



**DEFENSE LOGISTICS AGENCY  
HEADQUARTERS  
8725 JOHN J. KINGMAN ROAD, SUITE 2533  
FT. BELVOIR, VIRGINIA 22060-6221**

IN REPLY  
REFER TO

MMPPP  
PROCLTR 97- 14

**APR 22 1997**

**MEMORANDUM FOR PROCLTR DISTRIBUTION LIST**

**SUBJECT: Automatic Data Processing Equipment Leasing Costs**

This PROCLTR forwards amendments to Part 239 of the DFARS to remove references to the deleted FAR cost principle at 31.205-2, Automatic Data Processing Equipment Leasing Costs, and to remove corresponding contractor documentation and Government oversight requirements at DFARS 239.73, Acquisition of Automatic Data Processing Equipment by DoD Contractors. The DFARS 239 changes were included with the subject March 3, 1997 memorandum from the Director, Defense Procurement. The interim rule was published March 3, 1997 in the Federal Register (DFARS Case 96-D011, same subject). Copies are at Attachments 1 and 2, respectively.

This PROCLTR is effective immediately and expires upon publication of the DFARS changes in a future Defense Acquisition Circular, but in any event, not later than one year from its issue date. Questions may be directed to Mr. Jerry Gilbert, MMPPP, 703-767-1350, DSN 427-1350, or via internet to [jerry\\_gilbart@hq.dla.mil](mailto:jerry_gilbart@hq.dla.mil).

Attachments

**ROBERT L. MOLINO  
Executive Director  
(Procurement)**



ACQUISITION AND  
TECHNOLOGY

DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

March 3, 1997



In reply refer to  
DFARS Case: 96-D011  
D. L. 97-010

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (RD&A) / ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) / SARD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Automatic Data Processing Equipment Leasing Costs

We have amended Part 239 of the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to the deleted Federal Acquisition Regulation (FAR) cost principle at 31.205-2, Automatic Data Processing Equipment Leasing Costs, and to remove corresponding contractor documentation and Government oversight requirements at DFARS 239.73, Acquisition of Automatic Data Processing Equipment by DoD Contractors.

This interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



Automatic Data Processing Equipment Leasing Costs  
DFARS CASE 96-D011

**SUBPART 239.73--ACQUISITION OF AUTOMATIC DATA PROCESSING  
EQUIPMENT BY DOD CONTRACTORS**

**239.7300 Scope of subpart.**

This subpart prescribes approval requirements for automatic data processing equipment (ADPE) ~~acquired (purchased or leased)~~ by contractors for use in performing DoD contracts.

**239.7301 Applicability.**

(a) This subpart applies when--

~~(1) The contractor acquires ADPE for the account of the Government;~~

~~(2) T[h]e contractor acquires [purchases] ADPE and title will pass to the Government(.); or~~

~~(3) The contractor leases ADPE and--~~

~~(i) The ADPE is not for the account of the Government;~~

~~(ii) Title will not pass to the Government; and~~

~~(iii) The contractor will charge the total cost of the lease to one or more Government contracts requiring the negotiation or determination of costs.~~

\* \* \* \* \*

**239.7302 Approvals and screening.**

\* \* \* \* \*

(b) If the contractor proposes acquiring ADPE subject to 239.7301(a)(1) and (2), and the unit acquisition cost is \$50,000 or more--

(1) The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7305[3].

\* \* \* \* \*

~~**239.7303 Review and approval of leasing costs.**~~

~~The cost principle in FAR 31.205-2, automatic data processing equipment leasing costs, requires the contractor to obtain contracting officer approval before incurring certain leasing costs.~~

~~(a) Before approving lease costs, meeting the criteria of FAR 31.205-2(b)(2)(iii), the contracting officer shall request and review the contractor supporting documentation described in 239.7305.~~

~~(b) The contracting officer shall conduct reviews of leasing costs as warranted, meeting the criteria of FAR 31.205-2(d), to determine the continued need for leasing. In performing the review, the contracting officer shall request the contractor to update its supporting documentation.~~

~~(c) If the initial or annual reviews disclose no basis for nonconcurrence, the contracting officer will advise the contractor and, as appropriate--~~

~~(1) Enter into an advance agreement (see FAR 31.109);~~

~~(2) Obtain purchase option credits (see 239.7304).~~

**~~239.7304 Purchase option credits.~~**

~~(a) If 100 percent of the lease costs are charged to Government cost reimbursement contracts, the rental contract shall give the Government the initial option to use any purchase credits or other benefits earned through rental payments.~~

