advice concerning issues raised by the records in this System.

The third routine use permits disclosure to a court or adjudicative body of competent jurisdiction in a proceeding when: (a) HHS or any component thereof; or (b) any employee of the agency in their official capacity; or (c) any employee of HHS in their individual capacity where HHS has agreed to represent the employee; or (d) the United States Government is party to litigation or has an interest in the litigation, and, after careful review, HHS determines that the records are both relevant and necessary to the litigation and the use of the records is therefore deemed by HHS to be for a purpose that is compatible with the purpose for which HHS collected the records.

When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising under general statute or particular program statute, or under regulation, rule, or order issued pursuant thereto, the fourth routine use permits disclosure to the appropriate agency, whether Federal, State, local, foreign or tribal, or other public authority or agency responsible for enforcing, investigating or prosecuting the violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

The fifth routine use permits disclosure to a Federal, State, local, foreign, or tribal or other public authority or agency of any portion of this System of Records that contains information relevant to the retention of an employee, the retention of a security clearance, the award of a grant or contract, or the issuance or retention of a license, patent or other monetary or nonmonetary benefit. Another agency or licensing organization may make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosures shall be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

The sixth routine use permits disclosure to a Federal, State, local or foreign agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action, the retention of a security clearance, the award of a grant or contract, or the issuance or retention of a license, patent or other monetary or nonmonetary benefit.

Under the seventh routine use, where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to HHS for records in this System of Records, HHS may make those records available.

The eighth routine use permits disclosure to agency contractors, experts, or consultants who have been engaged by the agency to assist in the performance of a service related to this System of Records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended (Act, also referred to as ''Privacy Act''), pursuant to 5 U.S.C. 552a(m).

The ninth routine use permits NIH to disclose information from this System of Records for the purpose of obtaining patent protection for HHS inventions and licenses for these and other HHS inventions to: (a) Scientific personnel, both in this agency and other Government agencies, and in non-Governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance; (b) contract patent counsel and their employees and foreign contract personnel retained by the Department for patent searching and prosecution in both the United States and foreign patent offices; (c) all other Government agencies whom HHS contacts regarding the possible use, interest in, or ownership rights in HHS inventions; (d) prospective licensees or technology finders who may further make the invention available to the public through sale or use; (e) parties, such as supervisors of inventors, whom HHS contacts to determine ownership rights, and those parties contacting HHS to determine the Government's ownership; and (f) the United States and foreign patent offices involved in the filing of HHS patent applications.

Under the tenth routine use, NIH shall report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the amount of royalty payment paid to HHS inventors.

The eleventh routine use permits NIH to disclose information from this System of Records to: (a) Potential clinical trial participants, under the rules and regulations governing the NIH human subjects protections program, when an investigator has any financial interests that might be relevant for their consideration when deciding whether or not to participate in a trial and; (b) the general public to reveal the compensation that government scientists receive on licensed inventions generated during their government work.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the System has become effective.

Dated June 6, 2006.

Colleen Barros,

Deputy Director for Management, NIH.

[FR Doc. E6–13211 Filed 8–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 235, and 252

RIN 0750–AF13

Defense Federal Acquisition Regulation Supplement; Export-Controlled Information and Technology (DFARS Case 2004–D010)

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 address requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 13, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D010, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2004–D010 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Debra

Overstreet, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Overstreet, (703) 602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule at 70 FR 39976 on July 12, 2005, to address requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts. To accommodate significant interest expressed with regard to the proposed rule, DoD extended the public comment period from 60 to 90 days (70 FR 46807, August 11, 2005), resulting in the public comment period ending on October 12, 2005. After thorough consideration of all comments by the Defense Acquisition Regulations Council, DoD is publishing a second proposed rule for public comment.

This second proposed rule recognizes contractor responsibilities to comply with existing Department of Commerce and Department of State regulations, and the mutual responsibility of both the Government and the contractor to identify export-controlled information or technology. The more expansive regulatory requirements (including the prescriptive requirements of badging, training, and segregated work areas) contained in the first proposed rule are not included in this second proposed rule.

