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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 regulations 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 regulations listed in the agenda are of limited 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 December 23, 2016, 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 fall of 2017.

The complete Unified Agenda will be available online at www.reginfo.gov.

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 Ms. Patricia Toppings, telephone 571-372-0485, or write to Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 9010 Defense Pentagon, Washington, DC 20301-9010, or email: patricia.l.toppings.civ@mail.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. Morgan Park, telephone 571-372-0489, or write to Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Advisory Committee Division, 9010 Defense Pentagon, Washington, DC 20301-9010, or email: morgan.e.park.civ@mail.mil.

For general information on Office of the Secretary regulations which are procurement-related, contact Ms. Jennifer Hawes, telephone 571-372-6115, or write to Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Defense Procurement and Acquisition Policy, Defense Acquisition Regulations System, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or email: jennifer.l.hawes2.civ@mail.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: charles.r.smith567.civ@mail.mil.

For general information on Department of the Navy regulations, contact LCDR Audrey Nichols, telephone 703-614-7408, 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: audrey.nichols@navy.mil.

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703-614-8500, or write the Office of the Secretary of the Air Force, Chief, Information Dominance/Chief Information Officer (SAF CIO/A6), 1800 Air Force Pentagon, Washington, DC 20330-1800, or email: usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.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 and Navy. 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.

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 regulations 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 regulations, 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) completed actions; and (5) long-term 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.

David Tillotson III,
Acting Deputy Chief Management Officer.

DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
61	Only One Offer (DFARS Case 2017–D009)	0750–AJ19
62	Inapplicability of Certain Defense-Unique Laws to Commercial Items (DFARS Case 2017–D010)	0750–AJ21
63	Restrictions on Acquisitions From Foreign Sources (DFARS Case 2017–D011)	0750–AJ22
64	Modification to Pilot Program for Streamlining Awards for Innovative Technology Projects (DFARS Case 2017–D015).	0750–AJ24
65	Performance-Based Payments (DFARS Case 2017–D019)	0750–AJ28
66	Acquisition of Commercial Items (DFARS Case 2017–D020)	0750–AJ29
67	Service Contract Reporting (DFARS Case 2017–D035)	0750–AJ40
68	Past Performance Information Retrieval System-Statistical Reporting (DFARS Case 2017–D003)	0750–AJ41
69	Consolidation of Contract Requirements (DFARS Case 2017–D004)	0750–AJ43
70	Electronic Submission and Processing of Payment Requests and Receiving Reports (DFARS Case 2016–D032).	0750–AJ44
71	Antiterrorism Requirements for Contractors (DFARS Case 2017–D034)	0750–AJ45

DEFENSE ACQUISITION REGULATIONS COUNCIL—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
72	Amendments Related to Sources of Electronic Parts (DFARS Case 2016–D013)	0750–AI92
73	Competition for Religious-Related Services Contracts (DFARS Case 2016–D015)	0750–AJ06
74	Use of the Government Property Clause (DFARS Case 2015–D035)	0750–AJ11

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
75	TRICARE; Reimbursement of Long Term Care Hospitals and Inpatient Rehabilitation Facilities	0720–AB47

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Proposed Rule Stage

61. • Only One Offer (DFARS Case 2017–D009)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–328, sec. 822

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 822 of the National Defense Authorization Act for Fiscal Year 2017. This rule is necessary to conform with the changes being made to the Federal Acquisition Regulation (FAR), under FAR Case 2017–006, which amends the standards for adequate price competition for DoD, NASA, and the Coast Guard. The rule requires that cost or pricing data be certified when only one offer is received

in response to a competitive solicitation, unless another exception to the requirement for certified cost or pricing data applies.

This rule will increase costs to offerors, including small entities, if only one offer is received in response to a competitive solicitation, unless another exception to certified cost or pricing data applies (such as commercial item acquisitions or acquisitions valued at less than \$750,000).