~~(b) If less than 100 percent of the lease costs are charged to Government cost reimbursement contracts, the contracting officer shall--~~

~~(1) Encourage the contractor to incorporate in its rental contract the right to assign accrued purchase credits to the Government;~~

~~(2) Obtain for the Government the right of first refusal on accrued purchase credits if the contractor elects not to exercise its purchase option; and~~

~~(3) Get the contractor's commitment to give the administrative contracting officer a 120 day advance notice of its intent to terminate a lease where the Government has rights in accrued purchase credits.~~

~~(c) Report purchase option credits as prescribed in the Defense Automation Resources Manual.~~

**239.7305[3] Contractor documentation.**

Contracting officers may tailor the documentation requirements in paragraphs (a) through (e[d]) of this section.

(a) *List of existing ADPE and an analysis of its use.*

(1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.

(2) Reliability and usage data on each component for the past 12 months.

(3) Identification of users supported by each component, including how much time each user requires the component and the related contract or task involved.

(b) List of new ADPE needed and reasons why it is needed.

(1) Estimates of the new equipment's useful life.

(2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.

(3) Anticipated software and telecommunications requirements.

(c) Selection of computer equipment.

(1) If the acquisition is competitive--

(i) List sources solicited and proposals received;

(ii) Show how the evaluation was performed;

(iii) Provide an explanation if the selected offer is not the lowest evaluated offer.

(2) If the acquisition is not competitive, state why.

(d) Cost. ~~(1) For purchases, state the ADPE cost.~~

~~(2) For leases, state the increase or decrease in monthly costs to the Government.~~

~~(e) Lease versus purchase analysis.~~

~~When the proposed acquisition is a lease, provide a lease/purchase analysis using the format in Table 39.1, Suggested Purchase/Lease Analysis Format, or one substantially similar.~~

Table 39.1 is deleted.

\* \* \* \* \*

**§ 73.202 (Amended)**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 266A at Weaverville.

Federal Communications Commission  
John A. Karousos,  
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.  
[FR Doc. 97-5184 Filed 2-28-97; 8:46 am]  
BILLING CODE 6712-01-P

**47 CFR Part 73**

[MM Docket No. 94-78; RM-8472 and RM-8626]

**Radio Broadcasting Services; Cloverdale, Montgomery, and Warrior, AL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This document denies a petition for reconsideration filed by William P. Rogers that appeals the Report and Order, 60 FR 65021 (December 18, 1995), in this proceeding insofar as it did not accept Rogers' counterproposal to allow Channel 254A to Florence, Alabama. The Report and Order was affirmed because Rogers' counterproposal did not provide 100 percent city-grade coverage of Florence, as required by Section 73.315(a) of the Commission's Rules.

**EFFECTIVE DATE:** March 3, 1997.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 94-78, adopted February 14, 1997, and released February 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.  
Douglas W. Webbink,  
Chief, Policy and Rules Division, Mass Media Bureau.  
[FR Doc. 97-5491 Filed 2-28-97; 8:45 am]  
BILLING CODE 6712-01-P

**DEPARTMENT OF DEFENSE**

**48 CFR Part 239**

[DFARS Case 96-D011]

**Defense Federal Acquisition Regulation Supplement; Automatic Data Processing Equipment Leasing Costs**

**AGENCY:** Department of Defense (DoD).  
**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to an obsolete Federal Acquisition Regulation (FAR) cost principle pertaining to automatic data processing equipment (ADPE) leasing costs, and to remove corresponding contractor documentation and Government oversight requirements.

**DATES:** Effective date: March 3, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 2, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D011 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim DFARS rule supplements the interim FAR rule published as Item I of Federal Acquisition Circular 90-44 on December 31, 1996 (61 FR 79287). The FAR rule deleted the cost principle at FAR 31.205-2, Automatic Data Processing Equipment Leasing Costs. The cost principle was incorporated into the FAR when ADPE was an emerging technology, had limited applications, and was a substantial cost element on Government contracts. In the current technological environment, however, where ADPE hardware costs

are no longer such a significant expense and computer systems have become ubiquitous in the workplace, the detailed scrutiny previously required under FAR 31.205-2 is no longer considered necessary.

This interim DFARS rule removes references to FAR 31.205-2, and removes corresponding contractor documentation and Government oversight requirements in Subpart 239.73, Acquisition of Automatic Data Processing Equipment by DoD contractors.