Under this second proposed rule, the requiring activity must review acquisitions to determine if, during performance of the contemplated contract, the contractor will generate or require access to export-controlled information or technology. The contracting officer will rely on input from the requiring activity when including the appropriate clause in each solicitation and contract for research and development and, when appropriate, in solicitations for supplies and services. In addition, there is a separate clause that is tailored specifically for the unique circumstances of fundamental research contracts.

The first and second proposed rules both include a new DFARS Subpart 204.73, Export-Controlled Information and Technology, and associated contract clauses. The subpart in the second proposed rule provides general information on export control laws and regulations and requires the contracting officer, based on input received from the requiring activity, to ensure that solicitations and contracts include appropriate terms and conditions regarding export controls and identify any export-controlled information and technology. For contracts that require generation of or access to export-controlled information or technology, the contractor will be required to—

• Comply with applicable laws and regulations regarding export-controlled information and technology;

• Consult with the Department of State on any questions regarding the International Traffic in Arms Regulations (ITAR), and with the Department of Commerce on any questions regarding the Export Administration Regulations (EAR); and

• Notify the contracting officer if the contractor determines during contract performance that generation of or access to additional export-controlled information or technology is required.

In addition, under this second proposed rule, for contracts that do not involve generation of or access to export-controlled information or technology, the applicable clauses require contract modification if, during performance, either contractual party becomes aware that the contractor will need to generate or have access to export-controlled information or technology.

DoD received comments from 145 persons and organizations in response to the first proposed rule. DoD noted common themes among the comments, resulting in development of the following six comment categories:

1. Boundaries of the proposed rule.
2. Foreign participation in U.S. federally-sponsored research projects.
3. Administrative burden and cost effectiveness of proposed solutions to the underlying export control issues.
4. DoD personnel knowledge, qualifications, and skills to implement the proposed rule.
5. Scope and purpose of regulation.
6. Processes involved and implementing language.

Differences between the first proposed rule and this second proposed rule are further addressed in the following discussion of the public comments.

1. Boundaries of the Proposed Rule

a. *Comment.* Directly or indirectly, one hundred and thirteen respondents recommended against adopting the proposed rule. This negative feedback came primarily from the educational research community.

DoD Response. DoD recognizes the respondents' concerns, and the proposed rule has been substantially re-written in a way that addresses many of the concerns, including those expressed by the research community. The impetus for creating the rule was a Department of Defense Inspector General (DoDIG) audit report which found that some contractors granted foreign nationals access to unclassified export-controlled technology without proper authorization. The DoDIG concluded that the Department does not have adequate processes to identify unclassified export-controlled information or technology, nor to prevent unauthorized disclosure to foreign nationals by its contractors. Based on these findings, DoD believes appropriate changes to regulations or procedures are warranted.

b. *Comment.* Ten respondents noted that the proposed guidance about setting up a compliance program was too vague.

DoD Response. DoD concurs that the guidance in the proposed rule was incomplete and conflicted with existing regulations. The rule has been changed to eliminate separate DoD requirements regarding export control compliance programs. Contractors that work with export-controlled information or technology should refer to the ITAR and the EAR when creating compliance programs.

c. *Comment.* Four respondents recommended that DoD use the Department of State process for compliance. Five others noted the dangers of setting up parallel requirements for compliance systems.

DoD Response. DoD agrees with these comments. The language at issue is not included in this second proposed rule. Contractors should refer to the ITAR and the EAR in developing their compliance programs.

d. *Comment.* Eighty-eight respondents noted that the proposed rule was not compliant with National Security Decision Directive 189 (NSDD–189). Ninety-two respondents specifically mentioned the fundamental research exemption contained in NSDD–189.

DoD Response. In response to these comments, DoD has amended the proposed rule to explicitly include reference to this directive and to the definition of ''fundamental research.'' Also, this second proposed rule contains a separate clause for inclusion in those contracts that involve only fundamental research. NSDD–189 is executive policy, and does not take precedence over statute-based export

controls, nor does it exempt any research, whether basic, fundamental, or applied, from statute-based export controls, such as the Arms Export Control Act, and the Export Administration Act. The Department of State's International Traffic in Arms Regulations (ITAR) and the Department of Commerce's Export Administration Regulations (EAR) implement such statutes. The EAR exempts information *resulting from* fundamental research from export controls; it does not exempt information *required to conduct* fundamental research from export controls. Questions regarding the applicability of export controls to ''fundamental research'' should be addressed to the Department of State or the Department of Commerce, as appropriate.

e. *Comment.* Five respondents referred to the Department of Commerce *advance notice of proposed* rulemaking (ANPR) of March 28, 2005 *(70 FR 15607).* These respondents recommended that DoD wait until the Department of Commerce completes its rulemaking on this subject.

DoD Response. The focus of the DoD rulemaking is to ensure that DoD contractors consider export controls and follow the EAR and ITAR rules that are in place at the time of contract performance. The Bureau of Industry and Security, Department of Commerce, published two documents in May 2006 related to the March 28, 2005, ANPR: On May 22, 2006 (71 FR 29301), the Department of Commerce announced the establishment of a Deemed Export Advisory Committee to ''address complex questions related to an evolving deemed export control policy.'' Subsequently, on May 31, 2006 (71 FR 30840), the Department of Commerce announced the withdrawal of its ANPR published on March 28, 2005. Therefore, no changes were made to the EAR as a result of the March 28, 2005, Department of Commerce ANPR.

f. *Comment.* Three respondents noted that it takes too long to obtain export licenses under the current process.

DoD Response. The intent of the DoD rule is to ensure that contractors are aware of their obligations under the ITAR and the EAR. Export license procedures are outside the scope of this rulemaking. Problems with obtaining export licenses should be resolved with the Department of State or the Department of Commerce, as appropriate.

g. *Comment.* Nine respondents stated that DoD should not require a contract clause.

DoD Response. DoD believes that action is required to ensure that contractors are aware of their obligations under the ITAR and the EAR. The proposed clauses, as rewritten, require that contractors comply with current laws and regulations. The proposed clauses are primarily intended to ensure that contractors are aware of their existing responsibilities and comply with those responsibilities.

h. *Comment.* Nine respondents stated that DoD should leave the whole area of export control to the Department of Commerce and the Department of State.

DoD Response. DoD program officers and contracting officers need to be mindful of export control requirements that apply to performance of contracts and must ensure that contractors are aware of their responsibilities. For example, if DoD is providing export-controlled information or technology under a contract, the contract should inform the contractor of the nature of such information or technology. Furthermore, DoD has coordinated this second proposed rule with the Department of Commerce and the Department of State, and has revised the language to eliminate potential conflicts with the ITAR and the EAR. The proposed rule now includes references to the Department of Commerce regarding the EAR and the Department of State regarding the ITAR, since these agencies are responsible for promulgating and enforcing those export control regulations.

i. *Comment.* Four respondents noted the proposed rule went beyond the ITAR in establishing system requirements.

DoD Response. DoD agrees with this concern, and has revised the proposed rule to advise contractors of their responsibilities to comply with the ITAR. In addition, language about the content of compliance systems has been removed.

j. *Comment.* Nine respondents stated that the Department of State Visas Mantis program requirements were adequate to protect information and technologies.

DoD Response. DoD agrees that the Visas Mantis program is very helpful in clearing individuals to participate in federally funded research projects. However, it was never intended to guarantee that contractors would not share information technology inappropriately.

k. *Comment.* Thirty-one respondents asserted that the language in the proposed rule was imprecise and/or inconsistent with the ITAR and the EAR.

DoD Response. In response to these comments, DoD has revised the proposed rule to eliminate conflicts and to clarify the text.

l. *Comment.* One respondent suggested that the proposed rule should be within the purview of the FAR Council.

