (1) * * *

(ii) Loss of Government property that 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 of Government property 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 of Government property occurred while the Contractor had adequate property management practices or the loss 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 property from further loss. The Contractor shall

separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

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

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

* * * * *

(j) * * *

(1) * * *

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.* (i) Provided the property was not reutilized, transferred, or otherwise disposed of under paragraph (j)(1) of this clause the Contractor, as directed by the Plant Clearance Officer shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

* * * * *

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) * * *

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

* * * * *

(3) *Submission requirements.* (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

* * * * *

(k) * * *

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

* * * * *

29. Amend section 52.245-2 by revising the date of the clause, and 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 lost Government property. If any or all of the Government property is lost, or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

* * * * *

30. Amend section 52.249-2 by revising the date of the clause, and paragraph (h) to read as follows:

52.249-2 Termination for Convenience of the Government (Fixed-Price).

* * * * *

Termination for Convenience of the Government (Fixed-Price) (Date)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

31. Amend section 52.249-3 by revising the date of the clause, and paragraph (h) to read as follows:

52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

* * * * *

Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) (Date)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

32. Revise section 52.251-1 to read as follows:

52.251-1 Government Supply Sources.

As prescribed in 51.107, insert the following clause:

Government Supply Sources (Date)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government. The provisions of the clause entitled "Government Property," at 52.245-1, shall apply to all property acquired under such authorization.

(End of clause)

PART 53—FORMS

33. Amend section 53.245 by revising paragraph (c) to read as follows:

53.245 Government property.

* * * * *

(c) SF 1423 (Rev. 5/2004), *Inventory Verification Survey*. (See 45.602-1(b)(1).)

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648-BA65

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures

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

ACTION: Notification of public hearing.