

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 235 and 252**

[Docket DARS–2024–0027]

RIN 0750–AL43

Defense Federal Acquisition Regulation Supplement: Public Access to Results of Federally Funded Research (2020–D028)**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 recommendation of the Government Accountability Office regarding DoD-funded fundamental research.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 25, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2020–D028, using either of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2020–D028. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2020–D028” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2020–D028 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: Mr. Jon M. Snyder, telephone 703–945–5341.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is proposing to revise the DFARS to implement a recommendation made by the Government Accountability Office (GAO) in its report GAO–20–81, *Additional Actions Needed to Improve Public Access to Research Results*, published in November 2019. GAO reviewed the progress agencies have

made in implementing their plans to increase public access to Federally funded research results (publications and data), as called for in a 2013 Office of Science and Technology Policy (OSTP) memorandum. In this report, GAO recommended that DoD take steps to ensure appropriate agency-funded research data are readily findable and accessible to the public.

The OSTP memorandum of February 22, 2013, entitled “Increasing Access to the Results of Federal Funded Scientific Research”, directed that each Federal agency with over \$100 million in annual research and development expenditures develop a plan to support increased public access to the results of research funded by the Federal Government. This includes any results published in peer-reviewed scholarly publications that are based on research that directly arises from Federal funds. The required plan’s objectives were developed with input from the National Science and Technology Council and public consultation in compliance with the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

II. Discussion and Analysis

This rule proposes changes to DFARS part 235 and adds two clauses that require contractors to submit final peer-reviewed manuscripts to the Defense Technical Information Center’s publicly accessible repository and to develop and maintain a data management plan.

Definitions are proposed at DFARS 235.001 for “data”, “data management plan”, “fundamental research”, and “peer-reviewed”. A policy statement reflects that for DoD-funded fundamental research, data management planning must be an integral part of research planning as required by Department of Defense Instruction 3200.12, DoD Scientific and Technical Information Program (STIP). DFARS 235.011 provides guidance for the submission of peer-reviewed manuscripts and development and submission of data management plans. Prescriptions are added at DFARS 235.072 for the following new DFARS part 252 contract clauses: (1) 252.235–70XX, Peer-Reviewed Manuscripts; and (2) 252.235–70YY, Data Management Plan. The clauses apply to solicitations and contracts that include fundamental research funded in whole or in part by DoD.

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 proposes to create two new clauses: (1) DFARS 252.235–70XX, Peer-Reviewed Manuscripts; and (2) DFARS 252.235–70YY, Data Management Plan. The clauses at DFARS 252.235–70XX and 252.235–70YY are prescribed at DFARS 235.702 for use in research and development solicitations and contracts that include fundamental research funded in whole or in part by DoD. The clauses are applicable to contracts at or below the SAT. The clauses are not applicable to contracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services. Not applying the clauses to contracts valued at or below the SAT would exclude contracts intended to be covered by this proposed rule and undermine the overarching purpose of the proposed rule, given GAO’s recommendation that DoD take steps to ensure appropriate agency-funded research data are readily findable and accessible to the public.

IV. Expected Impact of the Rule

The Defense Technical Information Center is responsible for collecting all scientific and technical reports. This proposed rule, when finalized, will require contractors under research and development contracts that include fundamental research, funded in whole or in part by DoD, to submit the author’s final peer-reviewed manuscript to one of the Defense Technical Information Center’s publicly accessible repositories.

Currently, a contractor’s data management plan is not required for research and development contracts. The proposed rule, when finalized, will require contractors awarded research and development contracts to implement and maintain a data management plan throughout the performance of the contract.

This proposed rule will ensure the results of fundamental research, funded in whole or in part by DoD, will be made as widely available as permitted by law, regulation, or policy to ensure the accuracy, validity, and reproducibility of the scientific results.

