

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is not creating any new requirements for contractors or changing any existing policies or practices. However, a final regulatory flexibility analysis has been prepared and is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to repeal DFARS subpart 211.273, Substitutions for Military or Federal Specifications of Standards, and DFARS clause 252.211-7005, Substitutions for Military or Federal Specifications of Standards, as the guidance and clause are no longer necessary. The objective of this rule is to remove outdated guidance from the DFARS and reduce regulatory burden on the public. This repeal is pursuant to action taken by the DoD Regulatory Reform Task Force established under Executive Order 13777, Enforcing the Regulatory Reform Agenda.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD does not collect data on the number of small businesses that proposed an Single Process Initiative (SPI) process in lieu of military of Federal specifications or standards cited in the solicitation. Instead, DoD subject matter experts estimate that approximately 10 contractors participate in SPI and that each participant will respond to one solicitation per year. Based on the information available, DoD does not anticipate that this rule will significantly impact small business entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known alternative to the rule that will meet the stated objectives or minimize the impact on of the rule on small entities.

VI. Paperwork Reduction Act

This rule removes the burden associated with DFARS 252.211-7005 from the information collection requirement currently approved under 0704-0398, entitled DFARS Part 211, Describing Agency Needs, and Related

Clause at DFARS 252.211. This reduction is reflected in the revision to and extension of the information collection, as published in the **Federal Register** on February 27, 2020, at 85 FR 11351, and May 28, 2020, at 85 FR 32019.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Jennifer D. Johnson,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS**211.273 [Removed and Reserved]**

- 2. Remove and reserve section 211.273.

211.273-1 through 211.273-4 [Removed]

- 3. Remove sections 211.273-1 through 211.273-4.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.211-7005 [Removed and Reserved]**

- 4. Remove and reserve section 252.211-7005.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 211 and 252**

[Docket DARS-2019-0056]

RIN 0750-AK59

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Alternate Preservation, Packaging, and Packing" (DFARS Case 2019-D022)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a provision that is

no longer necessary pursuant to action taken by the DoD Regulatory Reform Task Force.

DATES: Effective October 1, 2020.

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

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the **Federal Register** at 85 FR 19721 on April 8, 2020, to remove the provision at DFARS 252.211-7004, Alternate Preservation, Packaging, and Packing, and the associated prescription from the DFARS, because the provision is no longer necessary. No public comments were received in response to the proposed rule. No changes were made to the rule, as proposed.

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 the obsolete solicitation provision at DFARS 252.211-7004, Alternate Preservation, Packaging, and Packing. This rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, or commercial items, including commercially available off-the-shelf items.

III. 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.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is not creating any new

requirements for contractors or changing any existing policies or practices. However, a final regulatory flexibility analysis has been prepared and is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to repeal DFARS provision 252.211–7004, Alternate Preservation, Packaging, and Packing, as the provision is no longer necessary. The objective of this rule is to reduce regulatory burden on the public. This repeal is pursuant to action taken by the Regulatory Reform Task Force established under Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD does not collect data on the number of small businesses that respond to a solicitation that includes DFARS clause 252.211–7004 or the number of small businesses responding to such a solicitation with alternative preservation, packaging, or packing methods. Instead, DoD subject matter experts advise that approximately 375 solicitations are issued each year that contain military preservation, packaging, or packing requirements where commercial or industrial methods may also be acceptable. DoD estimates that it receives 1.5 responses to each solicitation, for a total of 563 offers received in response to these solicitations. This total estimated number of responses does not delineate between the business size of the offerors or those offerors that did and did not propose alternative methods for preservation, packaging, or packing in lieu of military specifications. Based on the information available, DoD does not anticipate that this rule will significantly impact small business entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known alternative to the rule that will meet the stated objectives or minimize the impact on of the rule on small entities.

VI. Paperwork Reduction Act

This rule removes the burden associated with DFARS 252.211–7004 from the information collection requirement currently approved under 0704–0398, entitled DFARS Part 211, Describing Agency Needs, and Related Clause at DFARS 252.211. This reduction is reflected in the revision to and extension of the information collection, as published in the **Federal Register** on February 27, 2020, at 85 FR

11351, and May 28, 2020, at 85 FR 32019.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Jennifer D. Johnson,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore 48 CFR parts 211 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

211.272 [Removed and Reserved]

■ 2. Remove and reserve section 211.272.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7004 [Removed and Reserved]

■ 3. Remove and reserve section 252.211–7004.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 244, and 252

[Docket DARS–2019–0052]

RIN 0750–AK66

Defense Federal Acquisition Regulation Supplement: Treatment of Certain Items as Commercial Items (DFARS Case 2019–D029)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement several sections of the National Defense Authorization Act for Fiscal Year 2017 that address treatment of commingled items purchased by contractors and services provided by nontraditional defense contractors as commercial items.

DATES: Effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 65322 on November 27, 2019, to implement sections 877 and 878 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and further implement section 848 of the NDAA for FY 2018 (Pub. L. 115–91). Section 877, Treatment of Commingled Items Purchased by Contractors as Commercial Items, adds 10 U.S.C. 2380b. Section 878, Treatment of Services Provided by Nontraditional Contractors as Commercial Items, amends 10 U.S.C. 2380a. Section 848 modifies 10 U.S.C. 2380(b) to provide that a contract for an item using FAR part 12 procedures shall serve as a prior commercial item determination, unless the appropriate official determines in writing that the use of such procedures was improper or that it is no longer appropriate to acquire the item using commercial item acquisition procedures. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

Further implementation of section 848 of the NDAA for FY 2018 (Pub. L. 115–91) has been removed from the final rule under this case. DoD plans to publish a new proposed rule under a separate case (DFARS Case 2020–D033).

B. Analysis of Public Comments

1. Treatment of commingled items as commercial items (section 877 of the NDAA for FY 2017).

a. Strike “when purchased” from proposed DFARS 244.402(S–70) and the proposed clause at DFARS 252.244–7000(c).

Comment: One respondent suggested removal of the words “when purchased,” which were added as a clarification to the statutory text in the proposed rule, suggesting that the addition “serves only to erode the purpose of the law, and will increase administrative burden of identifying commingled items.”

Response: The statutory change adding a new section 10 U.S.C. 2380b is titled, “Treatment of commingled items purchased contractors as commercial items.” The statute is intended to