**B. Regulatory Flexibility Act**

This interim 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D011 in correspondence.

**C. Paperwork Reduction Act**

This rule reduces, by 106,006 hours, the information collection requirements previously approved by the Office of Management and Budget under Clearance Number 0704-0341.

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary because the cost principle, Automatic Data Processing Equipment Leasing Costs, was deleted from the FAR on December 31, 1996. It is necessary that a DFARS rule be published expeditiously to remove references to the obsolete cost principle, and to remove corresponding contractor documentation and Government oversight requirements. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Part 239****Government procurement.**

Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 239 is amended as follows:

1. The authority citation for 48 CFR Part 239 continues to read as follows:

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

**PART 239—ACQUISITION OF INFORMATION TECHNOLOGY**

2. The title of Part 239 is revised to read as set forth above.

3. Section 239.7300 is revised to read as follows:

**239.7300 Scope of subpart.**

This subpart prescribes approval requirements for automatic data processing equipment (ADPE) purchased by contractors for use in performing DoD contracts.

4. Section 239.7301 is amended by revising paragraph (a) to read as follows:

**239.7301 Applicability.**

(a) This subpart applies when the contractor purchases ADPE and title will pass to the Government.

\* \* \* \* \*

5. Section 239.7302 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

**239.7302 Approvals and screening.**

\* \* \* \* \*

(b) If the contractor proposes acquiring ADPE subject to 239.7301, and the unit acquisition cost is \$50,000 or more—

(1) The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7303.

\* \* \* \* \*

6. Section 239.7303 is revised to read as follows:

**239.7303 Contractor documentation.**

Contracting officers may tailor the documentation requirements in paragraphs (a) through (d) of this section.

(a) *List of existing ADPE and an analysis of its use.* (1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.

(2) Reliability and usage data on each component for the past 12 months.

(3) Identification of users supported by each component, including how

much time each user requires the component and the related contract or task involved.

(b) *List of new ADPE needed and reasons why it is needed.* (1) Estimates of the new equipment's useful life.

(2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.

(3) Anticipated software and telecommunications requirements.

(c) *Selection of computer equipment.*

(1) If the acquisition is competitive—

(i) List sources solicited and proposals received;

(ii) Show how the evaluation was performed; and

(iii) Provide an explanation if the selected offer is not the lowest evaluated offer.

(2) If the acquisition is not competitive, state why.

(d) *Cost.* State the ADPE cost.

**239.7304, 239.7305, and Table 39-1 [Removed]**

7. Sections 239.7304 and 239.7305 and Table 39-1 are removed.

[FR Doc. 97-5143 Filed 2-28-97, 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 285**

[I.D. 022107C]

**Atlantic Tuna Fisheries; Fishery Closure**

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

**ACTION:** Closure.

**SUMMARY:** NMFS has determined that landings of Atlantic bluefin tuna (ABT) since January 1, 1997 and continued high catch rates warrant an interim closure of the ABT Angling category. Therefore, the Angling category fishery for school, large school, and small medium ABT is closed in all areas until further notice.

**EFFECTIVE DATE:** The closure of the Angling category is effective 11:30 p.m. local time on March 2, 1997, until the effective date of any reopening, which will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** John Kelly, 301-713-2347, or Mark Murray-Brown, 508-281-9260.

**SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

On February 21, 1997, NMFS amended the regulations governing the Atlantic bluefin tuna (ABT) fisheries to provide authority for NMFS to close and/or reopen all or part of the Angling category in order to provide for equitable distribution of fishing opportunities throughout the species range. The regulatory amendments were necessary to increase the geographic and temporal scope of data collection from the scientific monitoring quota established for the United States.

Additionally, the authority for interim closures facilitates a more equitable geographic and temporal distribution of fishing opportunities for all fishermen in the Angling category, thus furthering domestic management objectives for the Atlantic tuna fisheries.

**Angling Category Closure**

NMFS has received information from the State of North Carolina that approximately 13 mt of school, large school, and small medium ABT have been measured during dockside interviews conducted through February 16, 1997. It is estimated that dockside intercepts account for 43 percent of angler trips. Therefore, NMFS estimates that 30 mt of school, large school, and small medium ABT have been landed.

Regulations allow that, upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or that the catch rate in one area may preclude anglers in another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date if NMFS determines that ABT have migrated into an identified area. In determining the need for any such temporary or area closure, NMFS considers the following factors:

(A) The usefulness of information obtained from catches of a particular