



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS-2019-0031]

RIN 0750-AK07

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Tariff Information" (DFARS Case 2018-D044)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D044, using any of the following methods:

- o *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for "DFARS Case 2018-D044". Select "Submit a Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D044" on any attached document.

o *Email:* *osd.dfars@mail.mil.* Include DFARS Case 2018-D044 in the subject line of the message.

o *Fax:* 571-372-6094.

o *Mail:* Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to remove the DFARS clause 252.239-7006, Tariff Information, and the associated clause prescription at DFARS 239.7411(a). This clause is prescribed for use in solicitations, contracts, and basic agreements for telecommunications services. The clause requires the contractor to provide the contracting officer with the following information:

- Upon request, a copy of the contractor's existing tariffs.
- Before filing, a copy of any application to be made to a regulatory agency that requests new or changes to rates, charges, services, or regulations related to any tariff or to any of the facilities or services furnished primarily to the Government.
- Upon request, all supporting documentation prepared in connection with any application to a regulatory agency.
- Notice of any application that anyone other than the contractor files with a regulatory body which affects or will affect the rate or conditions of services under the agreement or contract.

This clause was added to the DFARS to implement a standardized approach across DoD for addressing critical issues associated with the acquisition of telecommunication services. Since its implementation, technological advances, and the passage of additional telecommunication regulations at 47 CFR 42.10, have made this DFARS clause unnecessary. Pursuant to 47 CFR 42.10, telecommunications carriers are now required to make tariff and non-tariff information available to the public online at the carrier's internet website and to update the information regularly. Additionally, online databases and tools have been

created to track and monitor changes in telecommunications tariffs, prices, and services. Since contracting officers are now able review carriers' websites and access online tariff tools and databases as needed, it is unnecessary and burdensome to require the contractor to provide this information separately to the contracting officer in accordance with the clause. As such, this DFARS clause can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. Public notification of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 28041 on June 20, 2017 (see also 82 FR 35741 (August 1, 2017)), and requested public input. No public comments were received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.239-7006, Tariff Information, and determined that the DFARS coverage was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete DFARS clause 252.239-7006, Tariff Information. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Expected Cost Savings

This rule impacts only telecommunication service providers who do business, or want to do business, with DoD. DFARS clause 252.239-7006, Tariff Information, requires telecommunications service contractors to submit certain tariff and non-tariff information to DoD when requested by the contracting officer or as specified in the clause. Removal of this DFARS clause is expected to result in savings for both DoD and DoD contractors that provide telecommunications services.

The following is a summary of the estimated public and Government cost savings:

SUMMARY	Public	Government	Total
Present Value	-\$1,624,014	-\$406,000	-\$2,030,014
Annualized Costs	-\$113,681	-\$28,420	-\$142,101

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search

for "DFARS Case 2018-D044," click "Open Docket," and view "Supporting Documents."

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is expected to be an E.O. 13771 deregulatory action. We estimate that this rule generates \$2.03 million in annualized cost savings, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated cost savings can be found in section III. of this preamble.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within

the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to major weapon system acquisition programs. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation from the DoD Regulatory Task Force established pursuant to Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, to repeal the clause at DFARS 252.239-7006, *Tariff Information*, and the associated clause prescription at DFARS 239.7411(a).

The objective of this rule is to remove the requirement for contractors to report tariff information under the DFARS clause. The legal basis for this change is 41 U.S.C. 1303.

According to the Electronic Document Access database, DoD awards approximately 855 contracts to 83 unique contractors each year that include DFARS clause 252.239-7006. It is estimated that 171 of those contracts are awarded to small entities.

This proposed rule does not include any new reporting or recordkeeping requirements for small entities. Rather this rule reduces the information collection requirements approved under OMB Control Number 0704-0341. Small entities will no longer be required to provide tariff information to the contracting officer in accordance with DFARS clause 252.239-7006.

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

There are no known significant alternative approaches to the proposed rule that would meet the policy objective of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018-D044), in correspondence.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the DFARS provision 252.239-7006, Tariff Information, currently approved under OMB Control Number 0704-0341, entitled "Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology and associated clauses at DFARS 252.239-7000 and 252.239-7006." The rule revises an information collection requirement, which requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request to OMB for approval of a revised information collection.

A. Public reporting burden.

Public reporting burden for this previously approved collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule proposes to eliminate DFARS 252.239-7006, Tariff Information, thereby reducing the associated current annual reporting burden and OMB inventory of hours as follows:

Respondents: 83.

Responses per respondent: Approximately 10.3.

Total annual responses: 855.

Hours per response: 2 hours

Total response Burden Hours: 1,710.

Request for Comments Regarding Paperwork Burden Reduction.

Written comments and recommendations on the proposed reduction of this information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email Susan_M_Minson@omb.eop.gov, with a copy to the Defense Acquisition Regulations System, Attn: Carrie Moore; OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 to 60 days after the date of this notification, but comments to OMB

will be most useful if received by OMB within 30 days after the date of this notification.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or email osd.dfars@mail.mil. Include DFARS Case 2018-D044 in the subject line of the message.

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

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

PART 239-ACQUISITION OF INFORMATION TECHNOLOGY

239.7411 [Amended]

2. Amend section 239.7411 by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.239-7006 [Removed and Reserved]

3. Remove and reserve section 252.239-7006.

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