

If ongoing responsibility for medicals was imposed, demonstrated or accepted from the date of “settlement” through the life of the beneficiary or life of the injury, we may review and approve a proposed amount to be paid as an upfront lump sum payment for the full amount of the calculated cost for all related future medical care. This option would generally apply in workers’ compensation, no-fault insurance situations or when life-time medicals are imposed by law. In effect, this option may be used in place of administering a MSA if we have reviewed and approved a proposed MSA amount. We solicit comment on how to develop this process, the efficacy of it, and whether it would be utilized.

b. If Ongoing Responsibility for Medicals was Not Imposed, Demonstrated or Accepted.

If a beneficiary obtains a “settlement,” our general rule stated previously applies to the “settlement,” and ongoing responsibility for medicals has not been imposed on, demonstrated by or accepted by the defendant, the beneficiary may elect to make an upfront payment to Medicare in the amount of a specified percentage of “beneficiary proceeds.” This option would most often apply in liability insurance (including self-insurance situations, primarily due to policy caps. For the purposes of this option, the term “beneficiary proceeds” would be calculated by subtracting from the total “settlement” amount attorney fees and procurement costs borne by the beneficiary, Medicare’s demand amount (for conditional payments made by Medicare), and certain additional medical expenses the beneficiary paid out of pocket. Such additional medical expenses are specifically limited to items and services listed in 26 U.S.C. 213(d)(1)(A) through (C) and 26 U.S.C. 213(d)(2). The calculation of beneficiary proceeds does not include medical expenses paid by, or that are the responsibility of, a source other than the beneficiary. We specifically solicit comment on how to develop this process, its efficacy, and whether it would be utilized. We further request comment on the calculation of beneficiary proceeds, the appropriate percentage(s) to be used, and how the percentage(s) is/are justified.

*Option 7. The Beneficiary Obtains a Compromise or Waiver of Recovery.*

If the beneficiary obtains either a compromise or a waiver of recovery, Medicare would have the discretion to not pursue future medicals related to the specific “settlement” where the compromise or waiver of recovery was granted. If the beneficiary obtains

additional “settlements,” Medicare would review the conditional payments it made and adjust its claim for past and future medicals accordingly. We specifically solicit comment on whether this approach is practical and usable, as it relates to “future medicals.”

Again, we also solicit comment on additional options we may consider in order to provide workable solutions for beneficiaries with respect to resolving “future medicals” obligations.

#### IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

#### V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 24, 2012.

**Marilyn Tavenner**,

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: May 8, 2012.

**Kathleen Sebelius**,

*Secretary, Department of Health and Human Services.*

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**BILLING CODE 4120-01-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 211, 212, 218, 246, 252 and Appendix F to Chapter 2

RIN 0750-AH64

#### Defense Federal Acquisition Regulation Supplement: Item Unique Identifier Update (DFARS Case 2011-D055)

**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 update and clarify requirements for unique identification and valuation of items delivered under DoD contracts. The proposed rule revises the applicable prescription and contract clause to reflect the current requirements.

**DATES:** *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before August 14, 2012, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2011-D055, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “DFARS Case 2011-D055” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2011-D055.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2011-D055” on your attached document.

- *Email:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2011-D055 in the subject line of the message.

- *Fax:* 571-372-6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD (AT&L) DPAP/DARS, Room 3B855, 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:** Mr. Dustin Pitsch, telephone 571-372-6090.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The contract clause at DFARS 252.211-7003, Item Identification and Valuation, requires unique identification for all delivered items for which the Government’s unit acquisition cost is \$5,000 or more and for other items designated by the Government. In addition, the clause requires identification of the Government’s unit acquisition cost for all delivered items, and provides

instructions to contractors regarding the identification and valuation processes.