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060

Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:* jennifer.l.hawes2.civ@mail.mil.
RIN: 0750–AJ19

62. • Inapplicability of Certain Defense-Unique Laws to Commercial Items (DFARS Case 2017–D010)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–328, sec. 874

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 874 of the National Defense Authorization Act for Fiscal Year 2017. Section 874 amends 10 U.S.C. 2375 to address the relationship of commercial item provisions to other provisions of law and regulation.

The DFARS will include lists of defense-unique statutes, and Governmentwide contract clause requirements not expressly authorized

by statute, that are not applicable to contracts or subcontracts for the acquisition of commercial items or contracts for the acquisition of commercially available off-the-shelf items. To the maximum extent practicable, the DFARS shall prohibit the flowdown of contract clauses to subcontracts under contracts for the procurement of commercial items unless required by law or Executive order.

This rule is expected to reduce costs to contractors, including small entities, by reducing the number of regulations applicable to commercial items, including commercially available off-the-shelf items.

Timetable:

Action	Date	FR Cite
NPRM	09/00/17	
NPRM Comment Period End.	11/00/17	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:* jennifer.l.hawes2.civ@mail.mil, *RIN:* 0750–AJ21

63. • Restrictions on Acquisitions From Foreign Sources (DFARS Case 2017–D011)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–328, sec. 817; 37 U.S.C. 418; Pub. L. 114–328, sec. 881(b); 10 U.S.C. 2500(1); Pub. L. 114–328, sec. 1296; Pub. L. 109–163, sec. 1211

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections 817, 881(b), and 1296 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. These sections of the NDAA for FY 2017 accomplish the following:

(1) Section 817 amends 37 U.S.C. 418, adding new paragraph (d), which extends domestic source requirements to acquisitions at or below the simplified acquisition threshold when acquiring athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces.

(2) Section 881(b) amends 10 U.S.C. 2500(1) by adding Australia and the United Kingdom to the definition of “National Technology and Industrial Base.” 10 U.S.C. 2534 restricts acquisition of certain items to items

from manufacturers that are part of the national technology and industrial base.

(3) Section 1296 amends section 1211 of the NDAA for FY 2006 (Pub. L. 109–163), which was also amended by the NDAA for FY 2012 (Pub. L. 112–81). It prohibits purchase of items from a Communist Chinese military company that meet the definition of goods and services controlled as munitions items when moved to the 600 series of the Commerce Control List of the Export Administration Regulations of the Department of Commerce.

Implementation of section 817 in the DFARS may result in some increased costs to the Government for purchase of domestic athletic footwear; however, this will benefit the manufacturers of domestic footwear and components thereof. Implementation of section 881(b) is not expected to increase costs to contractors or the Government and will improve the integration of the national technology and industrial base, expanding to include several close allies (United Kingdom and Australia). Implementation of section 1296 is not expected to significantly increase costs to contractors or the Government; there may be some costs of transition to other sources if restricted parts are currently being purchased from China.

Timetable:

Action	Date	FR Cite
NPRM	09/00/17	
NPRM Comment Period End.	11/00/17	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:* jennifer.l.hawes2.civ@mail.mil, *RIN:* 0750–AJ22

64. • Modification to Pilot Program for Streamlining Awards for Innovative Technology Projects (DFARS Case 2017–D015)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–328, sec. 896; Pub. L. 114–92, sec. 873

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 896 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which amends section 873 of the NDAA for FY 2016 to modify the Pilot Program for Streamlining Awards for Innovative Technology Projects. This proposed rule

revises DFARS to implement section 896 by providing an exception from the following:

(1) Certified cost or pricing data requirements for contracts, subcontracts, or modifications of contracts or subcontracts valued at less than \$7.5 million awarded under the Small Business Technology Transfer Program. The head of the agency may determine that submission of cost or pricing data should be required based on past performance of the specific small business concern or nontraditional defense contractor or analysis of other information specific to the award.

