

approximately 127 small businesses would be awarded contracts or a combination of contracts and other prizes. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to implement section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81), which amends 10 U.S.C. 4025, Prizes for advanced technology achievements. Section 822 provides advanced technology prize programs authority to award contracts to recognize outstanding achievements in basic, advanced, and applied research; technology development; and prototype development. This proposed rule also provides that the award of a contract as a prize is a competitive procedure if the prize program solicitation is widely advertised. Section 822 also requires approval of such awards exceeding \$10,000 and congressional reporting for contracts exceeding \$10 million.

The objective of the proposed rule is to implement section 822 of the NDAA for FY 2022, which is the legal basis for the rule.

DoD does not have data on contracts awarded as prizes to recognize outstanding achievements in basic, advanced, and applied research; technology development; and prototype development. Contracts were not authorized as a prize. However, analyzing data provided from the Office of the Under Secretary of Defense for Research and Engineering, there were 809 cash prizes awarded from FY 2021 to FY 2023. During this three-year period, DoD awarded a total of 636 cash prizes to small businesses, which is an average of 212 per year. DoD estimates 20 percent of the 212 historical cash prize awards per year would be converted to contracts. Therefore, DoD estimates that approximately 42 small businesses per year would be awarded contracts or a combination of contracts and other prizes as a result of this proposed rule. Therefore, DoD does not anticipate that this proposed rule, when finalized, will have a significant impact on small entities.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed 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 2022–D014), in correspondence.

VII. Paperwork Reduction Act

This proposed 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 206

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 206 is proposed to be amended as follows:

PART 206—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 206 continues to read as follows:

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

■ 2. Amend section 206.102–70 by—

■ a. Designating the text as paragraph (a); and

■ b. Adding a new paragraph (b) to read as follows:

206.102–70 Other competitive procedures.

(a) * * *

(b) The award of a contract as a prize resulting from a competitive selection of prize recipients for advanced technology achievements is a competitive procedure (10 U.S.C. 4025(f)), when the solicitation is widely advertised, including through the Governmentwide point of entry (see FAR part 5). See PGI 206.102–70 for approval requirements.

[FR Doc. 2024–08437 Filed 4–24–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 242, 247, and 252

[Docket DARS–2024–0013]

RIN 0750–AL38

Defense Federal Acquisition Regulation Supplement: Preference for United States Vessels in Transporting Supplies by Sea (DFARS Case 2021–D020)

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 William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 intended to increase compliance with military cargo preference requirements.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 24, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2021–D020, using either of the following methods:

○ *Federal eRulemaking Portal:*
<https://www.regulations.gov>. Search for DFARS Case 2021–D020. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2021–D020” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2021–D020 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 1024 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 1024 amends 10 U.S.C. 2631 to,

among other things, clarify circumstances in which DoD may seek a waiver from the basic requirement for DoD supplies to be transported by sea in either vessels belonging to the United States or vessels of the United States. In particular, section 1024 specifies that DoD may waive this requirement, where such vessels are either not available at a fair and reasonable rate for commercial vessels of the United States or otherwise not available. Section 1024 also modifies the requirement for reflagging or repair work in the United States for vessels used under time charter contracts for the transportation of supplies, and it adds a requirement to ensure contractor compliance with 10 U.S.C. 2631.

II. Discussion and Analysis

This proposed rule includes modifications at DFARS 247.572(a)(1) and the contract clause at 252.247-7023, Transportation of Supplies by Sea, including its alternates, to specify that DoD may waive the requirement for DoD supplies to be transported by sea in either vessels belonging to the United States or vessels of the United States. Under this proposed rule, waivers may be granted, where such vessels are either not available at a fair and reasonable rate for commercial vessels of the United States or otherwise not available.

