

(2) *Unlimited rights categories.* The list of data types for which the Government receives unlimited rights in the SBIR/STTR clause at 252.227–7014 was corrected to harmonize with the description of those categories throughout the DFARS (see revisions at 252.227–7018(c)(1)(v)–(vii); compare 252.227–7013(c)(1)(vii)–(ix), 252.227–7014(c)(1)(ii)).

(3) *Markings.* The restrictive markings for SBIR/STTR data rights and Government purpose rights were revised to reflect the substantive changes.

#### *I. Prohibition on Preaward Negotiation*

Another specialized policy exception for the SBIR/STTR programs is that negotiation of specialized license agreements is prohibited as a condition of award, and thus is generally permitted only after award (see Policy Directive section 8(b)(6)). The implementation of this limitation was included in the draft revisions published for public comment as an advance notice of proposed rulemaking for DFARS case 2018–D071, Negotiation of Price for Technical Data and Preference for Specially Negotiated Licenses (84 FR 60988).

#### *J. Comments Sought Regarding any Increase or Decrease in Burden and Costs*

In addition to seeking public comment on the substance of the draft DFARS revisions, DoD is also seeking information regarding any corresponding change in the burden, including associated costs or savings, resulting from contractors and subcontractors complying with the draft revised DFARS implementation. More specifically, DoD is seeking information regarding any anticipated increase or decrease in such burden and costs relative to the burden and costs associated with complying with the current DFARS implementing language.

#### **List of Subjects in 48 CFR Parts 227 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

[FR Doc. 2020–18641 Filed 8–28–20; 8:45 am]

**BILLING CODE 5001–06–P**

## **DEPARTMENT OF DEFENSE**

### **Defense Acquisition Regulations System**

#### **48 CFR Parts 245 and 252**

**[Docket DARS–2020–0026]**

**RIN 0750–AK92**

#### **Defense Federal Acquisition Regulation Supplement: Property Loss Reporting in the Procurement Integrated Enterprise Environment (DFARS Case 2020–D005)**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to replace a legacy software application used for reporting loss of Government property with new capabilities developed within the DoD enterprise-wide, eBusiness platform, Procurement Integrated Enterprise Environment.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 30, 2020, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2020–D005, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Search for “DFARS Case 2020–D005” under the heading “Enter keyword or ID” and select “Search.” Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2020–D005” on any attached document.

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2020–D005 in the subject line of the message.

- *Fax:* 571–372–6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly R. Ziegler, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly R. Ziegler, telephone 571–372–6095.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DoD is proposing to amend the DFARS to replace the Defense Contract Management Agency (DCMA) eTool application used to report the loss of Government property with the new Government-Furnished Property (GFP) module in the Procurement Integrated Enterprise Environment (PIEE). The DCMA eTool application is a self-contained, legacy application that has numerous limitations, to include its inability to share data with other internal or external DoD business systems or to respond to changes in regulation, policies, and procedures. DoD developed the GFP module within the PIEE to house the GFP lifecycle to address these limitations and to provide the Department with the end-to-end accountability for all GFP transactions within a secure, single, integrated system.

### **II. Discussion and Analysis**

The clause at DFARS 252.245–7002, Reporting Loss of Government Property, directs DoD contractors to use the Defense Contract Management Agency (DCMA) eTool software application for reporting loss of Government-furnished property (GFP). This rule proposes to revise the clause at DFARS 252.245–7002 to direct contractors to use the property loss function within the GFP module in the PIEE, instead of the DCMA eTool, when reporting loss of Government-furnished property. There are no changes to the data to be reported, only the application in which it is submitted. The new application is based upon newer technology that will provide contractors with a much more efficient process to submit data for their reports. For instance, contractors will not be required to enter the same data into multiple fields, the system will automatically populate data fields throughout the process. This one improvement will save contractors time and reduce the potential for errors during manual entry.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This proposed rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold, or for commercial items, including commercially available off-the-shelf items.

#### IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### VI. 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 rule is not creating any new requirements for contractors, it is merely changing the software application contractors use to electronically report property losses under existing policies and practices. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to replace a legacy software application used for reporting loss of Government property with new capabilities developed within the DoD enterprise-wide, eBusiness platform, Procurement Integrated Enterprise Environment (PIEE).

The objective of the case is to transition property loss reporting from a stand-alone, legacy software application to the PIEE, a fully integrated, DoD enterprise-wide eBusiness platform. Use of the new system functionality will enable DoD to address numerous audit findings and security concerns.

This rule will likely affect some small business concerns that are provided Government-furnished property in the performance of their contracts and those who experience a loss which must be reported in the PIEE. Data generated from the DCMA eTool for fiscal years (FY) 2017 through 2019 indicates that an average of 3,765 loss cases are

submitted each year. Of those 3,765 loss cases, 52% or 1,958 cases are filed by the top 7 large business entities, while 48% or 1,807 make up all others which may include unique small business entities.

Data generated from the Federal Procurement Data System (FPDS) for fiscal years 2017 through 2019, indicates that DoD has awarded an average of 34,463 contracts that contain the two applicable Government property clauses FAR 52.245-1 and DFARS 252.245-7002. Of those applicable contracts, DoD has awarded approximately 16,966 contracts to an average of 4,009 unique small entities during the three-year period. This would equate to 4 applicable contracts awarded to each unique small business entity.

While there is no way to identify how many property loss cases are attributable specifically to unique small business concerns, it can be assumed that 11% of applicable contracts have had a property loss case reported (3,765/34,463). If the top 7 large business entities are removed from the equation, the number is reduced to 5% (1,807/34,463). We can therefore presume that approximately 5% of the 16,966 or 848 contracts awarded to 212 small business entities may require a property loss case.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. The replacement of the application used for the approved information collection requirements is intended to maintain the status quo and potentially reduce compliance requirements over time due to the technological advances in the PIEE. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives available to meet the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD 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 (DFARS Case 2020-D005) in correspondence.

