(a) "NVOCC Negotiated Rate Arrangement" or "NRA" means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the carrier or its agent (or the originating carrier in the case of through transportation).

(b) "Rate" means a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated date or within a defined time frame.

(c) "Rules tariff" means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

(d) "NRA shipper" means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NRA.

(e) "Affiliate" means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with or otherwise related to each other through common stock ownership or common directors or officers.

Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

§ 532.4 NVOCC rules tariff.

Before entering into NRAs under this Part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

§ 532.5 Requirements for NVOCC negotiated rate arrangements.

In order to qualify for the exemptions to the general rate publication requirement as set forth in section 532.2, an NRA must:

(a) Be in writing;

(b) contain the legal name and address of the parties and any affiliates; and contain the names, title and addresses of the representatives of the parties agreeing to the NRA;

(c) be agreed to by both NRA shipper and NVOCC, prior to the date on which the cargo is received by the common carrier or its agent (including originating carriers in the case of through transportation);

(d) clearly specify the rate and the shipment or shipments to which such rate will apply; and

(e) may not be modified after the time the initial shipment is received by the carrier or its agent (including originating carriers in the case of through transportation).

§ 532.6 Notices.

(a) An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and to the public by:

(1) A prominent notice in its rules tariff and bills of lading or equivalent shipping documents; and

(2) By so indicating on its Form FMC–1 on file with the Commission.

Subpart C—Recordkeeping

§ 532.7 Recordkeeping and audit.

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs and all associated records, including written communications, in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.

(b) NRAs and all associated records and written communications are subject to inspection and reproduction requests under section 515.31(g) of this chapter. An NVOCC shall produce the requested NRAs and associated records, including written communications, promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

(c) Failure to keep or timely produce original NRAs and associated records and written communications will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(1), 41104(2)(A) or other acts prohibited by the Shipping Act.

§ 532.91 OMB control number issued pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0071.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–4599 Filed 3–1–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AG45

Defense Federal Acquisition Regulation Supplement; Preservation of Tooling for Major Defense Acquisition Programs (DFARS Case 2008–D042)

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 section 815 of the National Defense Authorization Act for Fiscal Year 2009. Section 815 addresses the preservation of tooling for major defense acquisition programs.

DATES: *Effective Date:* March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

Section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) impacts the acquisition planning process. Section 815, entitled "Preservation of Tooling for Major Defense Acquisition Programs," mandates the publication of guidance requiring the "preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program." The statute states that the guidance must—

- Require that the milestone decision authority (MDA) approve a plan for the preservation and storage of "such tooling prior to Milestone C approval;"
- Require the MDA to periodically review the plan to ensure that it remains adequate and in the best interest of DoD; and
- Provide a mechanism for the Secretary of Defense to waive the requirement under certain circumstances.

DoD published a proposed rule in the **Federal Register** (75 FR 25159) on May

7, 2010, to address the new statutory requirements. The rule proposed to add a new paragraph (S–73) to DFARS 207.106, Additional requirements for major systems. The topic of subpart 207.1 is Acquisition Plans.

II. Discussion and Analysis

The public comment period closed July 6, 2010. Four respondents submitted comments on six issues. A discussion of the comments is provided in the following paragraphs.

A. Rule May Not Fully Implement the Statute

Comment: A respondent generally agreed with the proposed rule, but noted that it implemented only two of the three requirements of section 815, omitting the key language requiring the "milestone decision authority (to) periodically review the plan required by (section 815(a)(1)) prior to the end of the service life of the end item, to ensure that the preservation and storage of such tooling remains adequate and in the best interest of the Department of Defense." The respondent stated that the periodic review requirement should be included in the proposed rule.

In addition, the respondent believes that the proposed rule should require the contractor to develop adequate procedures for the preservation and storage of the special tooling and to document compliance.

Response: No changes have been made to the rule in response to these comments for several reasons. First, the DFARS has not been used to outline MDA determinations in the past. The appropriate location for requirements being placed on MDAs is in the DoD 5000 series regulations and/or directives from senior DoD leaders. Further, the requirement at section 815(a)(2) has been implemented in a Deputy Secretary of Defense memorandum dated August 3, 2009, entitled "Preservation and Storage of Tooling for Major Defense Acquisition Programs (MDAPs)." The preservation policy, according to the memorandum, will be included in the next update to DoDI 5000.02.

With regard to the second part of the respondent's comment, DoD notes that the clause at FAR 52.245–1, Government Property, requires the contractor to "have a system to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession." (*See* FAR 52.245–1(b).)

B. Rule Should Cover All Property

Comment: One respondent commented that "(i)ndustry agrees with the concept to sustain capability and supportability to the extent needed under major weapons systems." To that end, the respondent believes that this requirement should not be limited to special tooling, but should include "all property, i.e., special test equipment, ground support equipment, machine tools and machines and other intangibles to maintain capability."

Response: DoD is fully compliant with section 815, which addresses only special tooling.

With regard to tangible property, DoD notes that major systems acquisition contracts are required to include the clause at FAR 52.245–1, Government Property, which incorporates a basic storage requirement applicable to more than just special tooling (*see* FAR 52.245–1(f)(1)(viii)(A)). Further, in accordance with section 815, the MDA is required to "approve a plan, including the identification of any contract clauses, facilities, and funding required, for the preservation and storage of such tooling prior to Milestone C approval." This requirement is fully addressed by the Deputy Secretary of Defense memorandum dated August 3, 2009, which states that "MDAP Program Managers shall include a plan for preservation and storage of unique tooling as an annex to the Life Cycle Sustainment Plan (LCSP) submitted for Milestone Decision Authority (MDA) approval at Milestone C. The unique tooling annex shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling and shall describe how unique tooling retention will continue to be reviewed during the life of the program."

DoD considers "intangibles," as the term relates to major systems acquisitions, to be a reference to technical data. A contractor's rights in technical data are fully addressed in FAR and DFARS parts 27 and 227 respectively, and need not be addressed with the section 815 coverage.

C. "Unique Tooling"

Comment: Two respondents noted that the statute and the August 3, 2009, implementing memorandum use the term "unique tooling," not "special tooling." Both recommended that DFARS 207.106(S–73) be revised to use the term "unique tooling" and to add a definition to that paragraph as follows: "For DoD purposes, unique tooling shall mean special tooling as defined in Federal Acquisition Regulation 2.101(b)."

Response: DoD has determined that the use of "special tooling" in 207.106(S–73) correctly implements the statute, and no change is necessary.

Respondents agree that "unique tooling" and "special tooling" have the same meaning. However, there is no reason to use "unique tooling" in the coverage and then define it using a reference to FAR 2.101. That would contravene the FAR drafting convention to use a single term consistently to express the same meaning.

D. Approval of Preservation Plan

Comment: One respondent correctly noted that section 815 requires the MDA to approve the special tooling preservation plan prior to Milestone C approval (section 815(a)(1)). The respondent is concerned, however, with the lack of specificity about when the plan must be approved, claiming that it "risks undermining the very purpose of the rule and its antecedent legislation." The respondent recommended modifying DFARS 207.106 to require, or at least encourage, DoD to draft such plans before a program is given Milestone B approval.

Response: DoD has determined that DFARS is already fully compliant with the statute, and that no change is necessary. Further, while the plan must be approved prior to Milestone C approval, there is no limit in the regulations on how far in advance of Milestone C the special tooling preservation plan can be approved, as long as it is approved at a point in the system's life that is logical.

E. End of the Service Life of the Item

Comment: One respondent noted that section 815(a) requires that the special tooling be preserved "through the end of the service life of the end item associated with such a program." The respondent believes that "end item" refers to a "component" of the major system, not the major system itself. As noted by the respondent, it is possible that one component of a system may be replaced over the course of the production of the system as a whole, and it would be wasteful to maintain the special tooling for the now-obsolete component until production ends for the major system.

Response: DoD agrees with the respondent that it is possible, even likely, that one or more individual components of a major system will be replaced over the life of the major system. However, DoD points out that DoD policies are focused at the system level, and the requirement in section 815 is for a *plan* for the preservation and storage of the tooling associated with the production of hardware for a major defense acquisition program. DoD thinks that any complete plan would include the possibility of replacement

upgraded components and would not contemplate maintaining and storing any special tooling for components that are no longer a part of the major system end item.

F. Repricing Ongoing Programs

Comment: A respondent stated its belief that "the final rule must allow contractors to reprice ongoing programs should the plans for preserving tooling for major defense acquisition programs add additional requirements on to existing programs."

Response: The comment is outside the scope of this case. Further, whenever new or additional requirements are added to a contract, it can only be accomplished via a bilateral modification and with equitable consideration. This contract rule is not unique to MDAPs or tooling-preservation requirements. Therefore, this case need not address such a circumstance specifically with regard to the preservation of tooling. To do so would add inappropriate redundancy to the DFARS.

III. Executive Order 12866

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

IV. Regulatory Flexibility Act

DoD certifies that this final 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 rule addresses internal DoD procedural matters. Specifically, this implementation of section 815 of the National Defense Authorization Act for Fiscal Year 2009, "Preservation of Tooling for Major Defense Acquisition Programs," requires that—

1. The DoD Milestone Decision Authority (MDA) approve a plan for the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item; and

2. The MDA periodically review the plan to ensure that it remains adequate and in the best interest of DoD.

V. Paperwork Reduction Act

The rule does not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 207

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 207 is amended as follows:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

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

■ 2. Add paragraph (S–73) to section 207.106 to read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–73) In accordance with section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and DoD policy requirements, acquisition plans for major weapons systems shall include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. The Undersecretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) may waive this requirement if USD (AT&L) determines that it is in the best interest of DoD.

[FR Doc. 2011–4529 Filed 3–1–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 227, 252

Defense Federal Acquisition Regulation Supplement; Government Support Contractor Access to Technical Data (DFARS Case 2009–D031)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending 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 interim rule amends the DFARS to provide needed editorial changes.

DATES: *Effective date:* March 2, 2011.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 2, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D031, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D031" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D031." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009–D031" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D031 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, *Attn:* Ms. Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 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 *http://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. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

Section 821 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) was enacted October 28, 2009. 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