DoD Response. While export controls are not limited to DoD contracts, this rule will apply only to DoD contracts. If the FAR Council determines that a FAR rule is required, DoD will amend the DFARS as necessary to conform with any such FAR rule.

2. Foreign Participation in U.S. Federally-Sponsored Research Projects

a. *Comment.* Fifty-six respondents asserted that the proposed rule would harm national security. These respondents asserted that foreign scientists and researchers add more to the U.S. research enterprise than they take away. In some fields, foreign researchers are ahead of their U.S. counterparts. Restricting participation in DoD-funded research may deprive the United States of capabilities that result in essential contributions to maintaining U.S. military superiority.

DoD Response. DoD recognizes that National Security, as it relates to research and development, involves a balancing act. Science generally transcends national boundaries, *i.e.*, learning is not easily contained. Free exchange of ideas is a foundational concept of U.S. research and educational institutions. Conversely, it is important to prevent the transfer of technologies that would compromise national security. The revisions to the proposed rule attempt to strike the needed balance by interfering as little as possible with the university research infrastructure for fundamental research, while ensuring that contractors comply with their responsibilities under the ITAR and the EAR.

b. *Comment.* Two respondents stated that there would be a potential adverse effect on collaboration with foreign scientists and researchers.

DoD Response. DoD recognizes this concern and believes that the rule, as rewritten, minimizes this impact while ensuring that contractors are aware of their responsibilities to comply with existing export control regulations.

c. *Comment.* One respondent recommended inclusion of a provision to notify the contracting officer whenever foreign persons were hired on research projects.

DoD Response. In developing terms and conditions of contracts, contracting officers have the authority to require such notifications, consistent with the Privacy Act, when deemed appropriate for a specific situation (*e.g.*, when

export controlled information or technology or classified information is involved). However, DoD believes that mandating this notification for all contracts is unnecessary.

d. *Comment.* Ten respondents were concerned that the proposed rule used the terms ''foreign national'' and ''foreign person,'' but did not define these terms.

DoD Response. In response to this comment, the proposed rule has been revised to refer to the ITAR and the EAR for applicable definitions. e. Comment. Seventy-one respondents asserted that the proposed rule would hinder foreign student participation.

DoD Response. DoD acknowledges this concern and recognizes the value of foreign student participation in DoD research. DoD appreciates the contributions foreign researchers have made to DoD systems and technologies. However, it is also important that contractors comply with existing laws and regulations related to the unauthorized transfer of export-controlled information and technology to foreign recipients, which is the purpose of this proposed rule.

f. *Comment.* Seventy-one respondents stated that the proposed rule would hinder U.S. research.

DoD Response. DoD believes this second proposed rule does not impose any negative effects on U.S. research, since it refers contractors to their already-existing responsibilities under the ITAR and the EAR.

g. *Comment.* Sixty-three respondents objected to segregated work areas.

DoD Response. As noted in the responses to comments 1.b. and 1.h., the proposed rule has been changed to eliminate separate DoD requirements on export control compliance programs, and instead includes references to the Department of State for the ITAR and the Department of Commerce for the EAR. Thus, a specific DoD requirement for segregated work areas has been removed from the proposed rule.

3. Administrative Burden and Cost-Effectiveness of Proposed Solutions to the Underlying Export Control Issues

a. *Comment.* Forty-four respondents expressed concerns about the additional administrative burden of the proposed rule. These respondents asserted that the proposed rule appeared to mandate compliance system requirements beyond those required in the ITAR and the EAR.

DoD Response. DoD recognizes this concern, and appropriate revisions have been made to the rule. This second proposed rule requires contractors to comply with their responsibilities under the ITAR and the EAR when export-controlled information or technology will be generated or accessed in the performance of the contract.

b. *Comment.* Ninety-two respondents expressed concern with the requirement to issue badges to research participants.

DoD Response. As noted in the responses to comments 1.b., 1.h., and 2.g., the proposed rule has been changed to eliminate separate DoD requirements on export control compliance programs, and instead includes references to the Department of State for the ITAR and the Department of Commerce for the EAR. The Department of State and the Department of Commerce have responsibility for overseeing compliance with ITAR and EAR requirements.

c. *Comment.* Six respondents asserted that the proposed rule would impose a training burden.

DoD Response. The rule was not intended to place unique DoD compliance burdens on the contractor. Therefore, the specific language related to training has been removed.

d. *Comment.* Two respondents expressed concerns related to the rule's impact on access to research equipment that is export-controlled.

DoD Response. Since the proposed rule is focused on reminding contractors of their responsibility to comply with the ITAR and the EAR, access to research equipment is considered to be outside the scope of this proposed rule. DoD recommends that the respondents refer concerns on this matter to the Department of Commerce or the Department of State, as appropriate.

e. *Comment.* Three respondents stated that some universities do not have adequate infrastructure to comply with the proposed rule.

DoD Response. DoD believes that the revisions made to the proposed rule should mitigate some of these concerns. However, any institution that becomes involved with export-controlled information and technology must develop the infrastructure to comply with statute and regulation. This is a requirement separate and apart from the proposed rule.

f. *Comment.* Two respondents asserted that the security benefits of the proposed rule were modest and that the rule created unnecessary bureaucracies.

DoD Response. The proposed rule has been revised to focus only on requiring contractors to comply with their existing obligations under the ITAR and the EAR. As such, it does not create any new administrative burden.

4. DoD Personnel Knowledge, Qualifications, and Skills To Implement the Proposed Rule

Comment. Thirteen respondents doubted the capability of DoD contracting officers to identify and comment about export control issues. The primary concerns involved training, qualifications, and experience. An additional eight respondents expressed concern that contracting officers could not appropriately deal with compliance issues.

DoD Response. DoD recognizes the importance of training, as well as the importance of coordination between the contracting officer and technical/requirements personnel. DoD is committed to appropriate training of program managers and contracting officers related to the ITAR and the EAR. Therefore, concurrent with publication of this second proposed rule, DoD is developing better training for those Government employees involved with export-controlled information or technology. DoD also recognizes that part of the problem identified in the DoDIG report could have been avoided if the contracting officer and the Government scientific officer had been adequately attentive to the fact that export-controlled information or technology was involved. Therefore, under this second proposed rule, the requiring activity must review acquisitions to determine if the contractor will generate or require access to export-controlled information or technology. The contracting officer will rely on this input when including the appropriate clause in each solicitation and contract for research and development, and when appropriate, in solicitations for supplies and services.

5. Scope and Purpose of Regulation

a. *Comment.* Twenty-one respondents stated that the proposed rule adds new requirements.

DoD Response. DoD agrees that the first proposed rule was overly prescriptive and has revised the rule accordingly.

b. *Comment.* Four respondents expressed concern that the regulation is too narrow in scope, while three respondents recommended that the clause not be used extensively.

DoD Response. DoD believes that the revisions in the second proposed rule resolve both of these issues. The status of fundamental research under NSDD–189 has been recognized by including a clause specifically for the unique circumstances of fundamental research contracts. In addition, the rule as

rewritten requires inclusion of the appropriate clause in other research and development contracts, as well as contracts for supplies and services, when appropriate.

c. *Comment.* One respondent questioned the application of the rule to universities, stating that the DoDIG report identified only one instance of a university export control lapse.

DoD Response. Whereas DoD acknowledges that the DoDIG report identified only one instance of a university lapse, DoD recognizes that the findings were based on a limited sampling of contracts. To ensure that problems do not occur, DoD believes that all contractors must exercise due diligence to protect export-controlled information or technology when it is generated or accessed during contract performance. The status of fundamental research has been recognized by including a clause specifically for the unique circumstances of fundamental research contracts. However, universities still need to be aware of ITAR and EAR requirements, even though university contracts seldom involve export export-controlled information or technology.

d. *Comment.* Two respondents stated that the rule did not properly explain its purpose.

