

### Energy Effects

The Colorado Roadless Rule and the North Fork Coal Mining Area exception do not constitute a “significant energy action” as defined by Executive Order 13211. No novel legal or policy issues regarding adverse effects to supply, distribution, or use of energy are anticipated beyond what has been addressed in the 2012 FEIS or the Regulatory Impact Analysis prepared in association with the final 2012 Colorado Roadless Rule. The proposed reinstatement of the North Fork Coal Mining Area exception does not restrict access to privately held mineral rights, or mineral rights held through existing claims or leases, and allows for disposal of mineral materials. The proposed rule does not prohibit future mineral claims or mineral leasing in areas otherwise open for such. The rulemaking provides a regulatory mechanism for consideration of requests for modification of restriction if adjustments are determined to be necessary in the future.

### Federalism

USDA has determined the proposed rule conforms with the Federalism principles set out in Executive Order 13132 and does not have Federalism implications. The rulemaking would not impose any new compliance costs on any State; and the rulemaking would not have substantial direct effects on States, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government.

The proposed rule is based on a petition submitted by the State of Colorado under the Administrative Procedure Act at 5 U.S.C. 553(e) and pursuant to USDA regulations at 7 CFR 1.28. The State’s petition was developed through a task force with local government involvement. The State of Colorado is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for implementation of NEPA.

### Takings of Private Property

USDA analyzed the proposed rule in accordance with the principles and criteria contained in Executive Order 12630. The Agency determined the proposed rule does not pose the risk of a taking of private property.

### Civil Justice Reform

USDA reviewed the proposed rule in context of Executive Order 12988. The Agency has not identified any State or local laws or regulations that are in

conflict with this proposed rule or would impede full implementation of this proposed rule. However, if this proposed rule were adopted, (1) all State and local laws and regulations that conflict with this rulemaking or would impede full implementation of this rulemaking would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) this rulemaking would not require the use of administrative proceedings before parties could file suit in court.

### Tribal Consultation

USDA provided an introductory letter and the Notice of Intent for the Colorado Roadless Rule and the supplemental draft EIS to the Ute, Ute Mountain Ute, and Southern Ute Indian Tribes in context of Executive Order 13175. No specific requests from any tribes were made for additional information or meetings. No letters from any tribes have been received concerning the proposed action.

### Unfunded Mandates

USDA has assessed the effects of the Colorado Roadless Rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of \$100 million or more by State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of title II of the Unfunded Mandates Reform Act of 1995 is not required.

### Paperwork Reduction Act

This rulemaking does not call for any additional recordkeeping, reporting requirements, or other information collection requirements as defined in 5 CFR 1320 that are not already required by law or not already approved for use. The proposed rule imposes no additional paperwork burden on the public. Therefore the Paperwork Reduction Act of 1995 does not apply to this proposal.

### List of Subjects in 36 CFR Part 294

National Forests, Recreation areas, Navigation (air), and State petitions for inventoried roadless area management.

For the reasons set forth in the preamble, the Forest Service proposes to amend part 294 of Title 36 of the Code of Federal Regulations by reinstating 36 CFR 294.43(c)(1)(ix) to read as follows:

### PART 294—SPECIAL AREAS

#### Subpart D—Colorado Roadless Area Management

■ 1. The authority citation for part 294, subpart D continues to read as follows:

**Authority:** 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

■ 2. Amend § 294.43 by revising paragraph (c)(1)(ix) to read as follows:

#### § 294.43 Prohibition on road construction and reconstruction.

(c) \* \* \*  
(1) \* \* \*

(ix) A temporary road is needed for coal exploration and/or coal-related surface activities for certain lands with Colorado Roadless Areas in the North Fork Coal Mining Area of the Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork Coal Mining Area displayed on the final Colorado Roadless Areas map. Such roads may also be used for collecting and transporting coal mine methane. Any buried infrastructure, including pipelines, needed for the capture, collection, and use of coal mine methane, will be located within the rights-of-way of temporary roads that are otherwise necessary for coal-related surface activities including the installation and operation of methane venting wells.

\* \* \* \* \*

Dated: November 6, 2015.

**Robert Bonnie,**

*Under Secretary, Natural Resources and Environment.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 215

[Docket DARS–2015–0051]

RIN 0750–AI75

#### Defense Federal Acquisition Regulation Supplement: Promoting Voluntary Post-Award Disclosure of Defective Pricing (DFARS Case 2015–D030)

**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 stipulate that DoD contracting officers shall request a limited-scope audit, unless a full-scope audit is appropriate for the circumstances, in the interest of promoting voluntary contractor disclosure of defective pricing identified by the contractor after contract award.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D030, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D030” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D030.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015–D030” on your attached document.

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D030 in the subject line of the message.

- *Fax:* 571–372–6094.