(2) The records examination requirement at 10 U.S.C. 2313 that precludes the head of an agency, acting through an authorized representative, from examining all contractor or subcontractor records related to the proposal for the contract or subcontract, the discussions conducted on the proposal, and the pricing of the contract or subcontract. This exception applies to contracts valued at less than \$7.5 million that are awarded to a small business concern or nontraditional defense contractor pursuant to a technical, merit-based selection procedure or the Small Business Innovation Research Program. Notwithstanding this exception, the head of the agency may determine within 18 months of contract completion that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor or analysis of other information specific to the award.

This rule is expected to reduce costs for small business concerns or nontraditional defense contractors who are covered by the statutory exemptions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/17	
NPRM Comment Period End.	11/00/17	

Regulatory Flexibility Analysis
Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:* jennifer.l.hawes2.civ@mail.mil, *RIN:* 0750–AJ24

65. • Performance-Based Payments (DFARS Case 2017–D019)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–328, sec. 831

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 831 of the National Defense Authorization Act for Fiscal Year 2017 to require the following:

(1) Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes.

(2) Nontraditional defense contractors and other private sector companies shall be eligible for performance-based payments, consistent with best commercial practices.

(3) In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

Nothing in the rule shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

The rule is not expected to increase costs for contractors, and the rule does not impact negotiated contract prices. The rule revises the contractual procedures for financing through performance-based payments and provides for increased utilization of this financing method for traditional and nontraditional defense contractors.

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6115, *Email:* jennifer.l.hawes2.civ@mail.mil. *RIN:* 0750-AJ28

66. • Acquisition of Commercial Items (DFARS Case 2017-D020)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114-328, sec. 871; Pub. L. 114-328, sec. 872; Pub. L. 114-328, sec. 876; Pub. L. 114-328, sec. 877; Pub. L. 114-328, sec. 878

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement the requirements of sections 871, 872,

876, 877, and 878 of the National Defense Authorization Act for Fiscal Year 2017 to address:

(1) How contracting officers may require the offeror to submit relevant information to support market research for price analysis;

(2) That an offeror may submit information or analysis relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item, and a contracting officer may consider such information or analysis pursuant to 10 U.S.C. 2379;

(3) The head of an agency may not enter into a contract for facilities-related services, knowledge-based services (except engineering services), construction services, medical services, or transportation services that are not commercial services unless it is determined in writing by the appropriate authority that no commercial services are suitable to meet the agency's needs;

(4) That items valued at less than \$10,000 that are purchased by a contractor for use in the performance of multiple contracts with the DoD and other parties and are not identifiable to any particular contract shall be treated as a commercial item; and

(5) That services provided by a business unit that is a nontraditional defense contractor (as that term is defined in 10 U.S.C. 2302(9)) shall be treated as commercial items, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing.

DoD expects that this rule will reduce costs for contractors since certified cost or pricing data will not be required when contracting officers use commercial item procurement procedures for: Commingled items purchased by contractors for use in the performance of multiple contracts; commercial services (when DoD is obtaining facilities-related services, knowledge-based services (except engineering services), construction services, medical services, or transportation services); and services from nontraditional defense contractors. DoD does not expect this rule to increase costs for contractors, because this rule does not add to or remove any of the existing requirements for the submission of other than certified cost or pricing data for the purpose of determining the reasonableness of prices proposed for commercial items. While the use of market research and data to support a value analysis of commercial items will be encouraged, in

accordance with the statutory language, both techniques are existing practices for making price reasonableness determinations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6115, *Email:* jennifer.l.hawes2.civ@mail.mil.

RIN: 0750-AJ29

67. • Service Contract Reporting (DFARS Case 2017-D035)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114-328, sec. 812; 10 U.S.C. 2330a

Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulations Supplement (DFARS) to implement section 812 of the National Defense Authorization Act for Fiscal Year 2017. Section 812 amended 10 U.S.C. 2330a, which requires the Secretary of Defense to:

(1) Establish a data collection system with regard to each purchase of services by a military department or defense agency in excess of \$3 million for the following service acquisition portfolio groups: Logistics managements services, equipment-related services, knowledge-based services, and electronics and communications services; and

(2) Prepare an annual inventory, and submit to Congress a summary of the inventory, of activities performed during the preceding fiscal year pursuant to staff augmentation contracts on behalf of DoD.