#### VII. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The proposed change to the DFARS does not impose new information collection requirements that require the approval of the Office of Management and Budget (OMB) under

44 U.S.C. 3501, *et seq.* By replacing the software application used for reporting property loss, the status quo for the current information collection requirements are maintained under OMB clearance number 9000-0075, Government Property. OMB 9000-0075 provides approval for collections of information under FAR clause 52.245-1, Government Property, which requires reporting of Government-property losses. DFARS clause 252.245-7002 is used in conjunction with FAR 52.245-1, and merely stipulates that DoD will electronically report any property losses as required by FAR 52.245-1 using the PIEE portal.

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

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 245 and 252 are proposed to be amended as follows:

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

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### PART 245—GOVERNMENT PROPERTY

- 2. Amend section 245.102 by—
- a. In paragraph (4)(i) removing “GFP” and adding “Government-furnished property” in its place; and
  - b. Revising paragraph (5).

The revision reads as follows:

#### 245.102 Policy.

\* \* \* \* \*

(5) *Reporting loss of Government property.* The Government-Furnished Property module of the Procurement Integrated Enterprise Environment is the DoD data repository for reporting loss of Government property in the possession of contractors. The requirements and procedures for reporting loss of Government property to the Government-Furnished Property module are set forth in the clause at 252.245-7002, Reporting Loss of Government Property, prescribed at 245.107.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 252.245-7002 by—
- a. Removing the clause date of “(DEC 2017)” and adding “(DATE)” in its place; and
  - b. Revising paragraph (b)(1).

The revision reads as follows:

**252.245-7002 Reporting Loss of Government Property.**

\* \* \* \* \*

(b) \* \* \*

(1) The Contractor shall use the property loss function in the Government-Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE) for reporting loss of Government property. Reporting value shall be at unit acquisition cost. Current PIEE users can access the GFP module by logging into their account. New users may register for access and obtain training on the PIEE home page at <https://wawf.eb.mil/piee-landing>.

\* \* \* \* \*

[FR Doc. 2020-18639 Filed 8-28-20; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 216 and 229**

[Docket No. 200819-0222]

RIN 0648-BG55

**Guidelines for Safely Deterring Marine Mammals**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Marine Mammal Protection Act (MMPA) allows for specified persons to employ measures to deter marine mammals from damaging fishing gear and catch, damaging personal or public property, or endangering personal safety, as long as these measures do not result in death or serious injury of marine mammals. The MMPA directs the Secretary of Commerce, through NOAA's NMFS, to publish a list of "guidelines" for use in safely deterring marine mammals under NMFS' jurisdiction and to recommend "specific measures," which may be used to nonlethally deter marine mammals listed under the Endangered Species Act (ESA). While the guidelines and specific measures are not mandatory, the MMPA provides protection from liability under the MMPA for take resulting from such deterrence measures by specifying that any actions taken to deter marine mammals that are consistent with the guidelines or specific measures are not a violation of the act. NMFS has not evaluated these deterrents for effectiveness. This rulemaking also

includes prohibitions on certain deterrent methods that NMFS has determined, using the best available scientific information, would have a significant adverse effect on marine mammals.

**DATES:** Comments must be received by October 30, 2020.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2020-0109, by either of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal:

1. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0109](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0109);

2. Click the "Comment Now!" icon, complete the required fields;

3. Enter or attach your comments.

*Mail:* Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

The NMFS Acoustic Deterrents Web Tool is available and accessible via the internet at: <https://jmlondon.shinyapps.io/NMFSAcousticDeterrentWebTool/>.

Copies of the draft Environmental Assessment (EA) prepared in support of this action are available and accessible via the internet at: <https://www.regulations.gov/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS Office of Protected Resources and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Kristy Long, Office of Protected Resources, 301-427-8402; Amy Scholik-Schlomer, Office of Protected Resources, 301-427-8402. Individuals who use a telecommunications device

for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:****Background**

The deterrence provisions of the MMPA (16 U.S.C. 1361 *et seq.*) provide an exception to otherwise prohibited acts, allowing specified persons to deter a marine mammal from damaging fishing gear and catch, damaging personal or public property, or endangering personal safety, so long as those deterrents do not result in the death or serious injury of a marine mammal. NMFS has defined "serious injury" as any injury that will likely result in death (50 CFR 229.2) and has developed a process and policy to distinguish serious from non-serious injuries (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-policies-guidance-and-regulations#distinguishing-serious-from-non-serious-injury-of-marine-mammals>).

Specifically, MMPA section 101(a)(4)(A) allows the owner of fishing gear or catch, the owner of private property, or an employee or agent of such owner ("specified persons"), to deter marine mammals from damaging fishing gear or catch or private property, respectively. Additionally, it allows any person to deter a marine mammal from endangering personal safety and any government employee to deter a marine mammal from damaging public property. The appropriate use of deterrents is allowed under these circumstances so long as any such use does not result in mortality or serious injury of a marine mammal. Section 101(a)(4)(A) does not allow the use of deterrents by any other person or entity or for any other purpose than those expressly enumerated.

MMPA section 101(a)(4)(B) directs the Secretary of Commerce, through NMFS, to publish a list of guidelines for use in safely deterring marine mammals and to recommend specific measures which may be used to non-lethally deter marine mammals listed as endangered or threatened under the ESA. Section 101(a)(4)(B) provides protection from liability from take, including mortality and serious injury, resulting from actions to deter marine mammals that are consistent with such guidelines and specific measures by specifying that such actions are not a violation of the MMPA. Compliance with the recommended specific measures would not necessarily provide protection from