This proposed rule contains changes to DFARS 247.572(c) and the clause at 252.247-7025, Reflagging or Repair Work, to update requirements for reflagging or repair work in the United States for vessels used under time charter contracts for the transportation of supplies. This rule also includes modifications at DFARS 247.573(b) and DFARS 242.1502(g) to specify DoD procedures for increasing contractor compliance with the requirements of the clause at 252.247-7023, including its alternates.

This proposed rule adds a definition of “corrective and preventive maintenance or repair” both to DFARS 247.571 and to the clause at 252.247-7025. Further, this proposed rule updates the definitions of “foreign shipyard,” “ocean transportation,” “supplies” and “U.S.-flag vessel” at DFARS 247.571 and at the clause at 252.247-7023, including its alternates, and the solicitation provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade. Additionally, this proposed rule deletes the definition of “shipyard” from the provision at 252.247-7026 because the common

definition of this term suffices for this rule. The definition of “Department of Defense” is deleted from the clause at 252.247-7023, including its alternates, because the definition of this term at DFARS 2.101 suffices for purposes of this proposed rule.

This proposed rule clarifies the submission requirements in paragraph (d)(7) of the clause at 252.247-7023, including its alternates, where a contractor requests use of foreign-flag vessels.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This proposed rule amends the clauses at DFARS 252.247-7023, including alternates, 252.247-7025, and the provision at 252.247-7026. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clauses will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This proposed rule is intended to increase compliance with military cargo preference requirements, in accordance with section 1024 of the NDAA for FY 2021. These changes are largely clarifying in nature, including clarification of operational requirements internal to DoD. Therefore, this proposed rule, when finalized, is not expected to have a significant impact on the public.

V. 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, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, 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 does not create any new requirements or significantly change any existing requirements for contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1024 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021. Section 1024 modifies 10 U.S.C. 2631 to add a requirement to ensure contractor compliance with 10 U.S.C. 2631 and otherwise updates the listed circumstances in which DoD may waive the requirement that DoD supplies be transported by sea in vessels belonging to the United States or vessels of the United States. It also modifies the requirement for reflagging or repair work in the United States for vessels used under time-charter contracts.

The objective of this rule is to implement section 1024 of the NDAA for FY 2021. Section 1024 is the legal basis for the rule.

This proposed rule will apply to small entities that have contracts that include DFARS clauses 252.247-7023, Transportation of Supplies by Sea, and 252.247-7025, Reflagging or Repair Work. DoD obtained data from the Procurement Business Intelligence Service (PBIS) for all contracts and modifications that include DFARS clauses 252.247-7023 and 252.247-7025 for fiscal years 2020 through 2022. DoD awarded on average 649,016 contract actions per year that included either DFARS clause 252.247-7023 or 252.247-7025, or both, to 31,665 unique entities, of which approximately 363,260 contract awards (56 percent) were made to 21,737 unique small entities (69 percent).

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the

existing regulations in subparts affected by this proposed 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 2021–D020), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0245, titled: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and Related Clauses at 252.247.

List of Subjects in 48 CFR Parts 242, 247, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 242, 247, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 242, 247, and 252 continue to read as follows:

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

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Amend section 242.1502—

■ a. In paragraph (g)(i) by removing “Program); and” and adding “Program);” in its place;

■ b. In paragraph (g)(ii) by removing “(B).” and adding “(B)); and” in its place; and

■ c. By adding paragraph (g)(iii) to read as follows:

242.1502 Policy.

(g) * * *

(iii) In accordance with 10 U.S.C. 2631(d), shall include information on contractor compliance with requirements of the clause at 252.247–7023, Transportation of Supplies by Sea (see 10 U.S.C. 2631(a), (b), and (c)).

PART 247—TRANSPORTATION

■ 3. Amend section 247.570—

■ a. By revising paragraph (a)(1);

■ b. In paragraph (a)(2) by removing “(Pub. L. 109–364)” and adding “(Pub. L. 109–364) (10 U.S.C. 2631 note)” in its place;

■ c. In paragraph (a)(3) by removing “(Pub. L. 110–417)” and “chapter 121, title 46 U.S.C.” and adding “(Pub. L.