To create the inventory required by the statute, DoD must collect information from contractors performing such services, which will be accomplished through the use of the Enterprise-wide Contractor Manpower Reporting Application (eCMRA). This rule amends the DFARS to provide instructions to contracting officers and contractors regarding reports to be submitted through eCMRA. As such, the rule will increase costs for contractors, including small entities; however, the new reporting requirements are necessary for DoD to comply with the requirements of 10 U.S.C. 2330a.

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6115, *Email:* jennifer.l.hawes2.civ@mail.mil. *RIN:* 0750-AJ40

68. • Past Performance Information Retrieval System-Statistical Reporting (DFARS Case 2017-D003)

Legal Authority: 41 U.S.C. 1303
Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate price risk, item risk and supplier risk factors into DFARS 252.213-7000, Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System-Statistical Reporting in Past Performance Evaluations. The Past Performance Information Retrieval System-Statistical Reporting (PPIRS-SR) application provides objective, statistical information that can be used by contracting officers for evaluation of contractor quotations under simplified acquisition procedures.

This rule is necessary in order to align the DFARS with enhancements made to the PPIRS-SR application in 2016, enhancements that better enable DoD to evaluate supplier past performance in order to prevent the acquisition of counterfeit parts. PPIRS-SR captures historical pricing data from various sources to compute “average price” paid, applies a common statistical methodology to derive an expected cost range for previously procured items, and alerts contracting officers of items considered “high-risk” (i.e., the item to be procured has a critical use or is susceptible to counterfeiting).

The proposed rule does not increase costs for contractors; rather, the rule informs prospective suppliers that DoD will use PPIRS-SR as a source of information for past performance data.

Timetable:

Action	Date	FR Cite
NPRM	11/00/17	
NPRM Comment Period End.	01/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6115, *Email:* jennifer.l.hawes2.civ@mail.mil. *RIN:* 0750-AJ41

69. • Consolidation of Contract Requirements (DFARS Case 2017-D004)

Legal Authority: 41 U.S.C. 1303; 14 U.S.C. 657q; Pub. L. 112-239, sec. 1671
Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove or revise outdated DFARS coverage regarding consolidation of contract requirements, which is defined at DFARS 207.170 as “the use of a solicitation to obtain offers for a single contract or multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.” This coverage in the DFARS implemented 10 U.S.C. 2382, which was repealed by section 1671 of the National Defense Authorization Act for Fiscal Year 2013. Section 1671 also amended section 44 of the Small Business Act (15 U.S.C. 657q) to remove the requirement for DoD to comply with 10 U.S.C. 2382. As a result, DoD is now required to comply with 15 U.S.C. 657q, which places limitations on the use of acquisition strategies involving consolidation. The Federal Acquisition Regulation (FAR) addresses consolidation, including the limitations imposed by 15 U.S.C. 657q, at FAR 7.107.

By removing the outdated DFARS coverage of consolidation, this rule will reduce confusion among the DoD contracting workforce caused by different requirements in the FAR and DFARS. Accordingly, this rule is not expected to increase costs for offerors or contractors.

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6115, *Email:* jennifer.l.hawes2.civ@mail.mil.

RIN: 0750-AJ43

70. • Electronic Submission and Processing of Payment Requests and Receiving Reports (DFARS Case 2016-D032)

Legal Authority: 41 U.S.C. 1303
Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify exceptions to the use of Wide Area WorkFlow (WAWF) for electronic submission and processing of payment requests and receiving reports. The rule will amend the DFARS to reflect the current exceptions to WAWF, which include classified contracts, contractor inability to create an electronic invoice for reasons beyond its reasonable control (or because the creation of an electronic invoice is unduly burdensome), or when DoD is unable to receive a payment request or provide acceptance in electronic form. The proposed rule also updates DFARS appendix F and removes obsolete language from DFARS 246.370 and its related clause at DFARS 252.246-7000, Material Inspection and Receiving Report. This rule is not expected to increase costs for contractors.

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6115, *Email:* jennifer.l.hawes2.civ@mail.mil. *RIN:* 0750-AJ44

71. • Antiterrorism Requirements for Contractors (DFARS Case 2017-D034)

Legal Authority: 41 U.S.C. 1303
Abstract: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement requirements of DoD Instruction O-2000.16, “DoD Antiterrorism (AT) Program Implementation: DoD AT Standards,” as it relates to contractors. Specifically, DoDI O-2000.16 requires that contractor and subcontractor employees who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation for a period of performance in excess of six months, complete Level I antiterrorism awareness training annually. This rule

creates a new DFARS contract clause that informs contractors of this mandatory training requirement; therefore, this case will increase costs for contractors.

Timetable:

Action	Date	FR Cite
NPRM	10/00/17	
NPRM Comment Period End.	12/00/17	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:*

jennifer.l.hawes2.civ@mail.mil.

RIN: 0750–AJ45

DEPARTMENT OF DEFENSE (DOD)

Defense Acquisition Regulations Council (DARC)

Final Rule Stage

72. Amendments Related to Sources of Electronic Parts (DFARS Case 2016–D013)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–92, sec. 885(b); Pub. L. 112–81, sec. 818(c)(3)(D)(iii)

Abstract: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to implement section 885(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, which amends section 818(c)(3)(D)(iii) of the NDAA for FY 2012, which makes contractor and subcontractor identification and use of contractor-approved distributors subject to approval (as well as review and audit) by appropriate DoD officials. Contractors are only allowed to use contractor-approved suppliers when electronic parts are not in production by the original manufacturer or an authorized aftermarket manufacturer, and are not currently available in stock from a the original manufacturer, their authorized suppliers; or suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers. The contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

Five respondents submitted comments on the proposed rule, which resulted in one clarification in the final rule. This rule could have some cost

impact on contractors, including small entities, if a contractor-approved supplier is disapproved by DoD, but this would only occur if DoD had identified substantial risk of counterfeit parts from such supplier. DoD shares the desire of the contractors to avoid significant schedule delays and cost increases, which would result in impairment of operational readiness.

Timetable:

Action	Date	FR Cite
NPRM	08/02/16	81 FR 50680
NPRM Comment Period End.	10/03/16	
Final Action	09/00/17	
Final Action Effective.	09/00/17	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:*

jennifer.l.hawes2.civ@mail.mil.

RIN: 0750–AI92

73. Competition for Religious-Related Services Contracts (DFARS Case 2016–D015)

Legal Authority: 41 U.S.C. 1303; Pub. L. 114–92, sec. 898

Abstract: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to implement section 898 of the National Defense Authorization Act for Fiscal Year 2016, which prohibits DoD from precluding a nonprofit organization from competing for a contract for religious-related services on a U.S. military installation. The rule implements the prohibition set forth in the statute. In addition, since solicitations that are set aside for small businesses are likely to provide a competitive environment that excludes participation of nonprofit organizations, the rule provides a new provision to be used in solicitations for religious-related services on a U.S. military installation that are set aside for small businesses in order to advise potential offerors that nonprofit organizations will not be precluded from competing. Contracting officers are also directed to not use any of the sole source authorities at Federal Acquisition Regulation 6.302–5(b)(4) through (7), since use of those authorities would restrict award of the requirement to a small business and, contrary to statute, would bar a nonprofit organization from being considered for the award.

There were no public comments submitted in response to the proposed rule. This rule will not increase the cost of contracting for contractors. However, this rule may have an economic impact on small entities, since the rule expands opportunities for nonprofit organizations that will now be authorized to compete on solicitations that are set-aside for small businesses, when the acquisition of religious-related services on a U.S. military installation.