This proposed rule revises the prescription and the clause at DFARS 252.211–7003 to update and clarify instructions for the identification and valuation processes. The changes include—

- Adding definitions for data matrix and type designation;
- Specifically addressing item unique identification requirements for items with warranty requirements; DoD serially managed items, and special tooling or special test equipment;
- Clarifying of data submission requirements for a Major Defense Acquisition Program; and,
- Adding an alternative data submission method using either hard copy or a wide-area-workflow attachment.

## II. Executive Orders 12866 and 13563

Executive Orders (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.

## III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes being made do not increase the burden of the item unique identification requirements, nor do they cause the requirement to be applicable to any additional small businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed changes are being made to refine the language of the regulations and update the clause and prescription to comply with existing item unique identification policy. This DFARS case also adds reporting requirements for special tooling and special test equipment, warranty, and type designation, updates text to describe the

reason for the policy, clears up language that has been confusing in practice, and adds an alternative method of data submission using either hard copy or a wide-area-workflow attachment. It also eliminates Alternate I of DFARS 252.211–7003, which cites reporting requirements covered by other mechanisms.

This rule will apply to small businesses involved in manufacturing. There are currently 1,495 small businesses registered in the Item Unique Identification Registry, out of 2,431 total companies registered. The changes made by this rule will not affect the number of businesses required to be registered in the Item Unique Identification Registry.

This rule does not add any new information collection requirements as it only clarifies existing requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were determined that will accomplish 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 2011–D055), in correspondence.

## IV. Paperwork Reduction Act

This rule does not add any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) beyond those already covered by OMB Control Numbers 0704–0246 and 0704–0248. OMB Control Number 0704–0246, titled “Defense Federal Acquisition Regulations Supplement (DFARS) Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253,” which includes information collection requirements for DFARS subpart 211.274. OMB Control Number 0704–0248, titled “Defense Federal Acquisition Regulations Supplement (DFARS) Appendix F, Material Inspection and Receiving Report and related forms,” which covers all information submitted through the Wide Area Workflow system.

## List of Subjects in 48 CFR Parts 211, 212, 218, 246, 252 and Appendix F

Government procurement.

### Mary Overstreet,

*Editor, Defense Acquisition Regulations System.*

Therefore 48 CFR parts 211, 212, 218, 246, 252, and Appendix F are amended as follows:

1. The authority citation for 48 CFR parts 211, 218, and 246 is revised to read as follows:

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

### PART 211—DESCRIBING AGENCY NEEDS

2. The section heading for section 211.274 is revised to read as follows:

#### 211.274 Item unique identification and valuation requirements.

3. Revise section 211.274–1 to read as follows:

##### 211.274–1 General.

Item unique identification and valuation is a system of marking, valuing, and tracking items delivered to DoD that enhances logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through item unique identification policy, which capitalizes on leading practices and embraces open standards, DoD—

- (a) Achieves lower life-cycle cost of item management and improve life-cycle property management;
- (b) Improves operational readiness;
- (c) Provides reliable accountability of property and asset visibility throughout the life cycle;

(d) Reduces the burden on the workforce through increased productivity and efficiency; and

(e) Ensures item level traceability throughout lifecycle to strengthen supply chain integrity, enhance cyber security and combat counterfeiting.

4. Section 211.274–2 is amended by—

- a. Revising the section heading;
- b. Revising paragraph (a);
- c. Revising paragraph (b) introductory text;
- d. Revising paragraph (b)(2) introductory text; and
- e. Revising paragraph (b)(2)(ii).

The revisions read as follows:

#### 211.274–2 Policy for item unique identification.

(a) It is DoD policy that DoD item unique identification, or a DoD recognized unique identification equivalent, is required for all delivered items, including items of contractor-acquired property delivered on contract

line items (see PGI 245.402–71 for guidance when delivery of contractor acquired property is required)—

(1) For which the Government's unit acquisition cost is \$5,000 or more;

(2) For which the Government's unit acquisition cost is less than \$5,000, when identified by the requiring activity as serially managed;

(3) For mission essential, controlled inventory, or other items when the Government's unit acquisition cost is less than \$5,000, and the requiring activity determines that permanent identification is required; or