DoD Response. The purpose of the proposed rule is to ensure that DoD contractors are aware of their responsibilities to comply with all applicable laws and regulations when export-controlled information and technology is involved in contract performance.

6. Processes Involved and Implementing Language

a. *Comment.* Three respondents recommended a representation and certification as opposed to a contract clause.

DoD Response. DoD does not believe that the administrative burden associated with a certification would provide a commensurate benefit.

b. *Comment.* Seven respondents requested more detail about the citations used in the clause.

DoD Response. In response to this request, more detailed citations are provided in this second proposed rule.

c. *Comment.* Twenty respondents expressed concerns about the flow down of the clause from commercial entities to universities.

DoD Response. DoD recognizes the unique challenges associated with this concern. DoD believes that the need to protect export-controlled information and technology is of paramount importance and, therefore, recognizes the need to clarify the flow-down requirement. This second proposed rule requires that DoD contractors include the substance of the clause in a subcontract only when the subcontract will involve generation of or access to export-controlled information or technology.

d. *Comment.* Three respondents recommended specific wording changes.

DoD Response. These suggested wording changes were overtaken by the substantial changes to the first proposed rule.

e. *Comment.* Three respondents asserted that ''listing errors'' will occur if the contracting officer is required to identify export-controlled information or technology involved in contract performance.

DoD Response. As discussed in the response to comment 4, DoD recognizes the importance of training, as well as the importance of coordination between the contracting officer and technical/requirements personnel. This second proposed rule reminds contractors to comply with export control regulations, and places mutual responsibility upon the Government and the contractor to notify the contracting officer if, during contract performance, generation of or access to additional export-controlled information or technology is required.

f. *Comment.* One respondent objected to the requirement for periodic assessments.

DoD Response. In response to this comment, and for reasons discussed in the responses to comments 1.b. and 1.h., the requirement for periodic assessments was removed. However, contractors remain responsible for complying with export control regulations.

g. *Comment.* One respondent recommended a database of contractors with effective compliance programs.

DoD Response. Since the Department of Commerce and the Department of State have responsibility for system oversight, this comment has been forwarded to those agencies for consideration.

h. *Comment.* Nineteen respondents supported alternative language as offered by the Council on Government Relations.

DoD Response. DoD incorporated the concepts of some of this language in rewriting the proposed rule.

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

B. Regulatory Flexibility Act

The proposed rule is not expected 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 all contractors, including small entities, are already subject to export-control laws and regulations. The requirements in this proposed rule are clarifications of existing responsibilities. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. 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 2004–010.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 235, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 204, 235, and 252 as follows:

1. The authority citation for 48 CFR Parts 204, 235, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.73 is added to read as follows:

Subpart 204.73—Export-Controlled Information and Technology

Sec.

Subpart 204.73—Export-Controlled Information and Technology

204.7301 Definitions.

As used in this subpart—

Export-controlled information and technology is defined in the clause at 252.204–70XX.

Fundamental research is defined in the clause at 252.204–70YY.

204.7302 General.

Export control laws and regulations restrict the transfer, by any means, of certain types of information and technology to unauthorized persons. See PGI 204.7302 for additional information regarding lead regulatory agencies and compliance with export control laws and regulations.

204.7303 Policy.

The requiring activity shall review acquisitions to determine if, during performance of the contemplated contract, the contractor will generate or require access to export-controlled information or technology.

(a) Prior to issuance of a solicitation for research and development, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled information or technology will be involved. The notification shall identify the specific information or technology that must be controlled, including the applicable references to the International Traffic in Arms Regulations (ITAR) and/or Export Administration Regulations (EAR); or

(2) The work is fundamental research only, and export-controlled information or technology will not be involved.

