

delivered to a covered military installation.

225.7019–3 Waiver.

(a) *Request and approval of waiver.*

The requiring activity may submit to the contracting activity a request for waiver of the prohibition in 225.7019–2 for a specific contract for the acquisition of furnished energy for a covered military installation. The head of the contracting activity, without power of redelegation, may approve the waiver, upon certification to the congressional defense committees that—

(1) The waiver of section 2821 is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

(2) National security requirements have been balanced against the potential risk associated with reliance upon the Russian Federation for furnished energy.

(b) *Submission of waiver notice.* (1) Not later than 14 days before the execution of any energy contract for which a waiver is granted under paragraph (a) of this section, the head of the contracting activity shall submit to the congressional defense committees a notice of the waiver. See PGI 225.7019–3 for waiver procedures.

(2) The waiver notice shall include the following:

(i) The rationale for the waiver, including the basis for the certifications required by paragraph (a) of this section.

(ii) An assessment of how the waiver may impact DoD's European energy resilience strategy.

(iii) An explanation of the measures DoD is taking to mitigate the risk of using Russian Federation furnished energy.

225.7019–4 Solicitation provision and contract clause.

Unless a waiver has been granted in accordance with 225.7019–3—

(a) Use the provision at 252.225–7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items and solicitations at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation; and

(b) Use the clause at 252.225–7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items and solicitations and contracts at or

below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.225–7053 to read as follows:

252.225–7053 Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.

As prescribed in 225.7019–4(a), use the following provision:
 REPRESENTATION REGARDING PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (AUG 2021)

(a) *Definitions.* As used in this provision—
Covered military installation means a military installation in Europe identified by DoD as a main operating base.

Furnished energy means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

Main operating base means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

(b) *Prohibition.* In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), contracts for the acquisition of furnished energy for a covered military installation shall not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation, unless a waiver is approved. The prohibition—

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

(c) *Representation.* By submission of its offer, the Offeror represents that the Offeror will not use or provide any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.

(End of provision)

■ 5. Add section 252.225–7054 to read as follows:

252.225–7054 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.

As prescribed in 225.7019–4(b), use the following clause: PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (AUG 2021)

(a) *Definitions.* As used in this clause—
Covered military installation means a military installation in Europe identified by DoD as a main operating base.

Furnished energy means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

Main operating base means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

(b) *Prohibition.* In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), the Contractor shall not use in the performance of this contract any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation unless a waiver is approved. The prohibition—

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

(c) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts and other commercial instruments that are for furnished energy at a covered military installation, including subcontracts and commercial instruments for commercial items.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2021–0016]

RIN 0750–AL37

Defense Federal Acquisition Regulation Supplement; Use of Firm-Fixed-Price Contracts for Foreign Military Sales (DFARS Case 2021–D019)

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 a section of the National Defense Authorization Act for Fiscal Year 2021 that rescinds the requirement for the use of firm-fixed-price contract types for foreign military sales unless an exception or waiver applies.

DATES: Effective August 30, 2021.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule amending the DFARS to implement section 888 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283), which repeals section 830 of the NDAA for FY 2017 (Pub. L. 114-328). DoD published a proposed rule in the **Federal Register** at 84 FR 12179 on April 1, 2019, to implement sections 829 and 830 of the NDAA for FY 2017 (Pub. L. 114-328). On May 29, 2019, a document was published in the **Federal Register** at 84 FR 24734 to extend the comment period for 14 days until June 14, 2019. The final rule implementing section 830 was published in the **Federal Register** at 84 FR 65304, on November 27, 2019.

Section 830 was implemented at DFARS 225.7301-1, Requirement to Use Firm-Fixed-Price Contracts, and required the use of firm-fixed-price contracts for foreign military sales (FMS), unless one of the exceptions or the waiver provided in the statute applied.

Section 807 of the NDAA for FY 2020 (Pub. L. 116-92) delayed the effective date of regulations implementing section 830 until December 31, 2020.

Section 888 of the NDAA for FY 2021 repealed section 830 of the NDAA for FY 2017 and the requirement for contracting officers to use firm-fixed-price contracts for FMS unless an exception or a waiver applies. Accordingly, DFARS section 225.7301-1 is being removed and reserved.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public

comment, because DoD is not issuing a new regulation; rather, this rule is updating internal operating procedures that will no longer require contracting officers to use firm-fixed-price contracts for FMS as directed at DFARS 225.7301-1(a). In addition, the waiver at DFARS 225.7301-1(b) will no longer be required.

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

This rule does not create any new DFARS solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (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.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of

FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The rule does not contain any 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 225

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

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

225.7301-1 [Removed and Reserved]

■ 2. Remove and reserve section 225.7301-1.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA-2019-0056]

RIN 2127-AM24

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2019 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2019

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination that there are no new model year 2019 light duty truck lines subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard. The agency determined no new models were high-theft or had major parts that are interchangeable with a majority of the covered major parts of passenger car or multipurpose passenger vehicle lines. This final rule also identifies those