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 it is limited to contracts for DoD funded fundamental research. 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 a recommendation made by the Government Accountability Office (GAO) in Report GAO–20–81, Additional Actions Needed to Improve Public Access to Research Results, published in November 2019. GAO reviewed the progress agencies have made in implementing their plans to increase public access to Federally funded research results (publications and data), as called for in a 2013 Office of Science and Technology Policy (OSTP) memorandum. In this report, GAO recommended that DoD take steps to ensure appropriate agency-funded research data are readily findable and accessible to the public.

The OSTP memorandum of February 22, 2013, entitled “Increasing Access to the Results of Federal Funded Scientific Research,” directed that each Federal agency with over \$100 million in annual research and development expenditures develop a plan to support increased public access to the results of research funded by the Federal Government. This includes any results published in peer-reviewed scholarly publications that are based on research that directly arises from Federal funds. The required plan’s objectives were developed with input from the National Science and Technology Council and public consultation in compliance with the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

The objective of this proposed rule is to implement the recommendation to DoD in the GAO report GAO–20–81.

The legal basis for this proposed rule is 41 U.S.C. 1303.

Data was obtained on contracts that include DFARS clause 252.235–7011, Final Scientific or Technical Report. This DFARS clause is required to be included in solicitations and contracts for research and development, which includes fundamental research. According to the Procurement Business Intelligence Service in the last three fiscal years, DoD awarded contracts including this clause to unique small entities as follows: 2,086 in fiscal year (FY) 2021, 2,389 in FY 2022, and 1,799 in FY 2023, which averages out to 2,091 per FY. Therefore, the number of small entities to which this proposed rule may apply is approximately 2,091.

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

This proposed 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 policy.

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 2020–D028), 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 Parts 235 and 252

Government procurement.

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

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 235 and 252 as follows:

■ 1. The authority citation for 48 CFR parts 235 and 252 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 2. Amend section 235.001 by—

■ a. Adding introductory text; and
■ b. Adding, in alphabetical order, the definitions for “Data”, “Data management plan”, “Fundamental research”, and “Peer-reviewed”.

The additions read as follows:

235.001 Definitions.

As used in this subpart—

Data means the digitally recorded factual material commonly accepted in the scientific community as necessary to validate research findings, including data sets used to support scholarly publications including publicly releasable digital data, algorithms, or other information central to the conclusions of published peer-reviewed scientific research.

Data management plan means a document that describes which data generated during performance of a research and development contract will be publicly shared and preserved and how it will be accomplished, or a justification of why such actions cannot be accomplished.

Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. (Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) memorandum on Fundamental Research, dated May 24, 2010)

Peer-reviewed means a process that subjects an author’s scholarly work, research, or ideas to the scrutiny of others who are experts in the same field and is considered necessary to ensure scientific quality.

* * * * *

■ 3. Add section 235.003 to read as follows:

235.003 Policy.

It is DoD policy that for DoD-funded fundamental research (see 204.403(2)), data management planning should be an integral part of research planning. See Department of Defense Instruction 3200.12, DoD Scientific and Technical Information Program.

■ 4. Add section 235.010–70 to read as follows:

235.010–70 Peer-reviewed manuscripts.

The contracting officer shall require the contractor to submit peer-reviewed manuscripts as required by the clause at 252.235–70XX, Peer-Reviewed Manuscripts.

■ 5. Add section 235.011 to read as follows:

235.011 Data.

(1) The contracting officer shall obtain a data management plan from the contractor at the start of the research project as required by the clause at 252.235–70YY, Data Management Plan.

(2) The contracting officer shall provide the contractor's data management plan to the program manager for approval and notify the contractor of such approval or disapproval.

■ 6. Amend section 235.072 by adding paragraphs (f) and (g) to read as follows:

235.072 Additional contract clauses.

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(f) Use the clause at 252.235–70XX, Peer-Reviewed Manuscripts, in solicitations and contracts for research and development that include fundamental research funded in whole or in part by DoD.