(b) Prior to issuance of a solicitation for supplies or services, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled information or technology will be involved. The notification shall identify the specific information or technology that must be controlled, including the applicable references to the ITAR and/or EAR; or

(2) The requiring activity is unable to determine that export-controlled information or technology will not be involved.

204.7304 Contract clauses.

(a) Use the clause at 252.204–70XX, Requirements for Contracts Involving Export-Controlled Information or Technology, in solicitations and contracts when the requiring activity provides the notification at 204.7303(a)(1) or (b)(1). The contracting officer shall identify the export-controlled information or technology as provided by the requiring activity.

(b) Use the clause at 252.204–70YY, Requirements Regarding Access to Export-Controlled Information or Technology—Fundamental Research, in solicitations and contracts when the requiring activity provides the notification at 204.7303(a)(2).

(c) Use the clause at 252.204–70ZZ, Requirements Regarding Access to Export-Controlled Information or Technology, in solicitations and contracts—

(1) For research and development, except when the clause at 252.204–70XX or 252.204–70YY will be included; or

(2) For supplies and services, when the requiring activity provides the notification at 204.7303(b)(2).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.071 [Redesignated]

3. Section 235.071 is redesignated as section 235.072.

4. A new section 235.071 is added to read as follows:

235.071 Export-controlled information and technology at contractor, university, and Federally Funded Research and Development Center facilities.

For requirements regarding access to export-controlled information and technology, *see* Subpart 204.73.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 252.204–70XX, 252.204–70YY, and 252.204–70ZZ are added to read as follows:

252.204–70XX Requirements for Contracts Involving Export-Controlled Information or Technology.

As prescribed in 204.7304(a), use the following clause:

REQUIREMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED INFORMATION OR TECHNOLOGY (XXX 2006)

(a) *Definition. Export-controlled information and technology,* as used in this clause, means information and technology subject to export controls established in the Export Administration Regulations (EAR) (15 CFR parts 730–774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

(b) The parties anticipate that, in performance of this contract, the Contractor will generate or need access to export-controlled information or technology.

(1) The specific information [and, or] technology subject to export controls [is, are]:

[The Contracting Officer shall identify the specific information and/or technology as determined by the requiring activity in accordance with 204.7303(a)(1) or 204.7303(b)(1)].

(2) If, during performance of this contract, the Government or the Contractor becomes aware that the Contractor will generate or need access to export-controlled information or technology not listed in paragraph (b)(1) of this clause, it shall notify the other party and either—(i) Modify paragraph (b)(1) of this clause to include identification of the additional export-controlled information or technology, and ensure its control as required by paragraph (c) of this clause; or

(ii) Negotiate a contract modification that eliminates the requirement for performance of work that would involve access to or generation of export-controlled information or technology not identified in paragraph (b)(1) of this clause.

(c) The Contractor shall comply with all applicable laws and regulations regarding export-controlled information and technology, including the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State with any questions regarding the ITAR and shall consult with the Department of Commerce with any questions regarding the EAR.

(d) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979 (50 U.S.C. App. 2401 as extended by Executive Order 13222);

(2) The Arms Export Control Act of 1976 (22 U.S.C. 2751);

(3) The Export Administration Regulations (15 CFR parts 730–774);

(4) The International Traffic in Arms Regulations (22 CFR parts 120–130);

(5) DoD Directive 2040.2, International Transfers of Technology, Goods, Services, and Munitions; and

(6) DoD Industrial Security Regulation (DoD 5220.22–R).

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that will involve access to or generation of export-controlled information or technology.

(End of clause)

252.204–70YY Requirements Regarding Access to Export-Controlled Information or Technology—Fundamental Research.

As prescribed in 204.7304(b), use the following clause:

REQUIREMENTS REGARDING ACCESS TO EXPORT-CONTROLLED INFORMATION OR TECHNOLOGY—FUNDAMENTAL RESEARCH (XXX 2006)

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

Applied research means the effort that—

(1) Normally follows basic research, but may not be severable from the related basic research;

(2) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(3) Attempts to advance the state of the art.

Basic research means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

Export-controlled information and technology means information and technology subject to export controls established in the Export Administration Regulations (15 CFR parts 730–774) or the International Traffic in Arms Regulations (22 CFR parts 120–130).

Fundamental research, as defined by National Security Decision Directive 189, means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

(b) The parties consider the work required by this contract to be fundamental research. As such, the parties do not anticipate that in performance of this contract the Contractor will generate or need access to export-controlled information or technology.

(c) If, during performance of this contract, the Government or the Contractor becomes aware that the Contractor will generate or need access to export-controlled information or technology, it shall notify the other party and either—

(1) Modify the contract to include the Defense Federal Acquisition Regulation Supplement clause 252.204–70XX, Requirements for Contracts Involving Export-Controlled Information or Technology, and identify and control the export-controlled information or technology as required by the clause; or

(2) Negotiate a contract modification that eliminates the requirement for performance of work that would involve export-controlled information or technology.

(End of clause)

252.204–70ZZ Requirements Regarding Access to Export-Controlled Information or Technology.

As prescribed in 204.7304(c), use the following clause:

REQUIREMENTS REGARDING ACCESS TO EXPORT-CONTROLLED INFORMATION OR TECHNOLOGY (XXX 2006)

(a) *Definition. Export-controlled information and technology,* as used in this clause, means information and technology subject to export controls established in the Export Administration Regulations (15 CFR parts 730–774) or the International Traffic in Arms Regulations (22 CFR parts 120–130).

(b) The parties do not anticipate that in performance of this contract the Contractor will generate or need access to export-controlled information or technology.

(c) If, during performance of this contract, the Government or the Contractor becomes aware that the Contractor will generate or need access to export-controlled information or technology, it shall notify the other party and either—

(1) Modify the contract to include the Defense Federal Acquisition Regulation Supplement clause 252.204–70XX, Requirements for Contracts Involving Export-Controlled Information or Technology, and identify and control the export-controlled information or technology as required by the clause; or

(2) Negotiate a contract modification that eliminates the requirement for performance of work that would involve export-controlled information or technology.

(End of clause)

252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 [Amended]

6. Sections 252.235–7002, 252.235–7003, 252.235–7010, and 252.235–7011 are amended in the introductory text by removing ''235.071'' and adding in its place ''235.072''.

[FR Doc. E6–13290 Filed 8–11–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 040506143–6016–02. I.D. 101205B]

RIN 0648–AS36

Endangered Fish and Wildlife; Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales; Extension of Public Comment Period

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On June 26, 2006, NMFS proposed regulations to implement speed restrictions on vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard to reduce the likelihood of deaths and serious injuries to endangered North Atlantic right whales that result from collisions with ships. NMFS is extending the public comment period on the proposed regulations until October 5, 2006.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. local time on October 5, 2006.

ADDRESSES: Written comments should be sent to: Chief, Marine Mammal Conservation Division, Attn: Right Whale Ship Strike Strategy, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to *shipstrike.comments@noaa.gov* or to the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this notice of proposed rulemaking, should also be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and to David Rostker, OMB, by e-mail at *David__Rostker@omb.eop.gov* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D., Fishery Biologist, Office of Protected Resources, NMFS, at (301) 713–2322 x152.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 2006, NMFS published a Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales (71 FR 36299). That **Federal Register** notice began NMFS' 60–day public comment period ending on August 25, 2006.

NMFS subsequently received a request by the World Shipping Council to extend the public comment period so that its members and the public can fully review and provide comments on the proposed rule. Due to the size and scope of the proposed rule and accompanying Draft Environmental Impact Statement, the World Shipping Council requested additional time to complete an independent analysis. Since then, NMFS has received other requests to extend the public comment period. In this notice NMFS is extending the public comment period until October 5, 2006, in order to allow adequate time for the World Shipping Council and others to thoroughly review and thoughtfully comment on the proposed rule.

Dated: August 8, 2006.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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