



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(RESEARCH, DEVELOPMENT AND ACQUISITION)  
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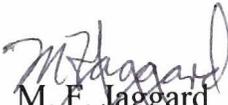
SEP 15 2008

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Change 08-3 to the Navy Marine Corps Acquisition Regulation Supplement  
(NMCARS)

Effective immediately, the changes in Attachment (1) are hereby incorporated into the April 2008 NMCARS.

The NMCARS online will be updated to reflect these changes.

  
M. F. Jaggard  
Chief of Staff/Policy  
for DASN (A&LM)

Attachment:  
As stated

Distribution:  
CMC (DC, I&L)  
CNR  
COMMARCORSSYSCOM  
COMNAVAIRSYSCOM  
COMNAVFACENGCOM  
COMNAVICP  
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COMSC  
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PEO (A)  
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PEO (CARRIERS)  
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PEO (IW)  
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(continued next page)

**SUBJECT: Change 08-3 to the Navy Marine Corps Acquisition Regulation Supplement  
(NMCARS)**

**Distribution (cont.):**

**PEO (LMW)**

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**SPAWARSYSCOM (02)**

**SSP (SPN)**

## Summary of NMCARS 08-3 Changes

Update NMCARS as follows:

### **1. Based upon a new requirement derived from A&LM review of recent Ratifications, create NMCARS 5201.602-3 (S-90)(h) Reports as follows:**

- a. A copy of all ratifications of unauthorized commitments must be submitted to the Senior Contracting Leader within the HCA.
- b. Within 30 days following the end of each fiscal quarter (30 October, 30 January, 30 April, 30 August), HCA's should provide a report via e-mail to [RDAPolicy@navy.mil](mailto:RDAPolicy@navy.mil) with the subject "Ratifications by COMMAND NAME during the X Quarter FYXX" using the format at Annex 4. That information includes:
  1. Ratification Amount
  2. Name of Contracting Officer Recommending Ratification
  3. Name of Ratifying Official
  4. Date of Ratification approval
  5. Description of Supplies/Services bought
- c. The updated NMCARS 5201.602-3 (S-90) now reads:

#### *(S-90) DoN Guidance.*

The following is provided as guidance for HCAs in establishing procedures to ratify unauthorized commitments. In establishing procedures, minimizing the need to ratify unauthorized commitments should be considered as a goal.

(a) The individual making the unauthorized commitment should forward to the activity's Commanding Officer, or civilian equivalent, documentation concerning the transaction, to include:

- (1) A signed statement describing--
  - (i) the circumstances surrounding the unauthorized commitment;
  - (ii) why normal procurement procedures were not followed;
  - (iii) what bona fide need of the Government necessitated the commitment;
  - (iv) whether any benefit was received and its value;
  - (v) how and when it was identified as an unauthorized commitment;
  - (vi) attempts to resolve the unauthorized commitment prior to requesting authorization (such as returning merchandise); and
  - (vii) any other pertinent facts.

(2) All orders, invoices, or other documentary evidence of the transaction.

(b) If the Commanding Officer, or civilian equivalent, concurs that the commitment should be ratified, then the Commanding Officer, or civilian equivalent, should forward the documentation described above in a report to the contracting officer with an endorsement that:

- (1) Verifies the accuracy and completeness of the documentation;
- (2) Describes any disciplinary action taken and the measures taken to prevent a recurrence of unauthorized commitments; and
- (3) Provides a complete purchase description and funding for the ratifying contract.

(c) If the statement required by (a)(1) is unavailable, the Commanding Officer, or civilian equivalent, should explain in the report the reason the individual's statement is not available and insure that all information required under (a)(1) is provided to the extent possible.

## Summary of NMCARS 08-3 Changes

- (d) The contracting officer should:
  - (1) Review the documentation and endorsement provided;
  - (2) Determine the adequacy of the facts and documentation, obtaining any additional material required;
  - (3) Prepare a determination and findings for signature by the ratifying official addressing the limitations in FAR 1.602-3(c)(1) through (7);
  - (4) Prepare a recommendation to the ratifying official;
  - (5) Prepare appropriate contractual documents; and
  - (6) Submit the contract and supporting documents to the appropriate counsel of the Office of the General Counsel for an opinion as to form and legality and for any additional pertinent comment or advice.
- (e) Comptroller review is recommended for all ratifications.
- (f) The ratifying official to whom authority has been delegated pursuant to NMCARS 5201.602-3(b)(3) should review the file, and if ratification is proper, sign the determination and findings.
- (g) Records. HCAs should ensure that a record of all ratification actions is maintained. This record should include the identity of the contracting office performing the ratification, the dollar value of the ratification action, and a copy of the required determination and findings.
- (h) Reports.
  - (1) Effective 1 September 2008, all ratifications of unauthorized commitments must be submitted to the Senior Contracting Leader within the HCA for review.
  - (2) Within 30 days following the end of each fiscal quarter (30 October, 30 January, 30 April, 30 August), HCA's should provide a report to via e-mail to RDAPolicy@navy.mil with the subject "Ratifications by COMMAND NAME during the X Quarter FYXX" using the format at Annex 4. That information includes:
    - (a) Ratification Amount
    - (b) Name of Contracting Officer Recommending Ratification
    - (c) Name of Ratifying Official
    - (d) Date of Ratification approval
    - (e) Description of Supplies/Services bought

**2. In accordance with A&LM Memorandum dated August 8, 2008, Subj: Termination Notification, requiring that any contract terminated for cause or default, regardless of contract dollar value, be reported to this office within 5 calendar days after issuing the notice of termination, NMCARS 5212.403(c) and NMCARS 49.470 are created as follows:**

- a. NMCARS 5212.403(c) (PGI 212.403(c)) Termination for cause. The contracting activities shall report all such terminations to this office within 5 calendar days after issuing the notification of termination using the format provided at Annex 5 via e-mail to RDAJ&As@navy.mil. The subject line of both the email and the reports should include T4D followed by the contract number ("T4D: N00001-080C-0001").
- b. NMCARS 5249.470 (PGI 249.470) Reporting of termination for default. The contracting activities shall report all such terminations to this office within 5 calendar days after issuing the notification of termination using the format provided at Annex 5 via

## Summary of NMCARS 08-3 Changes

e-mail to RDAJ&As@navy.mil. The subject line of both the email and the reports should include T4D followed by the contract number ("T4D: N00001-080C-0001").

c. The updated NMCARS 5212.4 and new NMCARS 49 now reads:

### SUBPART 5212.4--UNIQUE REQUIREMENTS REGARDING TERMS AND CONDITIONS FOR COMMERCIAL ITEMS

5212.403(c) (PGI 212.403(c)) Termination for cause. The contracting activities shall report all such terminations to DASN (A&LM) within 5 calendar days after issuing the notification of termination using the format provided at Annex 5 via e-mail to RDAJ&As@navy.mil. The subject line of both the email and the reports should include T4D followed by the contract number ("T4D: N00001-08-C-0001").

### PART 5249 - TERMINATION OF CONTRACTS

#### 5249.4 - TERMINATION FOR DEFAULT

5249.470 (PGI 249.470) Reporting of termination for default. The contracting activities shall report all such terminations to DASN (A&LM) within 5 calendar days after issuing the notification of termination using the format provided at Annex 5 via e-mail to RDAJ&As@navy.mil. The subject line of both the email and the reports should include T4D followed by the contract number ("T4D: N00001-08-C-0001")

### **3. In accordance with DFARS Change Notice 20080303 make the following changes to NMCARS 5225.7002:**

- a. NMCARS 5225.7002 should be retitled "Restrictions on food, clothing, fabrics, *specialty metals*, and hand or measuring tools."
- b. Restate 5225.7002-2 as follows:  
5225.7002-2 (DFARS 225.7002-2) Exceptions
  - (b) Requests for Under Secretary of Defense (Acquisition, Technology, and Logistics) or Secretary of the Navy determinations should be submitted through DASN (A&LM) using the format as shown in Annex 3.

### **4. Delete NMCARS 5225.7003 Restrictions on acquisition of specialty metals, 5225.7003-3 (DFARS 225.7003-3) Exceptions, and 5225.7003-4 One-time waiver as they are now included in PGI 225.7002-2. DFARS 225.7003 is Waiver of restrictions of 10 U.S.C. 2534 and requires no NMCARS language.**

### **5. Delete NMCARS 5225.7010 Restriction on Vessel Propellers based upon Change Notice 20080423 as the restriction on acquiring vessel propellers from foreign sources has been**

## Summary of NMCARS 08-3 Changes

**removed from the DFARS. The statute upon which the restriction was based applied only to acquisitions using fiscal year 2000 or 2001 funds.**

### **6. Correct PGI reference in NMCARS 5237.102-71 and delete subparagraph reference such that NMCARS 5237.102-71 reads as follows:**

**From:**

5237.102-71 (PGI 237.102-71) Limitations on service contracts for flight simulators.

(1) and (2) Submit requests for waivers and required economic analysis for the congressional defense committees through DASN(A&LM).

**To:**

5237.102-71 (DFARS 237.102-71) Limitations on service contracts for flight simulators.

Submit requests for waivers and required economic analysis for the congressional defense committees through DASN(A&LM).

### **7. Delete NMCARS 5245.302-1(a)(4) to remove requirement for a D&F to provide facilities to contractors as the requirement was removed from the Federal Acquisition Regulation. Delete the following text:**

5245.302-1 Policy.

(a)(4) The requirement for a determination and findings (D&F) applies to new facilities or existing facilities, and to extending the authorized period of use. The D&F requirement does not apply to contracts awarded under the A 76 Commercial Activities Program. The D&F shall be made by both a contracting official at least one level above the contracting officer and the program manager. These two officials are the agency head's designees for issuing the D&F.

The following text remains unchanged:

5245.302-1 (DFARS 245.302-1) Policy.

(a)(4)(A)(S-90) DASN(A&LM) and the Commandant of the Marine Corps may approve facility projects not exceeding \$3 million at any one location during one fiscal year. The Chief of Naval Research, the Commanders, Naval Systems Commands, and Director, Strategic Systems Program may approve facility projects (including research and development) that do not exceed \$2 million at any one location during one fiscal year.

(a)(4)(A)(2) Submit requests via DASN(A&LM).

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**8. Correct the typographical error in Annex 2 (Business Clearance Memorandum) as follows (*bold added for ease of identifying change only*):**

- a. On page A2-5, change “principle” to “principal” such that the sentence now reads “The business clearance should document the **principal** elements.”
- b. On page A2-16, the reference to DFARS 242.301 (S-71) should be DFARS 242.302 (S-71).

**9. Correct the typographical error in Determination section of Annex 3 (Determination of Domestic Non-Availability) as follows (*bold added for ease of identifying change only*):**

DFARS 225.7003-3(b)(5) should be DFARS 225.7002-2(b).