(g) Use the clause at 252.235–70YY, Data Management Plan, in solicitations and contracts for research and development that include fundamental research funded in whole or in part by DoD.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add sections 252.235–70XX and 252.235–70YY to read as follows:

252.235–70XX Peer-Reviewed Manuscripts.

As prescribed in 235.072(f), use the following clause:

Peer-Reviewed Manuscripts (DATE)

(a) *Definitions.* As used in this clause—
Final peer-reviewed manuscript means an author's final manuscript of a peer-reviewed paper accepted for journal publication, including all modifications from the peer-review process and manuscripts jointly authored with DoD personnel during the period of performance of the fundamental research contract. It does not include reports required to be delivered under the terms of the contract.

Peer-reviewed means a process that subjects an author's scholarly work, research, or ideas to the scrutiny of others who are experts in the same field and is considered necessary to ensure scientific quality.

(b) *Submission of final peer-reviewed manuscript.* When the final title and date of publication of the author's final peer-reviewed manuscript are known, the Contractor shall submit an electronic copy of the manuscript to one of the following Defense Technical Information Center repositories:

(1) Contractors with a common access card (CAC), personal identity verification (PIV), or external certification authority (ECA) shall

submit to <https://discover.dtic.mil/submit-documents/>; or

(2) Contractors without a CAC, PIV, or ECA shall submit to <https://www.osti.gov/mlink/agency-submission>.

(End of clause)

252.235–70YY Data Management Plan.

As prescribed in 235.072(g), insert the following clause:

Data Management Plan (DATE)

(a) *Definitions.* As used in this clause—
Data means the digitally recorded factual material commonly accepted in the scientific community as necessary to validate research findings, including data sets used to support scholarly publications including publicly releasable digital data, algorithms, or other information central to the conclusions of published peer-reviewed scientific research.

Data management plan means a document that describes which data generated during performance of a research and development contract will be publicly shared and preserved and how it will be accomplished, or a justification of why such actions cannot be accomplished.

(b) *Submission of data management plan.* Within 30 days of contract award, the Contractor shall submit to the Contracting Officer, with a copy to the Contracting Officer's Representative and the Program Manager, a data management plan for approval by the Program Manager. Generally, the data management plan should not exceed 2 pages and should address elements relevant to the research discipline for the following areas (see DoD Instruction 3200.12):

(1) The types of data, software, and other materials to be produced.

(2) How the data will be acquired.

(3) Time and location of data acquisition, if scientifically pertinent.

(4) How the data will be processed.

(5) The file formats and the naming conventions that will be used.

(6) A description of the quality assurance and quality control measures during collection, analysis, and processing.

(7) A description of dataset origin when existing data resources are used.

(8) A description of the standards to be used for data and metadata format and content.

(9) Appropriate timeframe for preservation.

(10) The plan may consider the balance between the relative value of data preservation and other factors such as the associated cost and administrative burden. The plan will provide a justification for such decisions.

(11) A statement that the data cannot be made available to the public when there are national security or controlled unclassified information concerns.

(c) *Implementation and maintenance of the data management plan.* The Contractor shall implement and maintain the approved data management plan throughout the performance of the contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 214, 215, and 252

[Docket DARS–2024–0028]

RIN 0750–AL55

Defense Federal Acquisition Regulation Supplement: DoD Cost or Pricing Data Requirements (DFARS Case 2022–D004)

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 sections of the National Defense Authorization Acts for Fiscal Years 2018, 2021, and 2022 that update requirements for contractors to submit cost or pricing data.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 25, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2022–D004, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2022–D004. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2022–D004” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2022–D004 in the subject line of the message.

Comments received will generally 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: Mr. Jon Snyder, telephone 703–945–5341.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 811(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91), section 814 of the NDAA for FY 2021 (Pub. L. 116–283), and section 804 of the NDAA for FY 2022 (Pub. L. 117–81). Section 811(b) of the NDAA for FY 2018 (10 U.S.C. 2306a(d), now 10