Timetable:

Action	Date	FR Cite
NPRM	12/22/16	81 FR 93875
NPRM Comment Period End.	02/21/17	
Final Action	09/00/17	
Final Action Effective.	09/00/17	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:*

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RIN: 0750–AJ06

74. Use of the Government Property Clause (DFARS Case 2015–D035)

Legal Authority: 41 U.S.C. 1303

Abstract: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to expand the prescription for use of Federal Acquisition Regulation (FAR) clause 52.245–1, Government Property, to apply to all purchase orders for repair, maintenance, overhaul, or modification to Government property regardless of the acquisition cost of the items to be repaired. Currently, the FAR clause is optional for use in purchase orders for repair when the acquisition cost of the item to be repaired is less than the simplified acquisition threshold; however, acquisition cost alone is not an indicator of the criticality or sensitivity of the property. The acquisition cost of individual items of firearms, body armor, night-vision equipment, computers, or cryptologic devices may be below the simplified acquisition threshold, but the accountability requirements for these items are fairly stringent. Requiring the clause in all purchase orders for repair, regardless of the acquisition cost of the item to be repaired, will ensure DoD has better accountability and insight into military repairable assets.

One respondent submitted comments on the proposed rule. This rule will increase costs for contractors, including

small entities, who receive purchase orders for repair of Government property, because these contractors will be required to comply with the reporting requirements associated with Government property clause. However, the rule also provides the contractors with the protections of the Government Property clause (where the Government self-insures the property provided to the contractor), and provides DoD better accountability of its property.

Timetable:

Action	Date	FR Cite
NPRM	10/21/16	81 FR 73002
NPRM Comment Period End.	12/20/16	
Final Action	10/00/17	
Final Action Effective.	10/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Hawes, Defense Acquisition Regulations System, Department of Defense, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6115, *Email:* jennifer.l.hawes2.civ@mail.mil.

RIN: 0750–AJ11

DEPARTMENT OF DEFENSE (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Final Rule Stage

75. Tricare; Reimbursement of Long Term Care Hospitals and Inpatient Rehabilitation Facilities

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

Abstract: The Department of Defense, Defense Health Agency, proposed to revise its reimbursement of Long Term Care Hospitals (LTCHs) and Inpatient Rehabilitation Facilities (IRFs). Proposed revisions are in accordance with the statutory provision at title 10, United States Code (U.S.C.), section 1079(i)(2) that requires TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare. 32 CFR 199.2 includes a definition for “Hospital, long-term (tuberculosis, chronic care, or rehabilitation).” This rule proposed to delete this definition and create separate definitions for “Long Term Care Hospital” and “Inpatient Rehabilitation Facility” in accordance with Centers for Medicare and Medicaid Services (CMS) classification criteria. Under TRICARE, LTCHs and IRFs (both freestanding rehabilitation hospitals and rehabilitation hospital units) are currently paid the lower of a negotiated rate (if they are a network provider) or

billed charges (if they are a non-network provider). Although Medicare’s reimbursement methods for LTCHs and IRFs are different, to the Defense Health Agency proposed adopting both the Medicare LTCH and IRF Prospective Payment System (PPS) methods simultaneously to align with our statutory requirement to reimburse like Medicare. The proposed rule set forth the regulation modifications that would be necessary for TRICARE to adopt Medicare’s LTCH and IRF Prospective Payment Systems and rates applicable for inpatient services provided by LTCHs and IRFs to TRICARE beneficiaries. The Department will finalize this rule after considering public comment.

Timetable:

Action	Date	FR Cite
NPRM	01/26/15	80 FR 3926
NPRM Comment Period End.	03/27/15	
Second NPRM	08/31/16	81 FR 59934
Second NPRM Comment Period End.	10/31/16	
Final Action	09/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ann N. Fazzini, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301, *Phone:* 303 676–3803.

RIN: 0720–AB47

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