

Dated: October 3, 2018.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: December 18, 2018.

**Alex M. Azar, II,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 202

[Docket DARS-2019-0013]

RIN 0750-AK20

#### Defense Federal Acquisition Regulation Supplement: Repeal of Certain Defense Acquisition Laws (DFARS Case 2018-D059)

**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 2019.

**DATES:** Effective April 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly R. Ziegler, telephone 571-372-6095.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the DFARS to implement section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. Section 812 repeals more than 60 obsolete Defense acquisition laws, most of which have been completed, have expired, or do not impact the procurement regulations. Of the obsolete laws listed in section 812, only one was implemented in the DFARS: section 815(b) of the NDAA for FY 2008 (Pub. L. 110-181). Section 815(b) required modification of the DFARS to clarify that the terms “general public” and “non-governmental entities”, with regard to sales of commercial items, do not include the Federal Government or a State, local, or

foreign government. The clarification with regard to the terms “general public” and “non-governmental entities,” as used in the definition of “commercial item,” was added to DFARS 202.101, Definitions, via a final rule published in the **Federal Register** at 75 FR 51416 on August 20, 2010 (DFARS Case 2008-D011).

Since section 812 of the NDAA for FY 2019 repealed section 815(b) of the NDAA for FY 2008, this final rule removes the clarification of the terms “general public” and “non-governmental entities” at DFARS 202.101. No other changes are required to implement section 812 of the NDAA for FY 2019.

##### 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 41 U.S.C. 1707 entitled “Publication of Proposed Regulations.” Paragraph (a)(1) of the statute 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 the rule merely removes a clarification to an existing definition in the FAR.

##### III. 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 definition of “general public” and non-governmental” entities at DFARS 202.101 Definitions. This rule does not create or revise any solicitation provisions or contract clauses.

##### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 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.

##### V. 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.

##### VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

##### 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 202

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 202 is amended as follows:

#### PART 202—DEFINITIONS

- 1. The authority citation for part 216 continues to read as follows:

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

##### 202.101 [Amended]

- 2. Amend section 202.101 by removing the definition “General public” and “non-governmental entities”.

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