

(4) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

\* \* \* \* \*

(c) \* \* \*

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

\* \* \* \* \*

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 227 and 252

[DFARS Case 2003-D104]

#### Defense Federal Acquisition Regulation Supplement; Written Assurance of Technical Data Conformity

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004. Section 844 eliminates the requirement for a contractor to furnish written assurance that technical data delivered to the Government is complete and accurate and satisfies the requirements of the contract.

**DATES:** *Effective date:* June 8, 2004.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D104, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D104 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule amends DFARS Subpart 227.71 and removes the clause at DFARS 252.227-7036, Declaration of Technical Data Conformity, to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. This change reduces paperwork for contractors, but does not diminish the contractor's obligation to provide technical data that is complete and adequate, and that complies with contract requirements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. 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 elimination of the requirement for a contractor to provide a written declaration of technical data conformity does not diminish the contractor's obligation to provide technical data that is complete and accurate and satisfies contract requirements. Therefore, DoD

has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D104.

##### C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.227-7036, Declaration of Technical Data Conformity, are currently approved under Office of Management and Budget Control Number 0704-0369. Elimination of this clause will reduce estimated annual public reporting burden by 126,886 hours (estimated 507,545 declarations annually at .25 hours per declaration).

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. Section 844 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

##### List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council*

■ Therefore, 48 CFR Parts 227 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

*Authority:* 41 U.S.C. 421 and 48 CFR Chapter 1.

##### PART 227—PATENTS, DATA, AND COPYRIGHTS

###### 227.7103-6 [Amended]

■ 2. Section 227.7103-6 is amended as follows:

■ a. In paragraph (e)(2) by adding “and” after the semicolon;

- b. By removing paragraph (e)(3); and
- c. By redesignating paragraph (e)(4) as paragraph (e)(3).

**227.7103–14 [Amended]**

- 3. Section 227.7103–14 is amended as follows:
  - a. By removing paragraph (a)(1); and
  - b. By redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2), respectively.

**227.7104 [Amended]**

- 4. Section 227.7104 is amended as follows:
  - a. In paragraph (e)(4) by adding “and” after the semicolon;
  - b. By removing paragraph (e)(5); and
  - c. By redesignating paragraph (e)(6) as paragraph (e)(5).

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.227–7036 [Removed and Reserved]**

- 5. Section 252.227–7036 is removed and reserved.

**252.227–7037 [Amended]**

- 6. Section 252.227–7037 is amended in the introductory text as follows:
  - a. By removing “227.7103(e)(4)” and adding in its place “227.7103–6(e)(3)”;
  - and
  - b. By removing “227.7104(e)(6)” and adding in its place “227.7104(e)(5)”.

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**DEPARTMENT OF DEFENSE****48 CFR Part 242**

[DFARS Case 2002–D015]

**Defense Federal Acquisition Regulation Supplement; Production Surveillance and Reporting**

**AGENCY:** Department of Defense (DoD).  
**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate requirements for contract administration offices to perform production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts. This change will permit contract administration offices to devote more resources to critical and high-risk contracts.

**EFFECTIVE DATE:** June 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Cohen, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2002–D015.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule revises DFARS 242.1104 to eliminate requirements for contract administration offices to perform production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts, and for monitoring of progress on any Criticality Designator C contract, unless production surveillance or contract monitoring is specifically requested by the contracting officer. This change will enable contract administration offices to use production surveillance resources in a more effective manner.

DoD published a proposed rule at 68 FR 50495 on August 21, 2003. One respondent submitted comments on the proposed rule. The respondent disagreed with the proposed change, because a Criticality Designator C contract could become more critical at a later date. DoD agrees that this situation could occur. However, DoD does not believe the general policy should be driven by exceptional situations. The rule provides flexibility for contracting officers to request production surveillance and contract monitoring when deemed necessary. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not 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 DFARS changes in this rule primarily affect the allocation of Government resources to production surveillance functions.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval

of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 242**

Government procurement.

**Michele P. Peterson,***Executive Editor, Defense Acquisition Regulations Council.*

- Therefore, 48 CFR Part 242 is amended as follows:

- 1. The authority citation for 48 CFR Part 242 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

- 2. Section 242.1104 is revised to read as follows:

**242.1104 Surveillance requirements.**

(a) The cognizant contract administration office (CAO)—

(i) Shall perform production surveillance on all contractors that have Criticality Designator A or B contracts;

(ii) Shall not perform production surveillance on contractors that have only Criticality Designator C contracts, unless specifically requested by the contracting officer; and

(iii) When production surveillance is required, shall—

(A) Conduct a periodic risk assessment of the contractor to determine the degree of production surveillance needed for all contracts awarded to that contractor. The risk assessment shall consider information provided by the contractor and the contracting officer;

(B) Develop a production surveillance plan based on the risk level determined during a risk assessment;

(C) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(D) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan. Contracts with Criticality Designator C are exempt from this requirement unless specifically requested by the contracting officer.

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