

program manager or other official responsible for the requirement, at a level specified by the agency, should execute the certification.

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 217**

[DFARS Case 2008-D023]

**Defense Federal Acquisition Regulation Supplement; Additional Requirements Applicable to Multiyear Contracts**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, with minor editorial corrections, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the National Defense Authorization Act for Fiscal Year 2008, section 811, entitled “Requirements Applicable to Multiyear Contracts for the Procurement of Major Systems of the Department of Defense.”

**DATES:** *Effective Date:* September 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L), DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-1302; facsimile 703-602-0350. Please cite DFARS Case 2008-D023.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD published an interim rule at 75 FR 9114 on March 1, 2010, to implement section 811 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), enacted January 28, 2008. The period for public comment closed on April 30, 2010. The interim rule revised DFARS 217.170 and 217.172 to add six new requirements to which the Secretary of Defense must certify in writing when requesting congressional authorization to enter into a multiyear contract for a major defense acquisition program. Among these requirements is the need to certify to certain cost-savings determinations.

DoD received no comments on the interim rule. Therefore, DoD is finalizing the interim rule with minor editorial corrections only.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

DoD certifies that this rule will not 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 additional requirements apply solely to internal Government operating procedures. The rule implements section 811 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), which only imposes new responsibilities on the Secretary of Defense when requesting congressional authorization to enter into a multiyear contract for a major defense acquisition program. Therefore, the rule will have no significant cost or administrative impact on contractors or offerors.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 217**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, the interim rule published at 75 FR 9114 on March 1, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

**PART 217—SPECIAL CONTRACTING METHODS**

■ 2. Section 217.170 is amended by revising paragraph (b) to read as follows:

**217.170 General.**

\* \* \* \* \*

(b) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(f)(2) (10 U.S.C. 2306b(i)(1)).

\* \* \* \* \*

■ 3. Section 217.172 is amended by revising paragraphs (d)(2) and (f)(2) introductory text to read as follows:

**217.172 Multiyear contracts for supplies.**

\* \* \* \* \*

(d) \* \* \*

(2) In addition, for contracts equal to or greater than \$500 million, the head of the contracting activity must determine that the conditions required by paragraphs (f)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary’s certification and determination required by paragraph (f)(2) of this section (10 U.S.C. 2306b(a)(1)(7)).

\* \* \* \* \*

(f) \* \* \*

(2) The Secretary of Defense certifies to Congress in writing, by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contracts, that each of the conditions in paragraphs (f)(2)(i) through (vii) of this section is satisfied (10 U.S.C. 2306b(i)(1)(A)–(G)).

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 217**

**Defense Federal Acquisition Regulation Supplement; Payment of Costs Prior to Definition of Contract Action (DFARS Case 2009-D035)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the National Defense Authorization Act for Fiscal Year 2010 to amend the definition of “contract action” to include task orders and delivery orders.

**DATES:** *Effective Date:* September 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-1302; facsimile 703-602-0350. Please cite DFARS Case 2009-D035.