- *Mail:* Defense Acquisition

Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/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](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:** Mr. Mark Gomersall, telephone 571–372–6176.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to stipulate that DoD contracting officers shall request a limited-scope audit when a contractor voluntarily discloses defective pricing after contract award, unless a full-scope audit is appropriate for the circumstances. In response to the Better Buying Power 2.0 initiative on “Eliminating Requirements Imposed on Industry where Costs Outweigh Benefits,” contractors recommended several changes to 41 U.S.C. chapter 35, Truthful Cost or Pricing Data (formerly the Truth in Negotiations Act) and to the related DFARS guidance. Specifically, contractors recommended that DoD clarify policy guidance to reduce repeated submissions of certified cost or pricing data. Frequent submissions of such data are used as a defense against defective pricing claims by DoD after contract award, since data

that are frequently updated are less likely to be considered outdated or inaccurate and, therefore, defective. Better Buying Power 3.0 called for a revision of regulatory guidance regarding the requirement for contracting officers to request an audit even if a contractor voluntarily discloses defective pricing after contract award.

**II. Discussion and Analysis**

This proposed rule amends DFARS 215.407–1(c) to—

- Require DoD contracting officers to request a limited-scope unless a full-scope audit is appropriate for the circumstances, when contractors voluntarily disclose defective pricing after contract award;

- Indicate that to determine the appropriate scope of the audit, the contracting officer should consult with Defense Contract Audit Agency; and

- Clarify that voluntary disclosure of defective pricing does not waive Government entitlement to the recovery of any overpayment plus interest on the overpayments, or rights to pursue defective pricing claims.

**III. 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. This rule is not a major rule under 5 U.S.C. 804.

**IV. 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of the proposed rule is to stipulate that DoD contracting officers shall request a limited-scope audit when a contractor voluntarily discloses defective pricing after contract award, unless a full-scope audit is appropriate for the circumstances. This rule will apply to all DoD contractors, including

small entities, who are required to submit certified cost or pricing data. If those small entities usually submit cost or pricing data frequently in order to avoid defective pricing claims, then this rule may encourage them to reduce the number of such submissions.

There is no change to reporting or recordkeeping as a result of this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the requirements.

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 2015–D030), in correspondence.

**V. 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 215**

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 215 is proposed to be amended as follows:

**PART 215—CONTRACTING BY NEGOTIATION**

■ 1. The authority citation for part 215 continues to read as follows:

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

■ 2. Add sections 215.407 and 215.407–1 to subpart 215.4 to read as follows:

**215.407 Special cost or pricing areas.**

**215.407–1 Defective certified cost or pricing data.**

(c)(i) When contractors voluntarily disclose defective pricing after contract award, contracting officers shall request a limited-scope audit (*e.g.*, limited to the affected cost elements of the defective pricing disclosure) unless a full-scope audit is appropriate for the circumstances (*e.g.*, nature or dollar amount of the defective pricing disclosure). To determine the appropriate scope of the audit, the contracting officer should consult with

Defense Contract Audit Agency (DCAA). At a minimum, the contracting officer shall request that DCAA evaluate—

(A) Completeness of the contractor's voluntary disclosure on the affected contract;

(B) Accuracy of the contractor's cost impact calculation for the affected contract; and

(C) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

(ii) Voluntary disclosure of defective pricing is not a voluntary refund as defined in 242.7100 and does not waive the Government entitlement to the recovery of any overpayment plus interest on the overpayments in accordance with FAR 15.407-1(b)(7).

(iii) Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 217 and 234

[Docket DARS-2015-0042]

RIN 0750-AI62

#### Defense Federal Acquisition Regulation Supplement: Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units (DFARS Case 2015-D008)

**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 implement a section of the National Defense Authorization Act for Fiscal Year 2015, which amended a section of the National Defense Authorization Act for Fiscal Year 2010, to extend and modify contract authority for advanced component development and prototype units.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015-D008, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D008" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D008" on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015-D008 in the subject line of the message.

○ *Fax:* 571-372-6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/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](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. Janetta Brewer, telephone: 571-372-6104.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 entitled "Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units" amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note).

The rule proposes to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text. This will allow for the inclusion of a contract line item (possibly an option) to go to initial production without further competition. However, there is no new impact on contract cost because section 819(b) of the NDAA for FY 2010 (which is unchanged in 2015) continues to place a limitation on costs associated with any contract line item (option or otherwise) for the delivery of initial or additional items. The rule also extends this authority at DFARS 234.005-1(2) to September 30, 2019, from September 30, 2014.

##### II. 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. This rule is not a major rule under 5 U.S.C. 804.

##### III. Regulatory Flexibility Act

DoD does not expect this 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 primarily provides greater flexibility to DoD when contracting for major system acquisitions. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of the rule is to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 entitled "Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units" amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note).

The rule proposes to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text. This will allow for the inclusion of a contract line item (possibly an option) to go to initial production without further competition.

The rule will apply to DoD major defense acquisition program contractors and subcontractors. Most major defense acquisition programs are awarded to large concerns as they are of a scope too large for any small business to perform. As such, it is not expected that this rule will have a significant impact on a substantial number of small entities.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives available that would meet the objectives of the statute.

DoD invites comments from small business concerns and other interested