(4) Regardless of value for any—

(i) DoD serially managed subassembly, component, or part embedded within a subassembly, component, or part;

(ii) Parent item (as defined in 252.211–7003(a)) that contains the embedded subassembly, component, or part;

(iii) Warranted serialized item;

(iv) Item of special tooling or special test equipment as defined at FAR 2.101 for a major defense acquisition program that is designated for preservation and storage in accordance with the requirements of section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417);

(v) DoD serially managed item (reparable or nonreparable); and

(vi) High risk item identified by the requiring activity as vulnerable to supply chain threat, a target of cyber threats, or counterfeiting.

(b) *Exceptions.* The Contractor will not be required to provide DoD item unique item identification if—

(1) \* \* \*

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery, and the item is acquired from a small business concern, or is a commercial item acquired under FAR part 12 or part 8.

(i) \* \* \*

(ii) Send a signed copy of the determination and findings required by paragraph (b)(2)(i) of this subsection to DPAP, PDI, 3060 Defense Pentagon, 3E1044, Washington, DC 20301–3060; or by email to *DPAP\_PDI@osd.mil*.

5. Section 211.274–3 is amended by—

a. Revising paragraph (a); and

b. Amending paragraph (c) by removing the word “need” and adding in its place the word “shall”.

#### 211.274–3 Policy for valuation.

(a) It is DoD policy that contractors shall be required to identify the Government's unit acquisition cost for

all deliverable end items to which item unique identification applies.

\* \* \* \* \*

6. Section 211.274–4 is amended by—

a. Revising the section heading;

b. Revising the introductory text;

c. Removing paragraphs (a), (b), and (c);

d. Redesignating paragraphs (d) through (h) as paragraphs (a) through (e); and

e. In the newly redesignated paragraph (a), removing the word “Part” and adding in its place the word “part”.

The revisions read as follows:

#### 211.274–4 Policy for reporting of Government-furnished property.

It is DoD policy that Government-furnished property be recorded in the DoD Item Unique Identification Registry, except for—

\* \* \* \* \*

7. Amend section 211.274–6 by—

a. Revising paragraph (a); and

b. Amending paragraph (c)(1) to remove the words “252.211–7003, Item Identification and Valuation” and insert in its place the words “252.211–7003, Item Unique Identification and Valuation”.

The revisions read as follows:

#### 211.274–6 Contract clauses.

(a)(1) Use the clause at 252.211–7003, Item Unique Identification and Valuation, in solicitations and contracts—

(i) For supplies, unless the conditions in 211.274–2(b) apply;

(ii) For services that involve the furnishing of supplies, unless the conditions in 211.274–2(b) apply;

(iii) That contain the clause at FAR 52.245–1; or

(iv) That contain the clause at 252.211–7007.

(2) Complete paragraph (c)(1)(i) of the clause with the contract line, subtitle, or exhibit line item numbers of any line items excluded from coverage in accordance with 211.274–2(b)(3).

(3) Identify in paragraph (c)(1)(ii) of the clause the contract line, subtitle, or exhibit line item number and description of any item(s) below \$5,000 in unit acquisition cost for which DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(2) or (3).

(4) Identify in paragraph (c)(1)(iii) of the clause the applicable attachment number, when DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(4) (i) through (vi).

\* \* \* \* \*

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

8. The authority citation for 48 CFR part 212 continues to read as follows:

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

### 212.301 [Amended]

9. Section 212.301(f)(iv)(D) is amended by—

a. Removing the words “252.211–7003, Item Identification and Valuation” and adding in its place the words “252.211–7003, Item Unique Identification and Valuation”; and

b. Removing “211.274–4” and adding in its place “211.274–6(a)”.

## PART 218—EMERGENCY ACQUISITIONS

10. Section 218.201(2) is revised to read as follows:

### 218.201 Contingency operation.

\* \* \* \* \*

(2) *Policy for item unique identification.* Contractors will not be required to provide DoD item unique identification if the items, as determined by the head of the agency, are to be used to support a contingency operation. See 211.274–2(b).

\* \* \* \* \*

## PART 246—QUALITY ASSURANCE

### 246.710 [Amended]

11. Section 246.710(5)(i) is amended by removing “252.211–7003, Item Identification and Valuation” and adding in its place “252.211–7003, Item Unique Identification and Valuation”.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citation for 48 CFR part 252 continues to read as follows:

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

13. Section 252.211–7003 is amended by—

a. Revising the section heading;

b. Revising the clause heading;

c. Removing from the clause heading “(JUN 2011)” and adding in its place “(DATE)”;

d. Amending paragraph (a) definitions by—

(i) Adding, in alphabetical order, definitions for “Data matrix” and “Type designation”;

(ii) Removing the definition title “DoD unique item identification” and adding in its place “DoD item unique identification”.

e. Revising paragraph (c);



(b) \* \* \*

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211-7003, Item Unique Identification and Valuation, and DFARS 252.245-7001, Tagging, Labeling, and Marking of Government-Furnished Property, and physically marked in accordance with MIL-STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (<https://www.bpn.gov/iuid/>);

\* \* \* \* \*

## Appendix F: Material Inspection And Receiving Report

### F-103 [Amended]

### F-301 [Amended]

15. The authority citation for 48 CFR chapter 2 appendix F continues to read as follows:

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

16. Section F-103, paragraph (e)(1) is amended by removing “DFARS 252.211-7003, Item Identification and Valuation” and adding in its place “DFARS 252.211-7003, Item Unique Identification and Evaluation”.

17. Section F-301, paragraph (18)(i) is amended by removing “DFARS 252.211-7003, Item Identification and Valuation” and adding in its place “DFARS 252.211-7003, Item Unique Identification and Evaluation”.

\* \* \* \* \*

[FR Doc. 2012-14289 Filed 6-14-12; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 120416007-2150-01]

RIN 0648-BB67

### Fisheries of the Exclusive Economic Zone Off Alaska; Monitoring and Enforcement Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet

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

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

**SUMMARY:** NMFS issues a proposed rule that would modify equipment and operational requirements for freezer longliners (catcher/processors) named on License Limitation Program (LLP) licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the Bering Sea and Aleutian Islands Management Area (BSAI). If approved, the proposed regulations would require vessel owners to select between two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. The selected monitoring option would be required to be used when the vessel is operating in either the BSAI or Gulf of Alaska groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is fishing for groundfish under the Western Alaska Community Development Quota (CDQ) Program. A vessel owner who notifies NMFS that the vessel will not be used to conduct directed fishing for Pacific cod in the BSAI or to conduct groundfish CDQ fishing at any time during a particular year would not be required to select one of the monitoring options and would continue to follow observer coverage and catch reporting requirements that apply to catcher/processors not subject to this proposed action. These regulatory amendments address the need for enhanced catch accounting, monitoring, and enforcement created by the formation of a voluntary cooperative by the BSAI longline catcher/processor subsector in 2010, and are necessary to improve the precision of the accounting for allocated quota species. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

**DATES:** Written comments must be received no later than 1700 hours, Alaska local time (A.L.T.) July 16, 2012.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0278, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter NOAA-NMFS-2011-0278 in the keyword search. Locate the

document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

- **Hand delivery to the Federal Building:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the Regulatory Impact Review and Environmental Assessment (RIR/EA) prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Electronic copies of NOAA Technical Memorandum NMFS-F/AKR-10 “Investigation of Weight Loss in Pacific cod (*Gadus macrocephalus*) Due to Exsanguination” may be obtained at [http://docs.lib.noaa.gov/noaa\\_documents/NMFS/AlaskaRegionalOfc/TM-FAKR/NOAA-TM-FAKR-10.pdf](http://docs.lib.noaa.gov/noaa_documents/NMFS/AlaskaRegionalOfc/TM-FAKR/NOAA-TM-FAKR-10.pdf).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed