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Part V

Department of Defense

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE**32 CFR Chs. I, V, VI, and VII****33 CFR Ch. II****36 CFR Ch. III****48 CFR Ch. II****Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions****AGENCY:** Department of Defense (DoD).**ACTION:** Semiannual regulatory agenda.

SUMMARY: The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866, "Regulatory Planning and Review." This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive Order and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process. Members of the public may submit comments on individual proposed and interim final rulemakings at www.regulations.gov during the comment period that follows publication in the **Federal Register**.

This agenda updates the report published on July 7, 2011, and includes regulations expected to be issued and under review over the next 12 months. The next agenda is scheduled to be published in the spring of 2012. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

Starting with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users the ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C.

602), the Department of Defense's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements. Additional information on these entries is in the Unified Agenda available online.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Mr. Robert Cushing, telephone 571 372-0493, or write to Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155, or email: robert.cushing@whs.mil.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, or call 703 697-2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Ms. Patricia Toppings, telephone 571 372-0485, or write to Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155, or email: patricia.toppings@whs.mil.

For general information on Office of the Secretary agenda items, which are procurement-related, contact Ms. Ynette Shelkin, telephone 703 602-8384 or write to Defense Acquisition Regulations Directorate, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, or email: ynette.shelkin@osd.mil.

For general information on Department of the Army regulations, contact Ms. Brenda Bowen, telephone 703 428-6173, or write to the U.S. Army Records Management and Declassification Agency, ATTN: AAHS-RDR-C, Casey Building, Room 102, 7701 Telegraph Road, Alexandria, Virginia 22315-3860, or email: brenda.s.bowen.civ@mail.mil.

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. Chip Smith, telephone 703

693-3644, or write to Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Room 2E569, Washington, DC 20310-0108, or email: chip.smith@hqda.army.mil.

For general information on Department of the Navy regulations, contact LT Lisa Senay, telephone 703 614-5360, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, or email: lisa.senay@navy.mil.

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703 696-6515, or write to Department of the Air Force, SAF/XCPP, 1800 Air Force Pentagon, Washington, DC 20330-1800, or email: bao-anh.trinh@pentagon.af.mil.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement directives). The OSD agenda section contains the primary directives under which DoD components promulgate their implementing regulations.

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

- a. Regulatory Flexibility Act;
- b. Paperwork Reduction Act of 1995;
- c. Unfunded Mandates Reform Act of 1995.

Those DoD issuances, which are directly applicable under these statutes,

will be identified in the agenda and their action status indicated. Generally, the regulatory status reports in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) long-term actions; and (5) completed actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as

defined in the Regulatory Flexibility Act (5 U.S.C. 601[6]).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory

reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: August 16, 2011.

Michael L. Rhodes,
Director, Administration and Management.

DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
293	Reporting of Government-Furnished Property (DFARS Case 2012–D001)	0750–AG83
294	Updates to Wide Area WorkFlow (WAWF) (DFARS Case 2011–D027)	0750–AH40

DEFENSE ACQUISITION REGULATIONS COUNCIL—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
295	Business Systems—Definition and Administration (DFARS Case 2009–D038)	0750–AG58
296	Responsibility and Liability for Government Property (DFARS Case 2010–D018)	0750–AG94
297	Government Support Contractor Access to Technical Data (DFARS Case 2009–D031)	0750–AG95
298	Representation Relating to Compensation of Former DoD Officials (DFARS Case 2010–D020)	0750–AG99
299	Accelerated Payments to Small Business (DFARS Case 2011–D008)	0750–AH19
300	Fire-Resistant Fiber for Production of Military Uniforms (DFARS Case 2011–D021)	0750–AH22
301	Pilot Program on Acquisition of Military Purpose Nondevelopmental Items (DFARS Case 2011–D034)	0750–AH27
302	Contractors Performing Private Security Functions (DFARS Case 2011–D023)	0750–AH28
303	Management of Manufacturing Risk in Major Defense Acquisition Programs (DFARS Case 2011–D031) ...	0750–AH30
304	Utilization of Domestic Photovoltaic Devices (DFARS Case 2011–D046)	0750–AH43

DEFENSE ACQUISITION REGULATIONS COUNCIL—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
305	Warranty Tracking of Serialized Items (DFARS Case 2009–D018)	0750–AG74
306	Prohibition on Interrogation of Detainees by Contractor Personnel (DFARS Case 2010–D027)	0750–AG88
307	Construction and Architect-Engineer Services Performance Evaluation (DFARS Case 2010–D024)	0750–AG91
308	Electronic Ordering Procedures (DFARS Case 2009–D037)	0750–AH20
309	Inclusion of Option Amounts in Limitations on Authority of the Department of Defense to Carry Out Certain Prototype Projects (DFARS Case 2011–D024).	0750–AH23
310	Award-Fee Reductions for Health and Safety Issues (DFARS Case 2009–D039)	0750–AH24
311	Material Inspection and Receiving Report (DFARS Case 2009–D023)	0750–AH33
312	Extension of Restrictions on the Use of Mandatory Arbitration Agreements (DFARS Case 2011–D035)	0750–AH34

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
313	TRICARE; Reimbursement of Sole Community Hospitals	0720–AB41

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Proposed Rule Stage

293. Reporting of Government—Furnished Property (DFARS Case 2012–D001)

Legal Authority: 41 U.S.C. 1303

Abstract: This rule revises and expands reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources. The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.211–7007, is being renamed as “Reporting of Government-Furnished Property,” and is being revised to expand definitions, and provide guidance on reporting of GFP. This clause applies to commercial contracts that have GFP and reporting applicability, and is added to the list of solicitation provisions and contract clauses applicable to the acquisition of commercial items at DFARS 212.301. Additionally, the clause at 252.251–7000 is being revised to require electronic receipts of property obtained from Government supply sources. The objective of the rule is to improve the accountability and control of DoD assets. At the time of publication, DoD was unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invited comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

Timetable:

Action	Date	FR Cite
NPRM	12/22/10	75 FR 80426
NPRM Comment Period Extended.	02/18/11	76 FR 9527
Public Meeting	03/18/11	76 FR 11190
NPRM Comment Period End.	04/08/11	
Second NPRM	10/19/11	76 FR 64885
Second NPRM Comment Period End.	12/19/11	
Final Action	03/00/12	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:*

703 602–8384, *Email:* ynette.shelkin@osd.mil.
RIN: 0750–AG83

294. • Updates to Wide Area Workflow (WAWF) (DFARS Case 2011–D027)

Legal Authority: 41 U.S.C. 1303

Abstract: DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy and procedures on electronic submission of payment requests and receiving reports through Wide Area Workflow (WAWF) and TRICARE Encounter Data System (TEDS). WAWF is the accepted DoD system for generating invoices and receiving reports. TEDS is an accepted system for processing payment requests for rendered TRICARE health care services.

Timetable:

Action	Date	FR Cite
NPRM	12/00/11	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email:* mary.overstreet@osd.mil.
RIN: 0750–AH40

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Final Rule Stage

295. Business Systems—Definition and Administration (DFARS Case 2009–D038)

Legal Authority: 41 U.S.C. 1303

Abstract: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of DoD oversight of contractor business systems. Section 893 of the National Defense Authorization Act for Fiscal Year 2011 established statutory requirements for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. In accordance with section 893, DoD is issuing a rule to improve the effectiveness of DCMA/ DCAA oversight and clarify the definition and administration of contractor business systems.

The rule addresses comments received under the interim rule for this case, as well as statutory requirements

of section 893 of the National Defense Authorization Act for Fiscal Year 2011. DoD published an interim rule with request for comments on May 18, 2011 (76 FR 28856).

The rule will apply to solicitations and contracts that are subject to the Cost Accounting Standards (CAS) under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix). Since contracts and subcontracts with small businesses are exempt from CAS requirements, DoD estimates that this rule will have no impact on small businesses.

Timetable:

Action	Date	FR Cite
NPRM	01/15/10	75 FR 2457
NPRM Comment Period End.	03/16/10	
Second NPRM	12/03/10	75 FR 75549
Second NPRM Comment Period Extended.	12/09/10	75 FR 76692
Second NPRM Comment Period End.	01/10/11	
Interim Final Rule	05/18/11	76 FR 28855
Interim Final Rule Effective.	05/18/11	
Interim Final Rule Comment Period End.	07/18/11	
Final Action	04/00/12	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email:* ynette.shelkin@osd.mil.
RIN: 0750–AG58

296. Responsibility and Liability for Government Property (DFARS Case 2010–D018)

Legal Authority: 41 U.S.C. 1303

Abstract: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the Government self-insurance policy for Government property provided under negotiated fixed-price contracts that are awarded on a basis other than submission of certified cost or pricing data. This rule proposes that DoD contractors not be held liable for loss of Government property under such contracts, and eliminates the use of Alternate I of the FAR clause at 52.245–1, Government Property. Use of Alternate I requires contractors to assume the risk and be responsible for

loss of Government property. The basic premise of this case, that the Government should be self-insuring under contracts that provide Government property, is supported by the Government Accountability Office (GAO) policy contained in GAO publication, GAO-04-261SP Appropriations Law, and its decisions. Any impact of this rule on small entities is expected to be beneficial. The Government assuming the liability for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data should provide some relief for the small entities concerning costs to acquire insurance against risk of loss.

Timetable:

Action	Date	FR Cite
NPRM	04/19/11	76 FR 21852
NPRM Comment Period End.	06/20/11	
Final Action	12/00/11	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, *Phone:* 703 602-8384, *Email:* ynette.shelkin@osd.mil.

RIN: 0750-AG94

297. Government Support Contractor Access to Technical Data (DFARS Case 2009-D031)

Legal Authority: Pub. L. 111-84

Abstract: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 821 of the National Defense Authorization Act for Fiscal Year 2010. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

Additionally, this rule amends the DFARS to provide needed editorial changes. The rule implements a new third statutory exception to the prohibition on release of privately developed data outside the Government, allowing a covered Government support contractor access to, and use of, any technical data delivered under a

contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates.

The rule also provides a definition of "covered Government support contractor" as contractor under a contract, whose primary purpose is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort. A "covered Government support contractor" must meet certain criteria identified in the rule and provide certain assurances to the Government to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor, to include signing a non-disclosure agreement.

The rule affects small businesses that are Government support contractors that need access to proprietary technical data belonging to prime contractors and other third parties. There are no known significant alternatives to the rule that would meet the requirements of the statute and minimize any significant economic impact of the rule on small entities. The impact of this rule on small business is not expected to be significant because the execution of a non-disclosure agreement is not likely to have a significant cost or administrative impact.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/02/11	76 FR 11363
Interim Final Rule Effective Date.	03/02/11	
Interim Final Rule Comment Period End.	05/02/11	
Final Action	01/00/12	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, *Phone:* 703 602-8384, *Email:* ynette.shelkin@osd.mil.

RIN: 0750-AG95

298. Representation Relating to Compensation of Former DoD Officials (DFARS Case 2010-D020)

Legal Authority: 41 U.S.C. 1303; 18 U.S.C. 207; 41 U.S.C. 423; Pub. L. 110-181

Abstract: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to require that offerors represent whether former DoD officials employed by the offeror are in compliance with post-employment restrictions concerning post-government employment for DoD and other Federal employees after leaving Government employment. The proposed rule will require offerors to submit representations at the time of contract award that all former DoD officials that are covered by the Procurement Integrity Act are in compliance with post-employment restrictions set forth in DFARS 203.171-3 and DFARS 252.203-7000. The representation goes further in also requiring a representation that former DoD employees employed by the contractor are also in compliance with additional post-employment restrictions. This representation will be required in contracts for commercial items.

There is no impact on the offeror unless the former DoD officials covered by the Procurement Integrity Act are not in compliance with the post-employment restrictions. In order to submit an offer, small entities that hire a former DoD official covered by the Procurement Integrity Act will have to check the compliance of such employees with various applicable post-employment restrictions.

DFARS 252.203-7000, Requirements Relating to Compensation of Former DoD Officials, already requires contractors to determine that a covered DoD official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor, regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the contractor. Therefore, this representation of compliance does not impose an additional burden on the offeror. Any economic impact is expected to be minimal.

Timetable:

Action	Date	FR Cite
NPRM	06/06/11	76 FR 32846
NPRM Comment Period End.	08/05/11	
Final Action	02/00/12	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, *Phone:* 703 602-8384, *Email:* ynette.shelkin@osd.mil.

RIN: 0750-AG99

299. Accelerated Payments to Small Business (DFARS Case 2011-D008)

Legal Authority: 41 U.S.C. 1303

Abstract: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to accelerate payments to all small business concerns. Currently, DoD assists small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract. This rule proposes removal of the term "disadvantaged" from the language at DFARS 232.903 and DFARS 232.906(a)(ii) extending this assistance to all small business concerns. This will align the DFARS with the statutory language at 5 CFR 1315.5 and FAR 32.903, which allows agencies to authorize accelerated payment procedures for small businesses. Because the rule proposes to extend accelerated payment assistance to all small business concerns, a positive economic impact on small business is expected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/27/11	76 FR 23505
Interim Final Rule Effective.	04/27/11	
Interim Final Rule Comment Period End.	06/27/11	
Final Action	12/00/11	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602-0311, *Email:* mary.overstreet@osd.mil.

RIN: 0750-AH19

300. • Fire-Resistant Fiber for Production of Military Uniforms (DFARS Case 2011-D021)

Legal Authority: Pub. L. 111-383

Abstract: Implements section 821 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383). Section 821 prohibits specification of the use of fire-resistant rayon fiber in

solicitations issued before January 1, 2015.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/06/11	76 FR 32843
Interim Final Rule Effective.	06/06/11	
Interim Final Rule Comment Period End.	08/05/11	
Final Action	02/00/12	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, *Phone:* 703 602-8384, *Email:* ynette.shelkin@osd.mil.

RIN: 0750-AH22

301. • Pilot Program on Acquisition of Military Purpose Nondevelopmental Items (DFARS Case 2011-D034)

Legal Authority: Pub. L. 111-383

Abstract: Implements section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383). Section 866 authorized the Secretary of Defense to establish a pilot program to assess the feasibility and advisability of acquiring military purpose nondevelopmental items. The authority for this pilot program expires on January 6, 2016. Under this pilot program, DoD may enter into contracts with nontraditional defense contractors for the purpose of: (1) Enabling DoD to acquire items that otherwise might have been available to DoD; (2) assisting DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and (3) protecting the interests of the United States in paying fair and reasonable prices for the item or items acquired.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/29/11	76 FR 38048
Interim Final Rule Effective.	06/29/11	
Interim Final Rule Comment Period End.	08/29/11	
Final Action	03/00/12	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC

20301, *Phone:* 703 602-0311, *Email:* mary.overstreet@osd.mil.

RIN: 0750-AH27

302. • Contractors Performing Private Security Functions (DFARS Case 2011-D023)

Legal Authority: 41 U.S.C. 1303; Pub. L. 110-181; Pub. L. 110-417; Pub. L. 111-383

Abstract: This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended by section 853 of the NDAA for FY 2009 and sections 831 and 832 of the NDAA for FY 2011. Section 862, as amended, establishes minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions. The DFARS is being revised to implement the statute. This interim rule implements the legislation by establishing (1) regulations addressing the selection, training, equipping, and conduct of personnel performing private security functions in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander, (2) a contract clause, and (3) remedies. DoD does not expect this interim 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 statute impacts only private security contractors performing outside the United States. Nevertheless, an initial regulatory flexibility analysis has been performed. Additionally, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/19/11	76 FR 52133
Interim Final Rule Effective.	08/19/11	
Interim Final Rule Comment Period End.	10/18/11	
Final Action	03/00/12	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC

20301, Phone: 703 602-8384, Email: ynette.shelkin@osd.mil.
RIN: 0750-AH28

303. • Management of Manufacturing Risk in Major Defense Acquisition Programs (DFARS Case 2011-D031)

Legal Authority: Pub. L. 111-383
Abstract: DoD is issuing an interim rule to implement section 812 of the National Defense Authorization Act for Fiscal Year 2011. Section 812(b)(5), instructs DoD to issue guidance that, at a minimum, shall require appropriate consideration of the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs. The interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 215.3, Source Selection by adding paragraph (iv) to state that the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors shall be considered as a part of the source selection process for major defense acquisition programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/29/11	76 FR 38050
Interim Final Rule Effective.	06/29/11	
Interim Final Rule Comment Period End.	08/29/11	
Final Action	02/00/12	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, Phone: 703 602-0311, Email: mary.overstreet@osd.mil.
RIN: 0750-AH30

304. • Utilization of Domestic Photovoltaic Devices (DFARS Case 2011-D046)

Legal Authority: Pub. L. 111-383; 41 U.S.C. 1905; 41 U.S.C. 1906; 41 U.S.C. 1707

Abstract: This interim rule amends the Defense Federal Acquisition Regulation Supplement to implement section 846 of the National Defense Authorization Act for Fiscal Year 2011. The section provides that photovoltaic devices to be utilized in performance of any covered contract shall comply with the Buy American statute, subject to the exceptions provided in the Trade Agreements Act of 1979 or otherwise provided by law. The rule amends

DFARS subpart 225.70 by adding a new section 225.7017, Utilization of domestic photovoltaic devices, as well as an associated provision and clause in DFARS part 252. DoD has not made a determination to apply the requirement of section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 to contracts at or below the simplified acquisition threshold (SAT), but has determined to apply the rule to contracts for the acquisition of commercial items. The objective of the rule is to promote utilization of domestic photovoltaic devices under an energy savings contract, a utility service contract, or a private housing contract, if such contract does not include DoD purchase of photovoltaic devices as end products, but will nevertheless result in DoD ownership of photovoltaic devices. Prime contractors for this type of contract would generally be large businesses, based on the capital costs involved in these projects. However, many developers tend to subcontract out the majority of work to smaller companies. We do not currently have data available on whether any of the manufacturers of photovoltaic devices are small entities. DoD expects that this interim rule may have a significant economic impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/11	
Final Action	03/00/12	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, Phone: 703 602-8384, Email: ynette.shelkin@osd.mil.
RIN: 0750-AH43

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Completed Actions

305. Warranty Tracking of Serialized Items (DFARS Case 2009-D018)

Legal Authority: 41 U.S.C. 401
Abstract: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a policy memorandum of the Undersecretary of Defense for Acquisition, Technology and Logistics dated February 6, 2007, that required

definition of the requirements to track warranties for Item Unique Identification-required items in the Item Unique Identification registry. This proposed rule stresses that the enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness. The capability to track warranties will significantly enhance the ability of DoD to—(1) Identify and enforce warranties, (2) Ensure sufficient durations of warranties for specific goods; and (3) Realize improved material readiness. The rule is structured to reduce burden to contractors and to facilitate data capture. DoD anticipates that there will be limited, if any, additional costs imposed on small businesses.

Timetable:

Action	Date	FR Cite
NPRM	08/30/10	75 FR 52917
NPRM Comment Period End.	10/29/10	
Final Action	06/08/11	76 FR 33166
Final Action Effective.	06/08/11	

Regulatory Flexibility Analysis

Required: Yes.

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RIN: 0750-AG74

306. Prohibition on Interrogation of Detainees by Contractor Personnel (DFARS Case 2010-D027)

Legal Authority: 41 U.S.C. 1303; Pub. L. 111-84

Abstract: This final rule implements section 1038 of the Fiscal Year 2010 National Defense Implements Authorization Act (Pub. L. 111-84). Section 1038 prohibits contractor personnel from interrogating detainees under the control of the Department of Defense. It also allows the Secretary of Defense to waive the prohibition for a limited period of time, if determined necessary to the national security interests of the United States. The interim rule added coverage at Defense Federal Acquisition Regulation Supplement (DFARS) 237.173 and a new clause at DFARS 252.237-7010 that prescribes policies prohibiting interrogation of detainees by contractor personnel as required by the statute. The interim rule also addressed permissible support roles for contractors by providing that contractor personnel

with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of, and advisors to, interrogations, if the contractor personnel meet the criteria provided by DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix; DoD Directive 2310.01E, The Department of Defense Detainee Program; and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning. This rule only prescribed policies that prohibit interrogation of detainees by contractor personnel. DoD anticipates that there will be no additional costs imposed on small businesses.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/03/10	75 FR 67632
Interim Final Rule Effective.	11/03/10	
Interim Final Rule Comment Period End.	01/03/11	76 FR 44282
Final Action	07/25/11	
Final Action Effective.	07/25/11	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, *Phone:* 703 602-8384, *Email:* ynette.shelkin@osd.mil.
RIN: 0750-AG88

307. Construction and Architect-Engineer Services Performance Evaluation (DFARS Case 2010-D024)

Legal Authority: 41 U.S.C. 1303

Abstract: This rule amended the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement to prepare contractor performance evaluations for construction and architect-engineer services by using DoD-unique forms. In 2010, consistent with the Office of Federal Procurement Policy memorandum dated July 29, 2008, Improving the Use of Contractor Performance Information, the Contractor Performance Assessment Reporting System (CPARS) was named as the sole system for collecting past-performance information. As such, CPARS will support Governmentwide data collection requirements for contractor

past performance reporting, to include construction and A&E contracts, and DFARS was updated to delete the outdated procedures and references to the obsolete DoD forms. The clarifications require no additional effort by contractors as the changes simply updated the DFARS to reflect the current automated process being used. CPARS is already being used by DoD personnel to report construction and A&E services contractor past performance, and the DFARS was merely updated to remove references to obsolete forms and procedures and reflect the current process. No start-up costs are expected as only Internet access is required should small entities elect to comment on their past performance rating in CPARS. Accordingly, any economic impact is expected to be minimal.

Timetable:

Action	Date	FR Cite
NPRM	04/19/11	76 FR 21851
NPRM Comment Period End.	06/20/11	
Final Action	09/20/11	76 FR 58155

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602-0311, *Email:* mary.overstreet@osd.mil.
RIN: 0750-AG91

308. Electronic Ordering Procedures (DFARS Case 2009-D037)

Legal Authority: 41 U.S.C. 1303; Pub. L. 107-347

Abstract: This rule addresses electronic business procedures for placing orders. This rule adds a new clause in the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify this process and standardize issuance of orders via electronic means DoD currently has the capability to distribute orders electronically on a routine basis, and can post to a Web site that any contractor can access. In order to make this possible, the DFARS needs to provide language that will make those procedures a routine part of contract issuance. This will enable DoD to further the goals of the E-Government Act of 2002 (Pub. L. 107-347). The benefit of this rule to small business is that it will make electronic distribution procedures a routine part of order issuance. This change will ultimately help improve the management and promotion of electronic Government

services and processes, and will establish a framework to improve public access to Government information, and services.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/05/11	76 FR 25566
Final Action Effective.	05/05/11	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060, *Phone:* 703 602-8384, *Email:* ynette.shelkin@osd.mil.
RIN: 0750-AH20

309. • Inclusion of Option Amounts in Limitations on Authority of the Department of Defense To Carry Out Certain Prototype Projects (DFARS Case 2011-D024)

Legal Authority: Pub. L. 111-383

Abstract: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 826 of the National Defense Authorization Act for Fiscal Year 2011. Section 826 amended the DoD pilot program for transition to follow-on contracting after use of other transaction authority.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/08/11	76 FR 33170
Final Action Effective.	06/08/11	

Regulatory Flexibility Analysis

Required: Yes.

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RIN: 0750-AH23

310. • Award-Fee Reductions for Health and Safety Issues (DFARS Case 2009-D039)

Legal Authority: Pub. L. 111-84; Pub. L. 109-364

Abstract: DoD issued an interim rule on November 12, 2011, amending the Defense FAR Supplement to implement section 823 of the National Defense Authorization Act for Fiscal Year 2010 and section 834 of the National Defense Authorization Act for Fiscal Year 2011.

Section 823 requires that all covered contracts for the procurement of goods or services using award fees be reviewed by the contracting officer during the evaluation of the contractor performance for the relevant award fee period, to determine if actions of gross negligence or reckless disregard by the contractor or its subcontractors caused harm or death to Government personnel, both civilian or military. Section 834 of the National Defense Authorization Act for Fiscal Year 2011, added an additional disposition, for a finding of fault by the Secretary of Defense in an administrative proceeding, where a reduction or denial of award fee is applicable. The case was closed as agreed to by the DAR Council on June 2, 2011, incorporated into DFARS Case 2011–D033, and renamed Award Fee Reduction or Denial for Health or Safety Issues, RIN 0750–AH37.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/12/10	75 FR 69360
Interim Final Rule Effective.	11/12/10	
Interim Final Rule Comment Period End.	01/11/11	
Merged With 0750–AH37.	06/02/11	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email:* ynette.shelkin@osd.mil.
RIN: 0750–AH24

311. • Material Inspection and Receiving Report (DFARS Case 2009–D023)

Legal Authority: 41 U.S.C. 1303

Abstract: DoD issued a final rule with changes to implement updates to the Defense FAR Supplement (DFARS), appendix F, Material Inspection and Receiving Report, that incorporate procedures for using the electronic Wide Area Workflow (WAWF) Receiving Report required for use in most contracts in lieu of the DD Form 250, Material Inspection and Receiving Report, which is now used mostly on an exception basis. DoD published a proposed rule in the **Federal Register** (75 FR 56961) on September 17, 2010, to amend DFARS appendix F to provide new coverage on the use, preparation, and distribution of the electronic

WAWF receiving report which is the primary method for documenting acceptance and distribution of shipments. The rule also addressed WAWF capability to provide Item Unique Identification (IUID), and Radio Frequency Identification (RFID). The rule was revised to reflect comments received. A final regulatory flexibility analysis has been prepared. The final rule affects all DoD contractors who are not exempt from using WAWF, however, the exact number of small entities is unknown. Any impact on small business is expected to be beneficial from providing detailed preparation and distribution guidance for use of WAWF.

Timetable:

Action	Date	FR Cite
NPRM	09/17/10	75 FR 56961
NPRM Comment Period End.	11/16/10	
Final Action	09/20/11	76 FR 58122
Final Action Effective.	09/20/11	

Regulatory Flexibility Analysis

Required: Yes.

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RIN: 0750–AH33

312. • Extension of Restrictions on the Use of Mandatory Arbitration Agreements (DFARS 2011–D035)

Legal Authority: Pub. L. 112–10

Abstract: This rule amends the Defense Federal Acquisition Regulation Supplements (DFARS) to implement section 8102 of the DoD Appropriations Act for Fiscal Year 2011 (Pub. L. 112–10) to restrict the use of mandatory arbitration agreements when awarding contracts that exceed \$1 million when using Fiscal Year 2011 funds appropriated or otherwise made available by the DoD Appropriations Act. Section 8102 of Public Law 112–10 prohibits the use of Fiscal Year 2011 funds for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of \$1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention. This rule does not apply to the acquisition of commercial items.

Section 8102(b) requires the contractor to certify compliance by subcontractors. The Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/29/11	76 FR 38047
Final Action Effective.	06/29/11	

Regulatory Flexibility Analysis

Required: Yes.

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RIN: 0750–AH34

DEPARTMENT OF DEFENSE (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Final Rule Stage

313. TRICARE; Reimbursement of Sole Community Hospitals

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch 55

Abstract: This proposed rule is to implement the statutory provision at 10 U.S.C. 1079(j)(2) that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This proposed rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for inpatient services provided by Sole Community Hospitals (SCHs). It will be phased in over a several-year period.

Timetable:

Action	Date	FR Cite
NPRM	07/05/11	76 FR 39043
NPRM Comment Period End.	09/06/11	
Final Action	12/00/11	

Regulatory Flexibility Analysis

Required: Yes.

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RIN: 0720–AB41

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