110–417) (10 U.S.C. chapter 257 note)” and “46 U.S.C. chapter 121” in their places, respectively;

■ d. By adding a new paragraph (a)(4).

■ e. In paragraph (b) by removing “46 U.S.C. 1241(b)” and adding “46 U.S.C. chapter 553” in its place; and

■ f. By revising paragraph (c).

The revisions read as follows:

247.570 Scope.

* * * * *

(a) * * *

(1) The Military Cargo Preference Act of 1904 (“the 1904 Act”), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, destined for use by, or otherwise transported by DoD;

* * * * *

(4) Section 1024 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), which updates the listed circumstances where DoD may waive the requirement that DoD supplies be transported by sea in vessels belonging to the United States or vessels of the United States, and it modifies the requirement for reflagging or repair work in the United States for vessels used under time-charter contracts.

* * * * *

(c) Does not implement—

(1) Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. chapters 121 and 552), commonly known as the “Jones Act,” for the application of coastwise trade; or

(2) Waivers thereof pursuant to 46 U.S.C. 501.

■ 4. Revise section 247.571 to read as follows:

247.571 Definitions.

As used in this subpart—
Corrective and preventive maintenance or repair means—

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and
(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

Covered vessel means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under 46 U.S.C. 12112 and 50501 and 46 U.S.C. chapter 551.

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Foreign shipyard means a shipyard that is not located in the United States.

Ocean transportation means any water-borne transportation aboard a

ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States (as defined in 33 CFR 2.24).

Overhaul, repair, and maintenance work means work requiring a shipyard period greater than or equal to 5 calendar days.

Reflagging or repair work means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

■ 5. Revise section 247.572 to read as follows:

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors shall transport supplies exclusively on U.S.-flag vessels. In accordance with 10 U.S.C. 2631(b), DoD (see 247.573(a)) may waive this requirement when a U.S.-flag vessel—

(1) Is not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) Is not otherwise available.

(b) Contracts must provide for the use of vessels belonging to the United States when security classifications prohibit the use of other than vessels belonging to the United States.

(c) In accordance with 10 U.S.C. 2631(c)—

(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have the following work performed in the United States or its outlying areas:

(i) Reflagging or repair work, if the reflagging or repair work is performed—

(A) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(B) Prior to acceptance of the vessel by the Government.

(ii) Corrective and preventive maintenance or repair work for the duration of the contract, to the greatest extent practicable.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States. In accordance with 10 U.S.C. 2631(c)(2), DoD shall immediately submit, in writing, a notice to the congressional committees listed at 10 U.S.C. 2631(e) of such a waiver and the reason for the waiver.

(d) In accordance with section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), when obtaining carriage requiring a covered vessel, the contracting officer shall consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

(e) In accordance with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), DoD may not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under 46 U.S.C. chapter 121, unless the contract contains the clause at 252.247-7027.

- 6. Amend section 247.573—
- a. By revising paragraph (a);
- b. In paragraph (b)—
- i. By revising paragraph (3);
- ii. In paragraph (4) by removing “Procedures are provided at” and adding “Follow the procedures at” in its place; and
- iii. By adding a new paragraph (5).

The revisions and addition read as follows:

247.573 General.

(a) *Delegated authority.* Pursuant to 10 U.S.C. 2631(b)(2), the Secretary of Defense has delegated (see PGI 247.573) the authority to make determinations either that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States or is otherwise not available to—

- (1) The Commander, United States Transportation Command; and
 - (2) The Secretary of the Navy.
- (b) * * *

* * * * *

(3) See PGI 247.573(b)(3) for agency and department procedures relating to annual reporting requirements of waivers granted for nonavailability of U.S.-flag vessels.

* * * * *

(5)(i) In accordance with 10 U.S.C. 2631(d), contracting officers shall exercise appropriate contractual rights and remedies against contractors who fail to comply. Such remedies may include the determination that a contractor is ineligible for award of

future contracts, termination of an existing contract, or suspension or debarment of the contractor. Also see 242.1502 regarding assessments of the contractor’s past performance.

(ii) In the event of a contractor’s unauthorized use of foreign-flag vessels in the performance of a contract, the contracting officer is authorized to consider an equitable adjustment.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 7. Amend section 252.247-7023—
- a. Revising the date of the clause;
- b. By revising paragraph (a);
- c. By revising paragraph (c);
- d. In paragraph (d) introductory text by revising the second sentence and paragraph (7);
- e. In paragraph (e)(10) by removing “the steamship company” and adding “the carrier” in its place;
- f. In paragraph (f)(3) by removing “had the written consent of the Contracting Officer” and adding “had received a prior-approved waiver for U.S.-flag vessels” in its place;
- g. In paragraph (f)(4) by removing “of the Contracting Officer” and adding “of DoD” in its place;
- h. Amend Alternate I—
- i. Revising the date of the clause;
- ii. By revising paragraph (a);
- iii. By revising paragraph (c);
- iv. In paragraph (d) introductory text by revising the second sentence and paragraph (7);
- v. In paragraph (e)(10) by removing “steamship company” and adding “the carrier” in its place;
- vi. In paragraph (f)(3) by removing “had the written consent of the Contracting Officer” and adding “had received a prior-approved waiver for U.S.-flag vessels” in its place;
- vii. In paragraph (f)(4) by removing “of the Contracting Officer” and adding “of DoD” in its place;
- i. Amend Alternate II—
- i. Revising the date of the clause;
- ii. By revising paragraph (a);
- iii. By revising paragraph (c);
- iv. In paragraph (d) introductory text by revising the second sentence and paragraph (7);
- v. In paragraph (e)(10) by removing “steamship company” and adding “the carrier” in its place;
- vi. In paragraph (f)(3) by removing “had the written consent of the Contracting Officer” and adding “had received a prior-approved waiver for U.S.-flag vessels” in its place; and
- vii. In paragraph (f)(4) by removing “of the Contracting Officer” and adding “of DoD” in its place.

The revisions read as follows:

252.247-7023 Transportation of Supplies by Sea.

* * * * *

Transportation of Supplies by Sea—Basic (Date)

(a) *Definitions.* As used in this clause—

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in 33 CFR 2.24.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

* * * * *

(c) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(d) * * * The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper’s sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. * * *

* * * * *

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag

carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

* * * * *

Transportation of Supplies by Sea— Alternate I (Date)

(a) *Definitions.* As used in this clause—

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in 33 CFR 2.24.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

* * * * *

(c) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(d) * * * The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. * * *

* * * * *

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of

contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

* * * * *

Transportation of Supplies By Sea— Alternate II (Date)

(a) *Definitions.* As used in this clause—

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in 33 CFR 2.24.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

* * * * *

(c) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(d) * * * The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. * * *

(7) A documented description of current, diligent efforts made to secure

U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

* * * * *

■ 8. Revise section 252.247–7025 to read as follows:

252.247–7025 Reflagging or Repair Work.

As prescribed in 247.574(c), use the following clause:

Reflagging or Repair Work (Date)

(a) *Definitions.* As used in this clause— *Corrective and preventive maintenance or repair* means—

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

Reflagging or repair work means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless DoD waives this requirement, the Contractor shall ensure performance of the following in the United States or its outlying areas:

(1) Reflagging or repair work, if the reflagging or repair work is performed—

(i) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(ii) Prior to acceptance of the vessel by the Government.

(2) Corrective and preventive maintenance or repair work for the duration of the contract, to the greatest extent practicable.

(End of clause)

■ 9. Amend section 252.247–7026—

■ a. By removing the provision date “Nov 2008” and adding “Date” in its place;

■ b. In paragraph (a) by revising the definitions of “Covered vessel” and “Foreign shipyard” and removing the definition of “Shipyard”;

■ c. In paragraphs (b) and (c) by removing “offeror” and adding “Offeror” in its place;

■ d. In paragraph (e) removing “Section 1017 of Public Law 109–364” and adding “section 1017 of Public Law 109–364 (10 U.S.C. 2631 note)” in its place.

The revisions read as follows:

252.247–7026 Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

* * * * *

(a) * * *

Covered vessel means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under 46 U.S.C. 12112 and 50501 and 46 U.S.C. chapter 551.

Foreign shipyard means a shipyard that is not located in the United States.

* * * * *

[FR Doc. 2024-08436 Filed 4-24-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 252**

[Docket DARS-2022-0030]

RIN 0750-AL67

Defense Federal Acquisition Regulation Supplement: Update of Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software (DFARS Case 2022-D016)**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 2012, which addresses the validation of proprietary data restrictions. In addition to the request for written comments, DoD will hold a public meeting to hear the views of interested parties.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 24, 2024, to be considered in the formation of a final rule.

Public Meeting: A virtual public meeting will be held on May 17, 2024, from 1:00 p.m. to 5:00 p.m. Eastern time. The public meeting will end at the stated time, or when the discussion ends, whichever comes first.

Registration: Registration to attend the public meeting must be received no later than close of business on May 9, 2024. Information on how to register for the public meeting is provided under the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

ADDRESSES: *Public Meeting:* A virtual public meeting will be held using Zoom video conferencing software.

Submission of Comments: Submit comments identified by DFARS Case 2022-D016, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2022-D016. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2022-D016” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2022-D016 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is proposing to revise the DFARS to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81). Section 815(b) amended 10 U.S.C. 2321 (currently 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction.

DoD published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on December 16, 2022, at 87 FR 77055, providing draft DFARS revisions and requesting written public comments. DoD hosted a public meeting to obtain the views of interested parties regarding the ANPR on January 26, 2023.

The preamble to the ANPR provided detailed explanations of revisions related to—

- The validation period for asserted restrictions; and
- The new statutory exception to the prescribed time limit for validation of asserted restrictions.

One respondent submitted public comments in response to the ANPR.

II. Public Meeting

DoD is interested in continuing a dialogue with experts and interested parties in the Government and the

private sector regarding amending the DFARS to implement section 815(b) of the NDAA for FY 2012.

Registration: Individuals wishing to participate in the virtual meeting must register by May 9, 2024, to facilitate entry to the meeting. Interested parties may register for the meeting by sending the following information via email to osd.dfars@mail.mil and include “Public Meeting, DFARS Case 2022-D016” in the subject line of the message:

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.
- Whether the individual desires to make a presentation.

Pre-registered individuals will receive instructions for connecting using the Zoom video conferencing software not more than one week before the meeting is scheduled to commence.

Presentations: Presentations will be limited to 5 minutes per company or organization. This limit may be subject to adjustment, depending on the number of entities requesting to present, in order to ensure adequate time for discussion. If you wish to make a presentation, please submit an electronic copy of your presentation via email to osd.dfars@mail.mil no later than the registration date for the meeting. Each presentation should be in PowerPoint to facilitate projection during the public meeting and should include the presenter’s name, title, organization affiliation, telephone number, and email address on the cover page.

Correspondence, Comments, and Presentations: Please cite “Public Meeting, DFARS Case 2022-D016” in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be posted to the following website at the conclusion of the public meeting: https://www.acq.osd.mil/dpap/dars/technical_data_rights.html.

III. Discussion and Analysis

DoD reviewed the public comments in response to the ANPR in the development of the proposed rule. No changes are made in this proposed rule text as a result of the public comments. A discussion of the comments is provided, as follows: