



**Annual Review
Contracting Overseas
Supplementary Materials**

Table of Contents

NDAA FY2019	3
Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.....	7
FAR Subpart 4.21.....	22
FAR 52.204-24.....	30
DoD Memo.....	39
GSAR Class Deviation.....	41
Information Collection.....	49
Operational Contract Support.....	51
NDAA Sec 885.....	69

PUBLIC LAW 115-232—AUG. 13, 2018

JOHN S. MCCAIN NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2019

★ (Star Print)

SEC. 889. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.41 USC 3901
note prec.

(a) **PROHIBITION ON USE OR PROCUREMENT.**—(1) The head of an executive agency may not—

(A) procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(B) enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(2) Nothing in paragraph (1) shall be construed to—

(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(b) **PROHIBITION ON LOAN AND GRANT FUNDS.**—(1) The head of an executive agency may not obligate or expend loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems described in subsection (a).

(2) In implementing the prohibition in paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs, including the heads of the Federal Communications Commission, the Department of Agriculture, the Department of Homeland Security, the Small Business Administration, and the Department of Commerce, shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(3) Nothing in this subsection shall be construed to—

(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) **EFFECTIVE DATES.**—The prohibition under subsection (a)(1)(A) shall take effect one year after the date of the enactment of this Act, and the prohibitions under subsections (a)(1)(B) and (b)(1) shall take effect two years after the date of the enactment of this Act.

(d) **WAIVER AUTHORITY.**—

(1) **EXECUTIVE AGENCIES.**—The head of an executive agency may, on a one-time basis, waive the requirements under subsection (a) with respect to an entity that requests such a waiver. The waiver may be provided, for a period of not more than two years after the effective dates described in subsection (c), if the entity seeking the waiver—

(A) provides a compelling justification for the additional time to implement the requirements under such subsection, as determined by the head of the executive agency; and

(B) submits to the head of the executive agency, who shall not later than 30 days thereafter submit to the appropriate congressional committees, a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the entity's systems.

(2) **DIRECTOR OF NATIONAL INTELLIGENCE.**—The Director of National Intelligence may provide a waiver on a date later than the effective dates described in subsection (c) if the Director determines the waiver is in the national security interests of the United States.

(f) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on Oversight and Government Reform of the House of Representatives.

(2) **COVERED FOREIGN COUNTRY.**—The term “covered foreign country” means the People's Republic of China.

(3) **COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.**—The term “covered telecommunications equipment or services” means any of the following:

(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(B) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(C) Telecommunications or video surveillance services provided by such entities or using such equipment.

(D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(4) **EXECUTIVE AGENCY.**—The term “executive agency” has the meaning given the term in section 133 of title 41, United States Code.

SEC. 890. PILOT PROGRAM TO ACCELERATE CONTRACTING AND PRICING PROCESSES.

10 USC 2306a note.

(a) **IN GENERAL.**—The Secretary of Defense shall establish a pilot program to reform and accelerate the contracting and pricing processes associated with contracts in excess of \$50,000,000 by—

(1) basing price reasonableness determinations on actual cost and pricing data for purchases of the same or similar products for the Department of Defense; and

(2) reducing the cost and pricing data to be submitted in accordance with section 2306a of title 10, United States Code.

(b) **LIMITATION.**—The pilot program authorized under subsection (a) may include no more than ten contracts, and none of the selected contracts may be part of a major defense acquisition program (as that term is defined under section 2430 of title 10, United States Code).

(c) **REPORT.**—Not later than January 30, 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the results of the pilot program authorized under subsection (a) and an assessment of whether the program should be continued or expanded.

(d) **SUNSET.**—The authority to carry out the pilot program under this section shall expire on January 2, 2021.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Office of the Secretary of Defense and Related Matters

- Sec. 901. Report on allocation of former responsibilities of the Under Secretary of Defense for Acquisition, Technology, and Logistics.
- Sec. 902. Modification of responsibilities of the Under Secretary of Defense for Policy.
- Sec. 903. Clarification of responsibilities and duties of the Chief Information Officer of the Department of Defense.
- Sec. 904. Technical corrections to Department of Defense Test Resource Management Center authority.
- Sec. 905. Specification of certain duties of the Defense Technical Information Center.

Subtitle B—Organization and Management of Other Department of Defense Offices and Elements

- Sec. 911. Comprehensive review of operational and administrative chains-of-command and functions of the Department of the Navy.
- Sec. 912. Modification of certain responsibilities of the Chairman of the Joint Chiefs of Staff relating to joint force concept development.
- Sec. 913. Clarification of certain risk assessment requirements of the Chairman of the Joint Chiefs of Staff in connection with the National Military Strategy.
- Sec. 914. Assistant Secretary of Defense for Special Operations and Low Intensity Conflict review of United States Special Operations Command.
- Sec. 915. Expansion of principal duties of Assistant Secretary of the Navy for Research, Development, and Acquisition.
- Sec. 916. Qualifications for appointment as Deputy Chief Management Officer of a military department.
- Sec. 917. Deadline for completion of full implementation of requirements in connection with organization of the Department of Defense for management of special operations forces and special operations.

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 4, 13, 39, and 52

[FAC 2020–08; FAR Case 2019–009; Docket No. FAR–2019–0009, Sequence No. 1]

RIN 9000–AN92

**Federal Acquisition Regulation:
Prohibition on Contracting With
Entities Using Certain
Telecommunications and Video
Surveillance Services or Equipment**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

DATES:

Effective: August 13, 2020.

Applicability: Contracting officers shall include the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment as prescribed—

- In solicitations issued on or after August 13, 2020, and resultant contracts; and
- In solicitations issued before August 13, 2020, provided award of the resulting contract(s) occurs on or after August 13, 2020.

Contracting officers shall modify, in accordance with FAR 1.108(d), existing indefinite delivery contracts to include the FAR clause for future orders, prior to placing any future orders.

If exercising an option or modifying an existing contract or task or delivery order to extend the period of performance, contracting officers shall include the clause. When exercising an option, agencies should consider modifying the existing contract to add the clause in a sufficient amount of time to both provide notice for exercising the option and to provide contractors with adequate time to comply with the clause.

The contracting officer shall include the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations for an order, or notices of intent to place an order, including those issued before the effective date of this rule, under an existing indefinite delivery contract.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before September 14, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–009 via the Federal eRulemaking portal at [Regulations.gov](https://www.regulations.gov) by searching for “FAR Case 2019–009”. Select the link “Comment Now” that corresponds with FAR Case 2019–009. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2019–009” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FAR Case 2019–009, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential version of the submission.

Any business confidential information should be in an uploaded file that has a file name beginning with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-

confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Farpolicy@gsa.gov or call 202–969–4075. Please cite “FAR Case 2019–009.”

SUPPLEMENTARY INFORMATION:

I. Background

Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232) prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The provision goes into effect August 13, 2020.

The statute covers certain telecommunications equipment and services produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of those entities) and certain video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of those entities). The statute is not limited to contracting with entities that use end-products produced by those companies; it also covers the use of any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Section 889 has two key sections, Section 889(a)(1)(A) and Section(a)(1)(B). Section (a)(1)(A) went into effect via FAR Case 2018–017 at 84 FR 40216 on August 13, 2019. The 889(a)(1)(A) rule does the following:

- It amends the FAR to include the 889(a)(1)(A) prohibition, which prohibits agencies from procuring or obtaining equipment or services that use covered telecommunications equipment or services as a substantial or essential component or critical technology. (FAR 52.204–25)

- It requires every offeror to represent prior to award whether or not it will

provide covered telecommunications equipment or services and, if so, to furnish additional information about the covered telecommunications equipment or services. (FAR 52.204–24)

- It mandates that contractors report (within one business day) any covered telecommunications equipment or services discovered during the course of contract performance. (FAR 52.204–25)

In order to decrease the burden on contractors, the FAR Council published a second interim rule for 889(a)(1)(A), at 84 FR 68314 on December 13, 2019. This rule allows an offeror that represents “does not” in the annual representation at FAR 52.204–26 to skip the offer-by-offer representation within the provision at FAR 52.204–24.

The FAR Council will address the public comments received on both previous interim rules in a subsequent rulemaking. In addition, each agency has the opportunity under 889(a)(1)(A) to issue agency-specific procedures (as they do for any acquisition-related requirement). For example, GSA issued a FAR deviation¹ where GSA categorized risk to eliminate the representations for low and medium risk GSA-funded orders placed under GSA indefinite-delivery contracts. For agency-specific procedures, please consult with the requiring agency.

This rule implements 889(a)(1)(B) and requires submission of a representation with each offer that will require all offerors to represent, after conducting a reasonable inquiry, whether covered telecommunications equipment or services are used by the offeror. DoD, GSA, and NASA recognize that some agencies may need to tailor the approach to the information collected based on the unique mission and supply chain risks for their agency.

In order to reduce the information collection burden imposed on offerors subject to the rule, DoD, GSA, and NASA are currently working on updates to the System for Award Management (SAM) to allow offerors to represent annually after conducting a reasonable inquiry. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite-delivery contracts. Similar to the initial rule for section 889(a)(1)(A), that was published as an interim rule on August 13, 2019 and was followed by a second interim rule on December 13, 2019 to update the System for Award Management, the FAR Council intends

to publish a subsequent rulemaking once the updates are ready in SAM.

Overview of the Rule

This rule implements section 889(a)(1)(B) and applies to Federal contractors’ use of covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The rule seeks to avoid the disruption of Federal contractor systems and operations that could in turn disrupt the operations of the Federal Government, which relies on contractors to provide a range of support and services. The exfiltration of sensitive data from contractor systems arising from contractors’ use of covered telecommunications equipment or services could also harm important governmental, privacy, and business interests. Accordingly, due to the privacy and security risks associated with using covered telecommunications equipment or services as a substantial or essential component or critical technology of any system, the prohibition applies to any use that meets the threshold described above.

It amends the following sections of the FAR:

- FAR subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

- The provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

- The contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Definitions Discussed in This Rule

This rule does not change the definition adopted in the first interim rule of “critical technology,” which was included in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Section 1703 of Title XVII of the NDAA for FY 2019, Pub. L. 115–232, 50 U.S.C. 4565(a)(6)(A)). The rule does not change the definitions of “Covered foreign country,” “Covered telecommunications equipment or services,” and “Substantial or essential component.” The term offeror will continue to refer to only the entity that executes the contract.

This rule also adds new definitions for “backhaul,” “interconnection arrangements,” “reasonable inquiry,” and “roaming,” to provide clarity regarding when an exception to the prohibition applies. These terms are not currently defined in Section 889 or

within the FAR. These definitions were developed based on consultation with subject matter experts as well as analyzing existing telecommunications regulations and case law.²

The FAR Council is considering as part of finalization of this rulemaking with an effective date no later than August 13, 2021, to expand the scope to require that the prohibition at 52.204–24(b)(2) and 52.204–25(b)(2) applies to the offeror and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, and expand the representation at 52.204–24(d)(2) so that the offeror represents on behalf of itself and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, as to whether they use covered telecommunications equipment or services. Section IV of this rule is requesting specific feedback regarding the impact of this potential change, as well as other pertinent policy questions of interest, in order to inform finalization of this and potential future subsequent rulemakings.

II. Discussion and Analysis

To implement section 889(a)(1)(B), the contract clause at 52.204–25 was amended to prohibit agencies “from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system,” unless an exception applies or a waiver is granted. This prohibition applies at the prime contract level to an entity that uses any equipment, system, or service that itself uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, regardless of whether that usage is in performance of work under a Federal contract.

The 52.204–25 prohibition under section 889(a)(1)(A) will continue to flow down to all subcontractors; however, as required by statute the prohibition for section 889(a)(1)(B) will not flow down because the prime contractor is the only “entity” that the agency “enters into a contract” with, and an agency does not directly “enter into a contract” with any subcontractors, at any tier.

The rule also adds text in subpart 13.2, Actions at or Below the Micro-

¹ <https://www.acquisition.gov/gsa-deviation/supply-chain-aug13>.

² See *FiberTower Spectrum Holdings, LLC v. F.C.C.*, 782 F.3d 692, 695 (D.C. Cir. 2015); *Worldcall Interconnect, Inc. v. Fed. Comm’n Comm’n*, 907 F.3d 810, 814 (Nov. 15, 2018).

Purchase Threshold, to address section 889(a)(1)(B) with regard to micro-purchases. The prohibition will apply to all FAR contracts, including micro-purchase contracts.

Representation Requirements

Representations and Certifications are requirements that anyone wishing to apply for Federal contracts must complete. They require entities to represent or certify to a variety of statements ranging from environmental rules compliance to entity size representation.

Similar to the previous rule for section 889(a)(1)(A), that was published as an interim rule on August 13, 2019, and was followed by a second interim rule on December 13, 2019, that updated the System for Award Management (SAM), the FAR Council is in the process of making updates to SAM requiring offerors to represent whether they use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services within the meaning of this rule. This rule will add a new OMB Control Number to the list at FAR 1.106 of OMB approvals under the Paperwork Reduction Act. Offerors will consult SAM to validate whether they use equipment or services listed in the definition of “covered telecommunications equipment or services” (see FAR 4.2101).

An entity may represent that it does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services within the meaning of this rule, if a reasonable inquiry by the entity does not reveal or identify any such use. A reasonable inquiry is an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity. A reasonable inquiry need not include an internal or third-party audit.

Grants

Grants are not part of this FAR based regulation and are handled separately. Please note guidance on Section 889 for grants, which are not covered by this rule, was posted for comment at <https://www.federalregister.gov/documents/2020/01/22/2019-28524/guidance-for-grants-and-agreements>.

Agency Waiver Process

Under certain circumstances, section 889(d)(1) allows the head of an executive agency to grant a one-time

waiver from 889(a)(1)(B) on a case-by-case basis that will expire no later than August 13, 2022. Executive agencies must comply with the prohibition once the waiver expires. The executive agency will decide whether or not to initiate the formal waiver process based on market research and feedback from Government contractors during the acquisition process, in concert with other internal factors. The submission of an offer will mean the offeror is seeking a waiver if the offeror makes a representation that it uses covered telecommunications equipment or services as a substantial or essential component of a system, or as critical technology as part of any system and no exception applies. Once an offeror submits its offer, the contracting officer will first have to decide if a waiver is necessary to make an award and then request the offeror to provide: (1) A compelling justification for the additional time to implement the requirements under 889(a)(1)(B), for consideration by the head of the executive agency in determining whether to grant a waiver; (2) a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity’s supply chain; and (3) a phase-out plan to eliminate such covered telecommunications equipment or services from the entity’s systems. This does not preclude an offeror from submitting this information with their offer, in advance of a contracting officer decision to initiate the formal waiver request through the head of the executive agency.

Since the formal waiver is initiated by an executive agency and the executive agency may not know if covered telecommunications equipment or service will be used as part of the supply chain until offers are received, a determination of whether a waiver should be considered may not be possible until offers are received and the executive agency analyzes the representations from the offerors.

Given the extent of information necessary for requesting a waiver, the FAR Council anticipates that any waiver would likely take at least a few weeks to obtain. Where mission needs do not permit time to obtain a waiver, agencies may reasonably choose not to initiate one and to move forward and make award to an offeror that does not require a waiver.

Currently, FAR 4.2104 directs contracting officers to follow agency procedures for initiating a waiver request. Since a waiver is based on the agency’s judgment concerning particular uses of covered telecommunications

equipment or services, a waiver granted for one agency will not necessarily shed light on whether a waiver is warranted in a different procurement with a separate agency. This agency waiver process would be the same for both new and existing contracts. If a waiver is granted, with respect to particular use of covered telecommunications equipment or services, the contractor will still be required to report any additional use of covered telecommunications equipment or services discovered or identified during contract performance in accordance with 52.204–25(d).

Before granting a waiver, the agency must: (1) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy; additionally this senior agency official will serve as the primary liaison with the Federal Acquisition Security Council (FASC); (2) establish participation in an information-sharing environment when and as required by the FASC to facilitate interagency sharing of relevant supply chain risk information; and (3) notify and consult with the Office of the Director of National Intelligence (ODNI) on the issue of the waiver request. The agency may only grant the waiver request after consulting with ODNI and confirming that ODNI does not have existing information suggesting that the waiver would present a material increase in risk to U.S. national security. Agencies may satisfy the consultation requirement by making use of one or more of the following methods as made available to agencies by ODNI (as appropriate): Guidance, briefings, best practices, or direct inquiry. If the agency has met the three conditions enumerated above and intends to grant the waiver requested, the agency must notify the ODNI and the FASC 15 days prior to granting the waiver, and provide notice to the appropriate Congressional committees within 30 days of granting the waiver. The notice must include:

(1) An attestation by the agency that granting of the waiver would not, to the agency’s knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security; and

(2) The required full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity’s supply chain; and

(3) The required phase-out plan to eliminate covered telecommunications or video surveillance equipment or services from the entity's systems.

The laydown described above must include a description of each category of covered telecommunications or video surveillance equipment or services discovered after a reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which such covered technology is found after such an inquiry.

In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements to enable effective mission critical functions or emergency response and recovery. In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must make a determination that the notice and consultation requirements are impracticable due to an emergency condition, and within 30 days of award, notify the ODNI, the FASC, and Congress of the waiver issued under emergency circumstances.

The provision of a waiver does not alter or amend any other requirements of U.S. law, including any U.S. export control laws and regulations or protections for sensitive sources and methods. In particular, any waiver issued pursuant to these regulations is not authorization by the U.S. Government to export, reexport, or transfer (in-country) items subject to the Export Administration or International Traffic in Arms Regulations (15 CFR 730–774 and 22 CFR 120–130, respectively).

Director of National Intelligence Waiver

The statute also permits the Director of National Intelligence (DNI) to provide a waiver if the Director determines one is in the national security interests of the United States.³ The statute does not include an expiration date for the DNI waiver. This authority is separate and distinct from that granted to an agency head as outlined above.

ODNI Categorical Scenarios

Additionally, the ODNI, in consultation with the FASC, will issue on an ongoing basis, for use in informing agency waiver decisions, guidance describing categorical uses or commonly-occurring use scenarios

where presence of covered telecommunications equipment or services is likely or unlikely to pose a national security risk.

Other Technical Changes

The solicitation provision at 52.204–24 has two representations, one for 889(a)(1)(A) and one for 889(a)(1)(B). This rule adds the representation for 889(a)(1)(B). The solicitation provision at 52.204–24 also has two disclosure sections, one for 889(a)(1)(A) and one for 889(a)(1)(B). This rule adds the disclosure section for 889(a)(1)(B) with separate reporting elements depending on whether the procurement is for equipment, services related to item maintenance, or services not associated with item maintenance. The reporting elements within the disclosure are different for each category because the information needed to identify whether the prohibition applies varies for these three types of procurements. This rule also administratively renumbers the paragraphs under the disclosure section. Finally, this rule will add cross-references in FAR parts 39, Acquisition of Information Technology, and to the coverage of the section 889 prohibition at FAR subpart 4.21.

Expected Impact of This Rule

The FAR Council recognizes that this rule could impact the operations of Federal contractors in a range of industries—including in the health-care, education, automotive, aviation, and aerospace industries; manufacturers that provide commercially available off-the-shelf (COTS) items; and contractors that provide building management, billing and accounting, and freight services. The rule seeks to minimize disruption to the mission of Federal agencies and contractors to the maximum extent possible, consistent with the Federal Government's ability to ensure effective implementation and enforcement of the national security measures imposed by Section 889. As set forth in Section III.C below, the FAR Council recognizes the substantial benefits that will result from this rule.

To date, there is limited information on the extent to which the various industries will be impacted by this rule implementing the statutory requirements of section 889. To better understand the potential impact of section 889 (a)(1)(B), DoD hosted a public meeting on March 2, 2020 (See 85 FR 7735) to facilitate the Department's planning for the implementation of Section 889(a)(1)(B).

NASA also hosted a Section 889 industry engagement event on January 30, 2020, to obtain additional

information on the impact this prohibition will have on NASA contractors' operations and their ability to support NASA's mission.

In addition, the FAR Council hosted a public meeting on July 19, 2019, and GSA hosted an industry engagement event on November 6, 2019 (<https://interact.gsa.gov/FY19NDAASection889>) to gather additional information on how section 889 could affect GSA's business and supply chain. The presentations are located at <https://interact.gsa.gov/FY19NDAASection889>.

Please note presentations and comments from the public meetings are *not* considered public comments on this rule.

The FAR Council notes this rule is one of a series of actions with regard to section 889 and the impact and costs to all industry sectors, including COTS items manufacturers, resellers, consultants, etc. is not well understood and is still being assessed. For example, in a filing to the Federal Communications Commission, the Rural Wireless Association estimated that at least 25% of its carriers would be impacted.⁴

In addition, while the rule will be effective as of August 13, 2020, the FAR Council is seeking public comment, including, as indicated below, on the potential impact of the rule on the affected industries. After considering the comments received, a final rule will be issued, taking into account and addressing the public comments. See 41 U.S.C. 1707.

Industry Costs for New Representation and Scope of Section 889(a)(1)(B)

The statute includes two exceptions at 889 (a)(2)(A) and (B). The exception at 889(a)(2)(A) allows the head of executive agency to procure with an entity “to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.” The exception at 889(a)(2)(B) allows an entity to procure “telecommunications equipment that cannot route or redirect user data traffic or [cannot] permit visibility into any user data or packets that such equipment transmits or otherwise handles.” The exception allowing for procurement of services that connect to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements applies only to a Government agency that is contracting with an entity to provide a service. Therefore, the exception does

³ Sec. 889(d)(2).

⁴ <https://ecfsapi.fcc.gov/file/12080817518045/FY%202019%20NDAA%20Reply%20Comments%20-%20FINAL.pdf>.

not apply to a contractor's use of a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements. As a result, the Federal Government is prohibited from contracting with a contractor that uses covered telecommunications equipment or services to obtain backhaul services from an internet service provider, unless a waiver is granted.

III. Regulatory Impact Analysis Pursuant to Executive Orders 12866 and 13563

The costs and transfer impacts of section 889(a)(1)(B) are discussed in the analysis below. This analysis was developed by the FAR Council in consultation with agency procurement officials and OMB. We request public comment on the costs, benefits, and transfers generated by this rule.

A. Risks to Industry of Not Complying With 889

As a strictly contractual matter, an organization's failure to submit an accurate representation to the Government constitutes a breach of contract that can lead to cancellation, termination, and financial consequences.

Therefore, it is important for contractors to develop a compliance plan that will allow them to submit accurate representations to the Government in the course of their offers.

B. Contractor Actions Needed for Compliance

Adopting a robust, risk-based compliance approach will help reduce the likelihood of noncompliance. During the first year that 889(a)(1)(B) is in effect, contractors and subcontractors will need to learn about the provision and its requirements as well as develop a compliance plan. The FAR Council assumes the following steps would most likely be part of the compliance plan developed by any entity.

1. *Regulatory Familiarization.* Read and understand the rule and necessary actions for compliance.

2. *Corporate Enterprise Tracking.* The entity must determine through a reasonable inquiry whether the entity itself uses "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This includes examining relationships with any subcontractor or supplier for which the prime contractor has a Federal contract and uses the supplier or subcontractor's "covered telecommunications" equipment or

services as a substantial or essential component of any system. A reasonable inquiry is an inquiry designed to uncover any information in the entity's possession—primarily documentation or other records—about the identity of the producer or provider of covered telecommunications equipment or services used by the entity. A reasonable inquiry need not include an internal or third-party audit.

3. *Education.* Educate the entity's purchasing/procurement, and materials management professionals to ensure they are familiar with the entity's compliance plan.

4. *Cost of Removal (if the entity independently decides to).* Once use of covered equipment and services is identified, implement procedures if the entity decides to replace existing covered telecommunications equipment or services and ensure new equipment and services acquired for use by the entity are compliant.

5. *Representation.* Provide representation to the Government regarding whether the entity uses covered telecommunications equipment and services and alert the Government if use is discovered during contract performance.

6. *Cost to Develop a Phase-out Plan and Submit Waiver Information.* For entities for which a waiver will be requested, (1) develop a phase-out plan to phase-out existing covered telecommunications equipment or services, and (2) provide waiver information to the Government to include the phase-out plan and the complete laydown of the presence of the covered telecommunications equipment or services.

C. Benefits

This rule provides significant national security benefits to the general public. According to the White House article "A New National Security Strategy for a New Era", the four pillars of the National Security Strategy (NSS) are to protect the homeland, promote American prosperity, preserve peace through strength, and advance American influence.⁵ The purpose of this rule is to align with the NSS pillar to protect the homeland, by protecting the homeland from the impact of Federal contractors using covered telecommunications equipment or services that present a national security concern.

The United States faces an expanding array of foreign intelligence threats by adversaries who are using increasingly

sophisticated methods to harm the Nation.⁶ Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests.⁷ Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure, and steal sensitive information and industrial secrets.⁸ The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.⁹ The increasing reliance on foreign-owned or controlled telecommunications equipment, such as hardware or software, and services, as well as the proliferation of networking technologies may create vulnerabilities in our nation's supply chains.¹⁰ The evolving technology landscape is likely to accelerate these trends, threatening the security and economic well-being of the American people.¹¹

Since the People's Republic of China possesses advanced cyber capabilities that it actively uses against the United States, a proactive cyber approach is needed to degrade or deny these threats before they reach our nation's networks, including those of the Federal Government and its contractors. China is increasingly asserting itself by stealing U.S. technology and intellectual property in an effort to erode the United States' economic and military superiority.¹² Chinese companies, including the companies identified in this rule, are legally required to cooperate with their intelligence services.¹³ China's reputation for persistent industrial espionage and close collaboration between its government and industry in order to amass technological secrets presents additional threats for U.S. Government contractors.¹⁴ Therefore, there is a risk

⁶ National Counterintelligence Strategy of the United States of America 2020–2022.

⁷ National Counterintelligence Strategy of the United States of America 2020–2022.

⁸ National Counterintelligence Strategy of the United States of America 2020–2022.

⁹ National Counterintelligence Strategy of the United States of America 2020–2022.

¹⁰ National Counterintelligence Strategy of the United States of America 2020–2022.

¹¹ National Counterintelligence Strategy of the United States of America 2020–2022.

¹² National Counterintelligence Strategy of the United States of America 2020–2022.

¹³ NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

¹⁴ NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

⁵ <https://www.whitehouse.gov/articles/new-national-security-strategy-new-era/>.

that Government contractors using 5th generation wireless communications (5G) and other telecommunications technology from the companies covered by this rule could introduce a reliance on equipment that may be controlled by the Chinese intelligence services and the military in both peacetime and crisis.¹⁵

The 2019 Worldwide Threat Assessment of the Intelligence Community¹⁶ highlights additional threats regarding China's cyber espionage against the U.S. Government, corporations, and allies. The U.S.-China Economic and Security Review Commission Staff Annual Reports¹⁷ provide additional details regarding the United States' national security interests in China's extensive engagement in the U.S. telecommunications sector. In addition, the U.S. Senate Select Committee on Intelligence Open Hearing on Worldwide Threats¹⁸ further elaborates on China's approach to gain access to the United States' sensitive technologies and intellectual property. The U.S. House of Representatives Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE¹⁹ further identifies how the risks associated with Huawei's and ZTE's provision of equipment to U.S. critical infrastructure could undermine core U.S. national-security interests.

Currently, Government contractors may not consider broad national security interests of the general public when they make decisions. This rule ensures that Government contractors keep public national security interests in mind when making decisions, by ensuring that, pursuant to statute, they do not use covered telecommunications equipment or services that present national security concerns. This rule will also assist contractors in mitigating supply chain risks (e.g. potential theft of trade secrets and intellectual property) due to the use of covered telecommunications equipment or services.

D. Public Costs

During the first year after publication of the rule, contractors will need to learn about the provisions and its

requirements. The DOD, GSA, and NASA (collectively referred to here as the Signatory Agencies) estimate this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation of a general manager.

To estimate the burden to Federal offerors associated with complying with the rule, the percentage of Federal contractors that will be impacted was pulled from Federal databases. According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM. As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small; therefore, it is assumed that out of the 387,967 unique vendors registered in SAM in February 2020, 287,096 entities are unique small entities. According to data from the Federal Procurement Data System (FPDS), as of February 2020, there was an average of 102,792 unique Federal awardees for FY16–FY19, of which 73%, 75,112, are unique small entities. Based on data in SAM for FY16–FY19, the Signatory Agencies anticipate there will be an average of 79,319²⁰ new entities registering annually in SAM, of which 74%, 57,956, are anticipated to be small businesses.

We estimate that this rule will also affect businesses which become Federal contractors in the future. As stated above, we estimate that there are 79,319²¹ new entrants per year.

1. Time To Review the Rule

Below is a list of compliance activities related to regulatory familiarization that the Signatory Agencies anticipate will occur after issuance of the rule:

a. *Familiarization with FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.* The Signatory Agencies assume that it will take all vendors who plan to submit an offer for a Federal award 20²² hours to familiarize themselves with the amendment to the offer-by-offer representation at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. The Signatory Agencies assume that all

entities registered in SAM, or 387,967²³ entities, plan to submit an offer for a Federal award, since there is no data available on number of offerors for Federal awards. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be \$735 million (= 20 hours × \$94.76²⁴ per hour × 387,967). Of the 387,967 entities impacted by this part of the rule, it is assumed that 74%²⁵ or 287,096 entities are unique small entities.

In subsequent years, these costs will be incurred by 79,319²⁶ new entrants each year. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be \$150 million (= 20 hours × \$94.76 per hour × 79,319) per year in subsequent years.

b. *Familiarization with FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.* The Signatory Agencies estimate that it will take all vendors who plan to submit an offer for a Federal award 8²⁷ hours to familiarize themselves with the amendment to the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. The average number of unique awardees for FY16–FY19, or 102,792²⁸ entities, will be impacted by this part of the rule, assuming all entities awarded Federal contracts would have to familiarize themselves with the clause. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be \$78 million (= 8 hours × \$94.76 per hour × 102,792). Of the 102,792 unique Federal awardees assumed to be impacted by this part of the rule, 73% or 75,038, are unique small entities.

In subsequent years, these costs are estimated will be incurred by 26%²⁹ of new entrants, or 20,623 entities because it is assumed that 26% of new entrants will be awarded a Federal contract and will be required to familiarize

²³ According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

²⁴ The rate of \$94.76 assumes an FY19 GS 13 Step 5 salary (after applying a 100% burden to the base rate) based on subject matter judgment.

²⁵ As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small.

²⁶ This value is based on data on new registrants in SAM.gov on average for FY16, FY17, FY18, and FY19.

²⁷ The 8 hours is an assumption based on historical familiarization hours and subject matter expert judgment.

²⁸ As of February 2020, there was an average of 102,792 unique Federal awardees for FY16–FY19.

²⁹ The percentage of 26% is the percentage of active entities registered in SAM.gov in FY20 that were awarded contracts.

¹⁵ NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

¹⁶ <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR--SSCI.pdf>.

¹⁷ <https://www.uscc.gov/annual-reports/archives>.

¹⁸ <https://www.intelligence.senate.gov/sites/default/files/hearings/CHRG-115shrg28947.pdf>.

¹⁹ <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=96>.

²⁰ This value is based on data on new registrants in SAM.gov on average for FY16, FY17, FY18, and FY19.

²¹ This value is based on data on new registrants in SAM.gov for FY19 and FY20.

²² The 20 hours are an assumption based on historical familiarization hours and subject matter expert judgment.

themselves with the clause. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$15.6 million* ($= 8 \text{ hours} \times \$94.76 \text{ per hour} \times 20,623$) per year in subsequent years.

The total cost estimated to review the amendments to the provision and the clause is estimated to be *\$813 million* in the first year after publication. In subsequent years, this cost is estimated to be *\$166 million* annually. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

2. Time To Establish a Corporate Enterprise Tracking Tool and Verify Covered Telecom Is Not Used Within the Corporation or by the Corporation and Ensure There Are No Future Buys

In order to complete the representation, the entity must determine, by conducting a reasonable inquiry whether the entity itself uses “covered telecommunications” equipment or services. This includes a relationship with any subcontractor or supplier in which the prime contractor has a Federal contract and uses the supplier or subcontractor’s “covered telecommunications equipment or services” regardless of whether that usage is in performance of work under a Federal contract. The Signatory Agencies do not have reliable data to form an estimate as to the processes vendors will adopt to conduct a reasonable inquiry or the costs, in time and other resources, for conducting such an inquiry. The Signatory Agencies intend to evaluate any information on this topic in the comments submitted by the public.

3. Time To Complete Corporate-Wide Training on Compliance Plan

The Signatory Agencies estimate that most entities have already begun to understand the impact of Section 889 (a)(1)(A) and have already educated the appropriate personnel to that part of the prohibition. Section 889 (a)(1)(B) requires a more robust training of the organization’s compliance plan, which include business partners that are outside of the typical “covered telecommunications equipment or services” purchases; such as day-day office supplies. The Signatory Agencies estimate that it will take all vendors at least 4³⁰ hours of training to ensure personnel understand the organization’s compliance plan for tracking partners that procure “covered telecommunications equipment and

services” that may be indirectly related to their respective business activities. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$147 million* ($= 4 \text{ hours} \times \$94.76 \text{ per hour} \times 387,967$).

Of the 387,967³¹ entities impacted by this part of the rule, it is assumed that 74% or 287,096 entities are unique small entities.

In subsequent years, we assume that 50%³² of the 79,319³³ new entrants will incur these costs. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$15 million* ($= 4 \text{ hours} \times \$94.76 \text{ per hour} \times 50\% \times 79,319$) per year in subsequent years. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

4. Time To Remove and Replace Existing Equipment or Services (if Contractor Decides to) in Order To Be Eligible for a Federal Contract

Data on the extent of the presence of the covered telecommunications equipment and services in the global supply chain is extremely limited, as is information as to the costs of removing and replacing covered equipment or services where it does exist. Furthermore, no data exists as to how many entities will receive a 2-year waiver from executive agency heads or a non-time-limited waiver from the ODNI. Accordingly, the Signatory Agencies are unable to form any estimate of the costs of this rule with regard to removing and replacing existing equipment and services. The Signatory Agencies intend to evaluate any information provided on this topic in comments submitted by the public.

5. Time To Complete the Representation 52.204–24

For the offer-by-offer representation at FAR 52.204–24 the Signatory Agencies assumed the cost for this portion of the rule to be *\$11 billion* ($= 3^{34} \text{ hours} \times \$94.76 \text{ per hour} \times 102,792 \text{ unique entities} \times 378^{35} \text{ responses per entity}$).

³¹ According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

³² The 50% value is an assumption based on subject matter expert judgment. In the absence, to be conservative, it assumes that 50% of new entrants will decide to perform corporate-wide training.

³³ This value is based on data on new registrants in SAM.gov on average for FY16, FY17, FY18, and FY19.

³⁴ The hours are an assumption based on subject matter expert judgment.

³⁵ The responses per entity is calculated by dividing the average number of annual awards in FY16–19 by the average number of unique entities awarded a contract (38,854,291 awards/102,792 unique awardees = 378).

In subsequent years, we assume that 26%³⁶ of new entrants will complete an offer and need to complete the offer-by-offer representation. Therefore, these costs will be incurred by 26% of the 79,319³⁷ new entrants each year. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$2.2 billion* ($= 3 \text{ hours} \times \$94.76 \text{ per hour} \times 26\% \times 79,319 \times 378 \text{ responses per entity}$) per year in subsequent years.

The FAR Council notes that these costs are based on offer-by-offer representations; upon completion of the updates to SAM, offerors will be able to make annual representations, which is anticipated to reduce the burden.

52.204–25

FAR 52.204–25 requires a written report in cases where a contractor (or subcontractor to whom the clause has been flowed down) identifies or receives notification from any source that an entity in the supply chain uses any covered telecommunications equipment or services. The signatory agencies estimate that 5%³⁸ of the unique entities awarded a contract (5,140) will submit approximately 5³⁹ written reports annually pursuant to FAR 52.204–25. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$7.3 million* ($= 3 \text{ hours} \times \$94.76 \text{ per hour} \times 5,140 \text{ entities} \times 5 \text{ responses per entity}$) per year in subsequent years.

In subsequent years, we assume that half of the entities impacted in year 1 will incur these costs for 52.204–25. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$3.6 million* ($= 3 \text{ hours} \times \$94.76 \text{ per hour} \times 2,570 \text{ entities} \times 5 \text{ responses per entity}$) per year in subsequent years.

The total estimated burden for the representation and the clause for year one is *\$11 billion*. The total annual cost for both representations in subsequent years is calculated as: *\$2.2 billion*. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

³⁶ The percentage of 26% is the percentage of active entities registered in SAM.gov in FY20 that were awarded contracts.

³⁷ This value is based on data on new registrants in SAM.gov on average for FY16, FY17, FY18, and FY19.

³⁸ The 5% value was derived from subject matter expert judgment.

³⁹ The 5 reports value was derived from subject matter expert judgment.

³⁰ The hours are an assumption based on subject matter expert judgment.

6. Time To Develop a Full and Complete Laydown and Phase-Out Plan To Support Waiver Requests

The calculation at #2 above captures the time to develop a full and complete laydown. There is no way to accurately estimate the time required for offerors to develop a phase-out plan or the number of offerors for which a waiver will be requested.

The total cost of the above Public Cost Estimate in Year 1 is at least: **\$12 billion.**

The total cost of the above Cost Estimate in Year 2 is at least: **\$2.4 billion.**

The total cost estimate per year in subsequent years is at least: **\$2.4 billion.**

The following is a summary of the estimated costs calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	\$89
Annualized Costs (3%)	2.7
Present Value (7%)	43
Annualized Costs (7%)	3

The FAR Council acknowledges that there is substantial uncertainty underlying these estimates, including elements for which an estimate is unavailable given inadequate information. As more information becomes available, including through comment in response to this notice, the FAR Council will seek to update these estimates which could very likely increase the estimated costs.

E. Government Cost Analysis

The FAR Council anticipates significant impact to the Government as a result of this rule. These impacts will appear as higher costs, reduced competition, and inability to meet some mission needs. These costs are justified in light of the compelling national security objective that this rule will advance.

The primary cost to the Government will be to review the representations and to process the waiver request. The cost to review the representations uses the same variables as the cost to the public to fill out the representation resulting in a total cost to the Government of \$11 billion as the hourly rate, hours to review, and number of representations are the same as the industry calculations. The other cost to the Government, is the cost to review the written reports required by the clause and the calculation uses the same variables as the cost to the public to complete the report, resulting in a total cost to the Government of \$7.3 million.

Higher Costs and Reduced Competition: It is anticipated that at

least three factors will each lead to the Government paying higher prices for services and products it buys: (1) Contractors will pass along some of the new costs of compliance; (2) due to anticipated compliance costs, some contractors will choose to exit the Federal market, particularly for commercial services and products and a reduced level of competition would increase prices; and (3) the risk of commercial firms choosing not to do business with the Government may be heightened in areas of high technological innovation such as digital services. In recent years, DoD and GSA, among other Departments and agencies, have placed particular emphasis on recruiting non-traditional contractors to provide emerging tech services and this rule could discourage innovative technology firms from competing on Federal Government contracts.

It is also anticipated that many Federal contractors may need to hire or contract for consultants to aid them in reviewing and updating their supply chains. Market principles suggest that this may increase the costs for such experts, making it more difficult for small businesses to afford them.

Inability to Meet Mission Needs: The Government uses Competition in Contracting Act exceptions (FAR subpart 6.3) to use sole source acquisitions to meet agency needs. These acquisitions would be impacted as offerors will also be subject to the section 889 requirements. There are industries where the Government makes up a small portion of the total market. There may be markets where the vendors will choose to no longer do business with the Government; leaving no sources to meet those specific requirements for the Government. This will reduce agencies' abilities to satisfy some mission needs.

The total cost of the above Government Cost Estimate in Year 1 is: **\$11 billion.**

The total cost of the above Cost Estimate in Year 2 is: **\$2.2 billion.**

The total cost estimate per year in subsequent years is: **\$2.2 billion.**

The following is a summary of the estimated costs calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	\$82.5
Annualized Costs (3%)	2.5
Present Value (7%)	40
Annualized Costs (7%)	2.8

F. Analysis of Alternatives

Alternative 1: The FAR Council could take no regulatory action to implement this statute. However, this alternative would not provide any implementation and enforcement of the important national security measures imposed by the law. Moreover, the general public would not experience the benefits of improved national security resulting from the rule as detailed above in Section C. As a result, we reject this alternative.

Alternative 2: The FAR Council could provide uniform procedures for how agency waivers must be initiated and processed. The statute provides this waiver authority to the head of each executive agency. Each executive agency operates a range of programs that have unique mission needs as well as unique security concerns and vulnerabilities. Since the waiver approval process will be based on each agency's judgment concerning particular use cases, standardizing the waiver process across agencies is not feasible. We believe that this alternative would not be able to best serve the public, as it would lead to inefficient waiver determinations at agencies whose ideal waiver process differs from the best possible uniform approach. As a result, we reject this alternative.

IV. Specific Questions for Comment

To understand the exact scope of this impact and how this impact could be affected in subsequent rulemaking, DoD, GSA, and NASA welcome input on the following questions regarding anticipated impact on affected parties.

- To what extent do you currently use any equipment, system, or service that itself uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system?

- The FAR Council is considering as part of finalization of this rulemaking to expand the scope to require that the prohibition at 52.204–24(b)(2) and 52.204–25(b)(2) applies to the offeror and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, and expand the representation at 52.204–24(d)(2) so that the offeror represents on behalf of itself and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, as to represent whether they use covered telecommunications equipment or services. If the scope of rule was extended to cover affiliates, parents, and subsidiaries of the offeror that are domestic concerns, how would that

impact your ability to comply with the prohibition?

- To the extent you use any equipment, system or service that uses covered telecommunications equipment or services, how much do you estimate it would cost if you decide to cease such use to come into compliance with the rule?

- To what extent do you have insight into existing systems and their components?

- What equipment and services need to be checked to determine whether they include any covered telecommunications equipment or services?

- What are the best processes and technology to use to identify covered telecommunications equipment or services?

- Are there automated solutions?

- What are the challenges involved in identifying uses of covered telecommunications equipment or services (domestic, foreign and transnational) that would be prohibited by the rule?

- Do you anticipate use of any products or services that are unrelated to a service provided to the Federal Government and connects to the facilities of a third-party (e.g. backhaul, roaming, or interconnection arrangements) that uses covered telecommunications equipment or services?

- To what extent do you currently have direct control over existing equipment, systems, or services in use (e.g., physical security systems) and their components, as contrasted with contracting for equipment, systems, or services that are used by you within meaning of the statute yet provided by a separate entity (e.g., landlords)? How long will it take if you decide to remove and replace covered telecommunications equipment or services that your company uses?

- When a company identifies covered telecommunications equipment or services, what are the steps to take if you decide to replace the equipment or services?

- What do companies do if their factory or office is located in foreign country where covered telecommunications equipment or services are prevalent and alternative solutions may be unavailable?

- What are some best practices (e.g., sourcing strategies) or technologies that can assist companies with replacing covered telecommunications equipment or services?

- Are there specific use cases in the supply chain where it would not be feasible to cease use of equipment,

system(s), or services that use covered telecommunications equipment and services? Please be specific in explaining why cessation of use is not feasible.

- Will the requirement to comply with this rule impact your willingness to offer goods and services to the Federal Government? Please be specific in describing the impact (e.g., what types of products or services may no longer be offered, or offered in a modified form, and why)

- The FAR Council recognizes there could be further costs associated with this rule (e.g. lost business opportunities, having to relocate a building in foreign country where there is no market alternative). What are they?

- What additional information or guidance do you view as necessary to effectively comply with this rule?

- What other challenges do you anticipate facing in effectively complying with this rule?

- Do you have data on the extent of the presence of covered telecommunications equipment or services? If so, please provide that data.

- Do you have data on the fully burdened cost to remove and replace covered telecommunications equipment or services, if that is a decision that you decide to make? If so, please provide that data and identify how you would revise the estimated costs in the cost analysis.

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

This rule does not add any new provisions or clauses. The rule does not change the applicability of existing provisions or clauses to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items. The rule is updating the provision at FAR 52.204-24 and the clause at FAR 52.204-25 to implement section 889(a)(1)(B).

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when, as in this case, the FAR Council makes a written determination and finding that it would not be in the best interest of the

Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in contracting with entities that use equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This level of risk is not alleviated by the fact that the equipment or service being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (i.e., that it is a commercial item or COTS item), nor by the small size of the purchase (i.e., at or below the SAT).

VI. Interim Rule Determination and Executive Orders 12866, 13563, and 13771

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling circumstances necessitate that this interim rule go into effect earlier than 60 days after its publication date.

Since Section 889 of the NDAA was signed on August 13, 2018, the FAR Council has been working diligently to implement the statute, which has multiple effective dates embedded in Section 889. Like many countries, the United States has increasingly relied on a global industrial supply chain. As threats have increased, so has the Government's scrutiny of its contractors and their suppliers. Underlying these efforts is the concern a foreign government will be able to expropriate valuable technologies, engage in espionage with regard to sensitive U.S. Government information, and/or exploit vulnerabilities in products or services. It is worth noting this rule follows a succession of other FAR and DOD rules dealing with supply chain and cybersecurity.

Government agencies are already authorized to exclude certain contractors and products from specified countries. For example, Section 515 of the Consolidated Appropriations Act of 2014 required certain non-DoD agencies to conduct a supply chain risk assessment before acquiring high- or moderate-impact information systems. The relevant agencies are required to conduct the supply chain risk assessments in conjunction with the FBI to determine whether any cyber-espionage or sabotage risk associated with the acquisition of these information systems exist, with a focus on cyber threats from companies "owned, directed, or subsidized by the People's Republic of China."

More recently, U.S. intelligence agencies raised concerns that Kaspersky Lab executives were closely tied to the Russian government, and that a Russian cybersecurity law would compel Kaspersky to help Russian intelligence agencies conduct espionage. As a result, DHS issued a Binding Operational Directive effectively barring civilian Government agencies from using the software. In the FY 2018 NDAA, Congress prohibited the entire U.S. Government from using products and services from Kaspersky or related entities. In June 2018, this prohibition

was implemented as an interim rule across the U.S. Government by FAR 52.204-23.

Section 889 differs from the previous efforts in substantial ways. Unlike the blanket prohibition on agency use of goods and services from Kaspersky Labs, the prohibitions in Section 889 apply to multiple companies, and apply with slightly different characterizations to products and services from the various named companies. Additionally, section 889 contains carve-outs under which the prohibitions do not apply, further complicating interpretation and implementation of rulemaking. Finally, section 889 contains distinct prohibitions related to contracting, with the first applying to products and services purchased for use by the Government, and the second applying to use of the covered telecommunications equipment or services by contractors. Given the various provisions of Section 889, including the focus in the (a)(1)(A) prohibition on addressing risk to the Government's own use of covered telecommunications equipment and services and the shorter time period available to implement that prohibition, the FAR Council first developed and published at 84 FR 40216 on August 13, 2019, FAR Case 2018-017 to implement that prohibition. As discussed in the background section of this rule, that rule focused on products and services sold to the Government (directly or indirectly through a prime contract). Changes necessary to the System for Award Management to reduce the burden of the rule were not available by the effective date of the first rule, so in order to decrease the burden on contractors from this first rule, the FAR Council published a second interim rule on Section 889(a)(1)(A) at 84 FR 68314 on December 13, 2019. After the publication of this second rule, the FAR Council accelerated its ongoing work on the provisions of Section 889(a)(1)(B). Section 889(a)(1)(B) focuses on the Federal Government's ability to contract with companies that use the covered products or services at the requisite threshold.

Given the expansiveness and complexity of Section 889(a)(1)(B), this rule required substantial up-front analysis. As described elsewhere in the rule, all three signatory agencies held public meetings to hear directly from industry on concerns with this rule, with the first occurring in July of 2019 and the most recent occurring in March of 2020. The rule was prepared in part in the spring of 2020 as the nation began shutdown due to the COVID-19 pandemic and work across the

Government was diverted to respond to the national emergency; the concentration of all available resources on the response to the pandemic very significantly delayed the Government's ability to finish the rule. These factors have left the FAR Council with insufficient time to publish the rule with 60 days before the legislatively established effective date of August 13, 2020, or to complete full public notice and comment before the rule becomes effective. As noted, however, the agencies are seeking public comment on this interim rule and will consider and address those comments.

Having an implementing regulation in place by the effective date is critically important to avoid confusion, uncertainty, and potentially substantial legal consequences for agencies and the vendor community. The statute requires contractors to identify the use of covered telecommunications equipment and services in their operations and the prohibitions will take effect on August 13, 2020. If they did so without an implementing regulation in place, contractors would have no guidance as to how to comply with the requirements of Section 889(a)(1)(B), leading to situations where contractors could refuse to contract with the Government over fears that lack of compliance could yield claims for breach of contract, or claims under the False Claims Act. Concerns of this sort were expressed during the outreach conducted by the FAR Council, with contractors expressing confusion as to the scope of the statutory prohibition, and asking for explicit guidance regarding what is required to comply with the requirement; this guidance is provided by the rule in the form of instructions regarding a reasonable inquiry and what must be represented to the Government. Absent coverage in the FAR to implement these requirements in a uniform manner as of the effective date, agencies would also be forced to implement the statute on their own, absent that unifying guidance, leading to rapidly divergent implementation paths, and creating substantial additional confusion and duplicative costs for the regulated contracting community. Publication of a proposed rule under these circumstances, while providing some indication of the direction the Government intended to take, would not provide sufficient clarity or certainty to avoid these consequences, given the complexity of the subject rule.

For the foregoing reasons, pursuant to 41 U.S.C. 1707(d), the FAR Council finds that urgent and compelling circumstances make compliance with

the notice and comment and delayed effective date requirements of 41 U.S.C. 1707(a) and (b) impracticable, and invokes the exception to those requirements under 1707(d). While a public comment process will not be completed prior to the rule's effective date, the FAR Council has incorporated feedback solicited through extensive outreach already undertaken, including through public meetings conducted over the course of nine months, and the feedback received through the two rulemakings associated with Section 889(a)(1)(A). The FAR Council will also consider comments submitted in response to this interim rule in issuing a subsequent rulemaking.

This interim rule is economically significant for the purposes of Executive Orders 12866 and 13563. This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because the benefit-cost analysis demonstrates that the regulation is anticipated to improve national security as its primary direct benefit. This rule is meant to mitigate risks across the supply chains that provide hardware, software, and services to the U.S. Government and further integrate national security considerations into the acquisition process.

The Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule under the Congressional Review Act (CRA) (5 U.S.C. 804(2)). Under the CRA (5 U.S.C. 801(a)(3)), a major rule generally may not take effect until 60 days after a report on the rule is received by Congress. As a result of the factors identified above, the FAR Council has insufficient time to prepare and complete a full public notice and comment rulemaking proceeding and to timely complete a final rule prior to the effective date of August 13, 2020. Because of the substantial additional impact to the regulated community if the rule is not in place on the effective date, the FAR Council has found good cause to forego notice and public procedure, the Council also determines, pursuant to 5 U.S.C. 808(2), that this interim rule will take effect on August 13, 2020.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA expect that this rule may 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. An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this interim rule is to implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

The objective of the rule is to provide an information collection mechanism that relies on an offer-by-offer representation that is required to enable agencies to determine and ensure that they are complying with section 889(a)(1)(B).

The legal basis for the rule is section 889(a)(1)(B) of the NDAA for FY 2019, which prohibits the Government from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020, unless an exception applies or a waiver has been granted. This prohibition applies to an entity that uses at the prime contractor level any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, regardless of whether that usage is in performance of work under a Federal contract. This prohibition does not flow-down to subcontractors.

This collection includes a burden for requiring an offeror to represent if it “does” or “does not” use any equipment, system, or service that uses covered telecommunications equipment or services.

The representation requirement being added to the FAR provision at 52.204–24 will be included in all solicitations, including solicitations for contracts with small entities and is an offer-by-offer representation. A data set was generated from the Federal Procurement Data System (FPDS) for FY 2016, 2017, 2018 and 2019 for use in estimating the number of small entities affected by this rule.

The FPDS data indicates that the Government awarded contracts to an average of 102,792 unique entities, of which 75,112 (73 percent) were small entities. DoD, GSA, and NASA estimate that the representation at 52.204–24 will impact all unique entities awarded Government contracts, of which 75,112 are small entities.

This rule amends the solicitation provision at 52.204–24 to require all vendors to represent on an offer-by-offer basis, that it “does” or “does not” use any covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services and if it does to provide an additional disclosure.

If the offeror selects “does” in the representation at 52.204–24(d)(2), the offeror is required to further disclose, per paragraph (e), substantial detail regarding the basis for selecting “does” in the representation.

This rule will impact some small businesses and their ability to provide

Government services at the prime contract level, since some small entities lack the resources to efficiently update their supply chain and information systems, which may be useful to comply with the prohibition.

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

The FAR Council intends to publish a subsequent rulemaking to allow offerors, including small entities, to represent annually in the System for Award Management (SAM) after conducting a reasonable inquiry. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation at 52.204–24(d)(2). The annual representation is anticipated to reduce the burden on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2019–009) in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested, and OMB authorized, emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because the prohibition in section 889(a)(1)(B) goes into effect on August 13, 2020.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government complies with section 889(a)(1)(B) on the statute's effective date in order to protect the Government supply chain

from risks posed by covered telecommunications equipment or services.

c. Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Authorizing collection of this information on the effective date will ensure that agencies do not enter into, extend, or renew contracts with any entity that uses equipment, systems, or services that use telecommunications equipment or services from certain named companies as a substantial or essential component or critical technology as part of any system in violation of the prohibition in section 889(a)(1)(B).

DoD, GSA, and NASA intend to provide a separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule under OMB Control Number 9000-0201.

The annual public reporting burden for this collection of information is estimated as follows:

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

FAR Clause: 52.204-24.

Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 102,792.

Average Responses per Respondents: 378.

Total Estimated Number of Responses: 38,854,291.

Average Time (for both positive and negative representations) per Response: 3 hours.

Total Annual Time Burden: 116,562,873.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

FAR Clause: 52.204-25.

Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 5,140.

Average Responses per Respondents: 5.

Total Estimated Number of Responses: 25,700.

Average Time per Response: 3 hours.

Total Annual Time Burden: 77,100.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Waiver from Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

FAR Clause: 52.204-25.

Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 20,000.

Average Responses per Respondents: 1.
Total Estimated Number of Responses: 20,000.

Average Time per Response: 160 hours.

Total Annual Time Burden: 3,200,000.

The public reporting burden for this collection of information consists of a representation to identify whether an offeror uses covered telecommunications equipment or services for each offer as required by 52.204-24 and reports of identified use of covered telecommunications equipment or services as required by 52.204-25. The representation at 52.204-24 is estimated to average 3 hours per response to review the prohibitions, research the source of the product or service, and complete the additional detailed disclosure, if applicable. Reports required by 52.204-25 are estimated to average 3 hours per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

If the Government seeks a waiver from the prohibition, the offeror will be required to provide a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain and a phase-out plan to eliminate such covered telecommunications equipment or services from the offeror's systems. There is no way to estimate the total number of waivers at this time. For the purposes of complying with the PRA analysis, the FAR Council estimates 20,000 waivers; however there is no data for the basis of this estimate. This estimate may be higher or lower once the rule is in effect.

The subsequent 60-day notice to be published by DoD, GSA, and NASA will invite public comments.

List of Subjects in 48 CFR Parts 1, 4, 13, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 1, 4, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by revising the entries for “4.21”, “52.204-24” and “52.204-25” to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment			OMB control No.		
*	*	*	*	*	*
4.21	.....		9000-0199 and 9000-0201.		
52.204-24	.....		9000-0199 and 9000-0201.		
52.204-25	.....		9000-0199 and 9000-0201		
*	*	*	*	*	*

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.2100 [Amended]

■ 3. Amend section 4.2100 by removing “paragraph (a)(1)(A)” and adding “paragraphs (a)(1)(A) and (a)(1)(B)” in its place.

■ 4. Amend section 4.2101 by adding in alphabetical order the definitions “Backhaul”, “Interconnection arrangements”, “Reasonable inquiry” and “Roaming” to read as follows:

4.2101 Definitions.

* * * * *

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

* * * * *

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice,

video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

* * * * *

- 5. Amend section 4.2102 by revising paragraphs (a) and (c) to read as follows:

4.2102 Prohibition.

(a) Prohibited equipment, systems, or services.

(1) On or after August 13, 2019, agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

* * * * *

(c) *Contracting Officers.* Unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or service is covered by a waiver described in 4.2104, Contracting Officers shall not—

(1) Procure or obtain, or extend or renew a contract (e.g., exercise an option) to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(2) Enter into a contract, or extend or renew a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or

as critical technology as part of any system.

* * * * *

- 6. Amend section 4.2103 by revising paragraph (a)(2) to read as follows:

4.2103 Procedures.

(a) * * *

(2)(i) If the offeror selects “will not” in paragraph (d)(1) of the provision at 52.204–24 or “does not” in paragraph (d)(2) of the provision at 52.204–24, the contracting officer may rely on the representations, unless the contracting officer has reason to question the representations. If the contracting officer has a reason to question the representations, the contracting officer shall follow agency procedures.

(ii) If an offeror selects “will” in paragraph (d)(1) of the provision at 52.204–24, the offeror must provide the information required by paragraph (e)(1) of the provision at 52.204–24, and the contracting officer shall follow agency procedures.

(iii) If an offeror selects “does” in paragraph (d)(2) of the provision at 52.204–24, the offeror must complete the disclosure at paragraph (e)(2) of the provision at 52.204–24, and the contracting officer shall follow agency procedures.

* * * * *

- 7. Amend section 4.2104 by revising paragraphs (a)(1) introductory text and (a)(2), and adding paragraphs (a)(3) and (4) to read as follows:

4.2104 Waivers.

(a) * * *

(1) *Waiver.* The waiver may be provided, for a period not to extend beyond August 13, 2021 for the prohibition at 4.2102(a)(1), or beyond August 13, 2022 for the prohibition at 4.2102(a)(2), if the Government official, on behalf of the entity, seeking the waiver submits to the head of the executive agency—

* * * * *

(2) *Executive agency waiver requirements for the prohibition at 4.2102(a)(2).* Before the head of an executive agency can grant a waiver to the prohibition at 4.2102(a)(2), the agency must—

(i) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy;

(ii) Establish participation in an information-sharing environment when and as required by the Federal Acquisition Security Council (FASC) to

facilitate interagency sharing of relevant acquisition supply chain risk information;

(iii) Notify and consult with the Office of the Director of National Intelligence (ODNI) on the waiver request using ODNI guidance, briefings, best practices, or direct inquiry, as appropriate; and

(iv) Notify the ODNI and the FASC 15 days prior to granting the waiver that it intends to grant the waiver.

(3) *Waivers for emergency acquisitions.*

(i) In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements under 4.2104(a)(2)(iii) and 4.2104(a)(2)(iv) to enable effective mission critical functions or emergency response and recovery.

(ii) In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must—

(A) Make a determination that the notice and consultation requirements are impracticable due to an emergency condition; and

(B) Within 30 days of award, notify the ODNI and the FASC of the waiver issued under emergency conditions in addition to the waiver notice to Congress under 4.2104(a)(4).

(4) *Waiver notice.*

(i) For waivers to the prohibition at 4.2102(a)(1), the head of the executive agency shall, not later than 30 days after approval—

(A) Submit in accordance with agency procedures to the appropriate congressional committees the full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain; and

(B) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(ii) For waivers to the prohibition at 4.2102(a)(2), the head of the executive agency shall, not later than 30 days after approval submit in accordance with agency procedures to the appropriate congressional committees—

(A) An attestation by the agency that granting of the waiver would not, to the agency's knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security;

(B) The full and complete laydown of the presences of covered

telecommunications or video surveillance equipment or services in the relevant supply chain, to include a description of each category of covered technology equipment or services discovered after a reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which such covered technology is found after conducting a reasonable inquiry; and

(C) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 8. Amend section 13.201 by redesignating paragraph (j) as (j)(1) and adding paragraph (j)(2) to read as follows:

13.201 General.

* * * * *

(j)(1) * * *

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted (see subpart 4.21). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 9. Amend section 39.101 by redesignating paragraph (f) as (f)(1) and adding paragraph (f)(2) to read as follows:

39.101 Policy.

* * * * *

(f)(1) * * *

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted (see subpart 4.21). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that

use is in performance of work under a Federal contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Revise section 52.204–24 to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items.

(a) *Definitions.* As used in this provision—*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or

services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

(d) *Representations.* The Offeror represents that—

(1) It [] will, [] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It [] does, [] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered

telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

■ 11. Amend section 52.204–25 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), adding in alphabetical order the definitions “Backhaul”, “Interconnection arrangements”, “Reasonable inquiry” and “Roaming”;

■ c. Revising paragraph (b); and

■ d. Removing from paragraph (e) “this paragraph (e)” and adding “this paragraph (e) and excluding paragraph (b)(2)” in its place.

The revisions read as follows:

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

(a) * * *

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

* * * * *

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another’s network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

* * * * *

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication

equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

* * * * *

■ 12. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraphs (a)(3) and (e)(1)(iv) “AUG 2019” and adding “AUG 2020” in their places, respectively;

■ c. Revising the date of Alternate II; and

■ d. In Alternate II, amend paragraph (e)(1)(ii)(D) by removing “AUG 2019” and adding “AUG 2020” in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (AUG 2020)

* * * * *

Alternate II (AUG 2020). * * *

* * * * *

■ 13. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(1)(iii) “AUG 2019” and adding “AUG 2020” in its place; and

■ c. Removing from paragraph (a)(2)(viii) “JUN 2020” and adding “AUG 2020” in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (AUG 2020)

* * * * *

■ 14. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(vi) “AUG 2019” and adding “AUG 2020” in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (AUG 2020)

* * * * *

[FR Doc. 2020–15293 Filed 7–13–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 4]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2019–05;
Introduction**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),

and National Aeronautics and Space
Administration (NASA).

ACTION: Summary presentation of an
interim rule.

SUMMARY: This document summarizes
the Federal Acquisition Regulation
(FAR) rule agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council (Councils) in this Federal
Acquisition Circular (FAC) 2019–05. A
companion document, the *Small Entity
Compliance Guide* (SECG), follows this
FAC. The FAC, including the SECG, is
available via the internet at [http://
www.regulations.gov](http://www.regulations.gov).

DATES: For effective date see the
separate document, which follows.

FOR FURTHER INFORMATION CONTACT:
Farpolicy@gsa.gov or call 202–969–
4075. Please cite FAC 2019–05, FAR
Case 2018–017.

SUPPLEMENTARY INFORMATION: A
summary for the FAR rule follows. For
the actual revisions and/or amendments
made by this FAR Case, refer to the
specific subject set forth in the
document following this item summary.
FAC 2019–05 amends the FAR as
follows:

RULE LISTED IN FAC 2019–05

Subject	FAR case	Analyst
Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

**Prohibition on Contracting for Certain
Telecommunications and Video
Surveillance Services or Equipment
(FAR Case 2018–017)**

This interim rule amends the FAR to
implement section 889(a)(1)(A) of the
John S. McCain National Defense
Authorization Act (NDAA) for Fiscal
Year (FY) 2019 (Pub. L. 115–232).
Paragraph (a)(1)(A) of section 889
prohibits agencies from procuring or
obtaining, or extending or renewing a
contract to procure or obtain, any
equipment, system, or service that uses
covered telecommunication equipment
or services as a substantial or essential
component of any system, or as a
critical technology as part of any system
on or after August 13, 2019, unless an
exception applies or a waiver has been
granted. Further prohibitions at
paragraph (a)(1)(B) of section 889 go
into effect August 13, 2020, and will be
addressed through separate rulemaking.

To implement paragraph (a)(1)(A) of
section 889, this interim rule provides a
new solicitation provision and contract
clause. The provision at FAR 52.204–24
requires offerors to represent whether
their offer includes covered
telecommunications equipment or
services and if so, to identify additional
details about its use. Representations are
also required for orders on indefinite
delivery contracts. The clause at FAR
52.204–25 prohibits contractors from
providing any equipment, system, or
service that uses covered
telecommunications equipment or
services as a substantial or essential
component of any system, or as critical
technology as part of any system, unless

an exception applies or the covered
telecommunications equipment or
services are covered by a waiver
described in FAR 4.2104. The contractor
must also report any such equipment,
systems, or services discovered during
contract performance; this requirement
flows down to subcontractors.

This rule applies to all acquisitions,
including acquisitions at or below the
simplified acquisition threshold and to
acquisitions of commercial items,
including commercially available off-
the-shelf items. It may have a significant
economic impact on a substantial
number of small entities.

This interim rule is being
implemented as a national security
measure to protect Government
information, and Government
information and communication
technology systems.

Contracting officers shall modify
certain contracts to include the new
FAR clause, as specified in the “Dates”
section of the preamble of the interim
rule. Contracting officers also shall
include the new FAR provision in
solicitations for an order, or notices of
intent to place an order, under those
contracts.

Janet M. Fry,
*Director, Federal Acquisition Policy Division,
Office of Government-Wide Policy.*

Federal Acquisition Circular (FAC) 2019–
05 is issued under the authority of the
Secretary of Defense, the Administrator of
General Services, and the Administrator of
National Aeronautics and Space
Administration.

Unless otherwise specified, all Federal
Acquisition Regulation (FAR) and other
directive material contained in FAC 2019–05

is effective August 13, 2019 except for FAR
Case 2018–017, which is effective August 13,
2019.

Kim Herrington,
Acting Principal Director, Defense Pricing
and Contracting, Department of Defense.
Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO,
Office of Acquisition Policy, U.S. General
Services Administration.
William G. Roets, II,
Acting Assistant Administrator, Office of
Procurement, National Aeronautics and
Space Administration.

[FR Doc. 2019–17200 Filed 8–12–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 4, 12, 13, 39, and 52

[FAC 2019–05; FAR Case 2018–017; Docket
No. 2018–0017, Sequence No. 1]

RIN 9000–AN83

**Federal Acquisition Regulation:
Prohibition on Contracting for Certain
Telecommunications and Video
Surveillance Services or Equipment**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

DATES: *Effective Date:* August 13, 2019.
Applicability:

Contracting officers shall include the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment as prescribed—

- In solicitations issued on or after August 13, 2019, and resultant contracts; and
- In solicitations issued before August 13, 2019, provided award of the resulting contract(s) occurs on or after August 13, 2019.

Contracting officers shall modify, in accordance with FAR 1.108(d), existing indefinite delivery contracts to include the FAR clause for future orders, prior to placing any future orders.

If modifying an existing contract or task or delivery order to extend the period of performance, including exercising an option, contracting officers shall include the clause in accordance with 1.108(d).

The contracting officer shall include the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations for an order, or notices of intent to place an order, including those issued before August 13, 2019, where performance will occur on or after that date, under an existing indefinite delivery contract.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 15, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–017 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2018–017”. Select the link “Comment Now” that corresponds with “FAR Case 2018–017”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2018–017” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite “FAR Case 2018–017” in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Farpolicy@gsa.gov or call 202–969–4075. Please cite FAR Case 2018–017.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement section 889(a)(1)(A) of the NDAA for FY 2019 (Pub. L. 115–232). Section 889(a)(1)(A) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system, on or after August 13, 2019.

“Covered telecommunications equipment or services,” as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The rule adopts the definition of critical technologies included in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Section 1703 of Title XVII of the NDAA

for FY 2019, Pub. L. 115–232, 50 U.S.C. 4565(a)(6)(A)).

“Covered foreign country,” as defined in section 889, means the People’s Republic of China.

Under certain circumstances, section 889 allows the head of an executive agency to grant a one-time waiver on a case-by-case basis for up to a two-year period; in other circumstances, waivers issued by the Director of National Intelligence are authorized.

This rule requires submission of a representation with each offer that will require offerors to identify as part of their offer any covered telecommunications equipment or services that will be provided to the Government. DoD, GSA, and NASA recognize that some agencies may need to tailor the approach to the information collected based on the unique mission and supply chain risks for their agency.

In order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA are currently working on updates to the System for Award Management to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite delivery contracts.

The prohibition in section 889(a)(1)(B) is not effective until August 13, 2020, and will be implemented through separate rulemaking.

II. Discussion and Analysis

This rule amends FAR part 4, adding a new subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, with a corresponding new provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. The rule adds text in subpart 12.3, Acquisition of Commercial Items, and subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address section 889(a)(1)(A) with regard to commercial item representations and micro-purchases.

The definition of “critical technologies” provided in FIRRMA has been adopted to address the prohibition in section 889(a)(1)(A) on providing

covered telecommunications equipment or services as “critical technology as part of any system.” As with section 889, FIRRMA is aimed at ensuring that the United States is protected from certain risks regarding foreign actors. In effectuating these protections, defining terms in a consistent manner, to facilitate consistent application, is crucial. While there are elements of this definition that may not raise concerns regarding covered telecommunications equipment or services (for example, the inclusions of select agents or toxins), the majority of identified categories in the FIRRMA definition of “critical technologies” include or could potentially include covered telecommunications equipment or services. Since the prohibition does not apply if no covered telecommunications equipment or services are present, a definition that includes categories that may be unlikely to include telecommunications equipment or services is overbroad in a way that incurs no additional cost, and ensures the benefits of consistency with other Government efforts.

To implement section 889(a)(1)(A), the clause at 52.204–25 prohibits contractors from providing any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception or a waiver applies. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

The provision at 52.204–24 is required in all solicitations, and includes a representation that will require offerors to identify as part of their offer any covered telecommunications equipment or services that will be provided to the Government. The additional information provided through this representation will assist the Government in appropriately assessing the presence of any covered telecommunications equipment or services that may be present in an offer, for example, to determine if the items in question will be used as a substantial or essential component, or to determine if a waiver request may be appropriate.

This rule also adds cross-references in FAR parts 39, Acquisition of Information Technology, and 13, Simplified Acquisition Procedures, to the coverage of the section 889 prohibition at FAR subpart 4.21. In addition, the rule adds OMB Control Number 9000–0199 to the list at FAR

1.106 of OMB approval under the Paperwork Reduction Act.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule adds a new provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and a new contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in order to implement section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits the purchase of any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver has been granted.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless certain circumstances apply, including

if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in buying equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This level of risk is not alleviated by the fact that the equipment or service being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.*, that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.*, at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring covered telecommunication equipment or services absent coverage of these types of acquisitions by this rule.

IV. 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 rule has been designated a “significant regulatory action” under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States. As highlighted by sections III, VII, and VIII of this preamble, national security is a primary direct benefit of this rule. Also, though this rule is subject to the regulatory publication requirements of 41 U.S.C. 1707, application of the national security exemption under E.O. 13771 requires assessing the application of the “good cause” exception under 5 U.S.C. 553. This rule meets the “good cause” exception as the one-year deadline Congress established to implement section 889(a)(1)(A) would not provide sufficient time for notice and comment in light of the complex nature of the rule and sensitive interagency process.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA expect that this rule may 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.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this interim rule is to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

The objective of the rule is to prescribe appropriate policies and procedures to enable agencies to determine and ensure that they are not procuring or obtaining any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2019. The legal basis for the rule is section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits Government procurement of such equipment, systems, and services on or after that date, unless an exception applies or a waiver has been granted.

This collection includes a burden for reporting during contract performance and a representation. A data set was generated from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2016, 2017, and 2018 for use in estimating the number of small entities affected by this rule.

The representation requirement in FAR provision 52.204–24 and the reporting requirement in the clause at FAR 52.204–25 will be incorporated in all solicitations and contracts, including contracts with small entities. The FPDS data indicates that the Government awarded contracts to an average of 95,223 unique entities, of which 69,865 (73 percent) were small entities. DoD, GSA, and NASA estimate that representations will be received from twice this number of entities, or 139,730 small entities. While

representations will be submitted by all offerors, detailed additional information is only estimated to be required from approximately 10 percent of offerors, or 13,973 small entities. It is estimated that reports will be submitted by 5 percent of contractors, or 3,493 small entities.

The provision at FAR 52.204–24 requires each offeror to represent whether it will provide covered telecommunications equipment or services. If the offeror responds affirmatively, the offeror is required to further disclose substantial detail regarding the basis for the affirmative representation. Representations will be submitted by all offerors, or 139,730 small entities; it is estimated that detailed representations following an affirmative response will be submitted by 10 percent of contractors, or 13,973 small entities.

The clause at FAR 52.204–25 requires contractors and subcontractors to report to the contracting officer, or for DoD through <https://dibnet.dod.mil>, any discovery of covered telecommunications equipment or services during the course of contract performance.

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

Because of the nature of the prohibition enacted by section 889(a)(1)(A), it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. However, in order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA are currently working on updates to the System for Award Management to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite delivery contracts. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–017) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested, and OMB authorized, emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because the prohibition in section 889(a)(1)(A) goes into effect on August 13, 2019.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government complies with section 889(a)(1)(A) on the statute's effective date in order to protect the Government supply chain from risks posed by covered telecommunications equipment or services.

c. Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Authorizing collection of this information on the effective date will ensure that agencies do not procure or obtain, or extend or renew a contract to procure or obtain, equipment, systems, or services in violation of the prohibition in section 889(a)(1)(A). It will also avoid substantial additional costs that may be incurred from having to replace such equipment, systems, or services that are purchased in violation of section 889(a)(1)(A), as well as additional administrative costs for reprocurement.

DoD, GSA, and NASA intend to provide a separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule under OMB Control Number 9000–0199.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 190,446.

Average Responses per Respondents: 41.25.
Total Estimated Number of Responses: 7,855,881.
Average Time (for both positive and negative representations) per Response: 0.105 hour.
Total Annual Time Burden: 821,274.
Agency: DoD, GSA, and NASA.
Type of Information Collection: New Collection.
Title of Collection: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 4,761.
Average Responses per Respondents: 5.
Total Estimated Number of Responses: 23,805.
Average Time per Response: 1.5 hour.
Total Annual Time Burden: 35,708.

The public reporting burden for this collection of information consists of a representation to identify whether an offeror will provide covered telecommunications equipment and services as required by 52.204–24 and reports of identified covered telecommunications equipment and services during contract performance as required by 52.204–25. Representations are estimated to average 0.105 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and either provide a negative response in the majority of cases or to complete the additional detailed disclosure, if applicable. Reports are estimated to average 1.5 hours per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

The subsequent 60-day notice to be published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the FAR is immediately revised to include the requirements of the law, which prohibits the Federal Government from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication equipment

or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver is granted.

Because section 889(a)(1)(A) takes effect on August 13, 2019, this rule must take effect immediately to ensure agencies and contractors are implementing the statutory prohibition.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 12, 13, 39, and 52

Government procurement.

Janet M. Fry,

Director, Federal Acquisition Policy Division,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 12, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 12, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by adding the entries “4.21”, “52.204–24” and “52.204–25” in numerical order to read as follows:

FAR segment			OMB control No.	
*	*	*	*	*
4.21	.....		9000–0199	
*	*	*	*	*
52.204–24	.....		9000–0199	
52.204–25	.....		9000–0199	
*	*	*	*	*

■ 3. Revise the heading to Part 4 and add Subpart 4.21 to read as follows:

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

* * * * *

Subpart 4.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

Sec.
 4.2100 Scope of subpart.
 4.2101 Definitions.
 4.2102 Prohibition.
 4.2103 Procedures.
 4.2104 Waivers.

4.2105 Solicitation provision and contract clause.

4.2100 Scope of subpart.

This subpart implements paragraph (a)(1)(A) of section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

4.2101 Definitions.

As used in this subpart—
Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
 (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—
 (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
 (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 (ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and

components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

4.2102 Prohibition.

(a) *Prohibited equipment, systems, or services.* On or after August 13, 2019, agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

(b) *Exceptions.* This subpart does not prohibit agencies from procuring or contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Contracting Officers.* Contracting officers shall not procure or obtain, or extend or renew a contract (e.g., exercise an option) to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

4.2103 Procedures.

(a) *Representations.* If an offeror provides an affirmative response to the representations or discloses information in accordance with paragraphs (c) and (d) of the provision at 52.204–24, follow agency procedures.

(b) *Reporting.* If a contractor provides a report pursuant to paragraph (d) of the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, follow agency procedures.

4.2104 Waivers.

(a) *Executive agencies.* The head of an executive agency may, on a one-time basis, waive the prohibition at 4.2102(a) with respect to a Government entity (e.g., requirements office, contracting office) that requests such a waiver.

(1) The waiver may be provided, for a period not to extend beyond August 13, 2021, if the Government entity seeking the waiver submits to the head of the executive agency—

(i) A compelling justification for the additional time to implement the requirements under 4.2102(a), as determined by the head of the executive agency; and

(ii) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(2) The head of the executive agency shall, not later than 30 days after approval, submit to the appropriate congressional committees the full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and the phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(b) *Director of National Intelligence.* The Director of National Intelligence may provide a waiver if the Director determines the waiver is in the national security interests of the United States.

4.2105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

(1) In all solicitations for contracts; and

(2) Under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order (i.e., subpart 8.4 and 16.505).

(b) The contracting officer shall insert the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and contracts.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by redesignating paragraphs (d)(6) through (d)(11) as (d)(7) through (d)(12), respectively, and adding a new paragraph (d)(6) to read as follows:

12.301 Solicitation provisions and contract clauses for acquisition of commercial items.

* * * * *

(d) * * *

(6) Insert the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, as prescribed in 4.2105(a).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.201 by revising the section heading and adding paragraphs (a) and (j) to read as follows:

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603–3).

* * * * *

(j) On or after August 13, 2019, do not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted. (See subpart 4.21.)

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 6. Amend section 39.101 by adding paragraph (f) to read as follows:

39.101 Policy.

* * * * *

(f) On or after August 13, 2019, contracting officers shall not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential

component of any system, or as critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver is granted. (See subpart 4.21.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add sections 52.204–24 and 52.204–25 to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(a) *Definitions.* As used in this provision—
Covered telecommunications equipment or services, Critical technology, and Substantial or essential component have the meanings provided in clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Representation.* The Offeror represents that—

It [] will, [] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(d) *Disclosures.* If the Offeror has responded affirmatively to the representation in paragraph (c) of this provision, the Offeror shall provide the following information as part of the offer—

(1) All covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services

(include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(b), insert the following clause:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(a) *Definitions.* As used in this clause—
Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.* (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

- 8. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6) and adding a new paragraph (a)(3);
- c. Redesignating paragraphs (e)(1)(iv) through (e)(1)(xxii) as (e)(1)(v) through (e)(1)(xxiii), and adding a new paragraph (e)(1)(iv);
- d. Revising the date of Alternate II; and
- e. In Alternate II, redesignating paragraphs (e)(1)(ii)(D) through (e)(1)(ii)(T) as (e)(1)(ii)(E) through (e)(1)(ii)(U), and adding a new paragraph (e)(1)(ii)(D).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (AUG 2019)

(a) * * *

(3) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG

2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

(e)(1) * * *

(iv) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

Alternate II (AUG 2019).

* * * * *

(e)(1) * * *

(ii) * * *

(D) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

■ 9. Amend section 52.213–4 by—

- a. Revising the date of the clause;
- b. Redesignating paragraphs (a)(1)(iii) through (a)(1)(viii) as (a)(1)(iv) through (a)(1)(ix), and adding a new paragraph (a)(1)(iii); and
- c. In paragraph (a)(2)(viii) removing “[JAN 2019]” and adding “(AUG 2019)” in its place.

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (AUG 2019)

(a) * * *

(1) * * *

(iii) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

■ 10. Amend section 52.244–6 by—

- a. Revising the date of the clause; and
- b. Redesignating paragraphs (c)(1)(vi) through (c)(1)(xix) as (c)(1)(vii) through (c)(1)(xx), and adding a new paragraph (c)(1)(vi).

The revision and addition reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (AUG 2019)

* * * * *

(c)(1) * * *

(vi) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

[FR Doc. 2019–17201 Filed 8–12–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–05; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2019–05, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2019–05, which precedes this document. These documents are also available via the internet at <http://www.regulations.gov>.

DATES: August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Farpolicy@gsa.gov or call 202–969–4075. Please cite FAC 2019–05, FAR Case 2018–017.

RULE LISTED IN FAC 2019–05

Subject	FAR case	Analyst
*Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR-2020-0051, Sequence No. 5]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2020-09;
Introduction**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),

and National Aeronautics and Space
Administration (NASA).

ACTION: Summary presentation of an
interim rule.

SUMMARY: This document summarizes
the Federal Acquisition Regulation
(FAR) rule agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council (Councils) in this Federal
Acquisition Circular (FAC) 2020-09. A
companion document, the *Small Entity
Compliance Guide* (SECG), follows this
FAC.

DATES: For effective date see the
separate document, which follows.

FOR FURTHER INFORMATION CONTACT:
Farpolicy@gsa.gov or call 202-969-
4075. Please cite FAC 2020-09, FAR
case 2019-009.

RULE LISTED IN FAC 2020-09

Subject	FAR case
Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	2019-009

ADDRESSES: The FAC, including the
SECG, is available via the internet at
<https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: A
summary for the FAR rule follows. For
the actual revisions and/or amendments
made by this FAR case, refer to the
specific subject set forth in the
document following this summary. FAC
2020-09 amends the FAR as follows:

**Prohibition on Contracting With
Entities Using Certain
Telecommunications and Video
Surveillance Services or Equipment
(FAR Case 2019-009)**

This second interim rule amends the
Federal Acquisition Regulation to
implement section 889(a)(1)(B) of the
John S. McCain National Defense
Authorization Act (NDAA) for Fiscal
Year (FY) 2019 (Pub. L. 115-232). The
first interim rule was published July 14,
2020.

This rule reduces the information
collection burden imposed on the
public by making updates to the System
for Award Management (SAM) to allow
an offeror to represent annually, after
conducting a reasonable inquiry,
whether it uses covered
telecommunications equipment or
services, or any equipment, system, or
service that uses covered
telecommunications equipment or
services. The burden to the public is
reduced by allowing an offeror that
responds "does not" in the annual
representation at 52.204-26, Covered
Telecommunications Equipment or
Services—Representation, or in
paragraph (v)(2)(ii) of 52.212-3, Offeror
Representations and Certifications—

Commercial Items, to skip the offer-by-
offer representation for paragraph (d)(2)
within the provision at 52.204-24,
Representation Regarding Certain
Telecommunications and Video
Surveillance Services or Equipment.
The provision at 52.204-26 requires that
offerors review SAM prior to completing
their required representations.

This rule applies to all acquisitions,
including acquisitions at or below the
simplified acquisition threshold and to
acquisitions of commercial items,
including commercially available off-
the-shelf items. It may have a significant
economic impact on a substantial
number of small entities.

William F. Clark,
*Director, Office of Government-wide
Acquisition Policy, Office of Acquisition
Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC)
2020-09 is issued under the authority of
the Secretary of Defense, the
Administrator of General Services, and
the Administrator of National
Aeronautics and Space Administration.

Unless otherwise specified, all
Federal Acquisition Regulation (FAR)
and other directive material contained
in FAC 2020-09 is effective August 27,

2020 except for FAR Case 2019-009,
which is effective October 26, 2020.

Kim Herrington,
*Acting Principal Director, Defense Pricing and
Contracting, Department of Defense.*

Jeffrey A. Koses,
*Senior Procurement Executive/Deputy CAO,
Office of Acquisition Policy, U.S. General
Services Administration.*

William G. Roets, II,
*Acting Assistant Administrator, Office of
Procurement, National Aeronautics and
Space Administration.*

[FR Doc. 2020-18771 Filed 8-26-20; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 4 and 52

[FAC 2020-09; FAR Case 2019-009; Docket
No. FAR-2019-0009, Sequence No. 2]

RIN 9000-AN92

**Federal Acquisition Regulation:
Prohibition on Contracting With
Entities Using Certain
Telecommunications and Video
Surveillance Services or Equipment**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing a second interim rule amending the Federal Acquisition Regulation (FAR) to require an offeror to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services. The new annual representation in the provision implements a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019.

DATES: Effective: October 26, 2020.

Applicability: Contracting officers shall include the provision at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation—

- In solicitations issued on or after the effective date; and
- In solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 26, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–009 via the Federal eRulemaking portal at [Regulations.gov](https://www.regulations.gov) by searching for “FAR Case 2019–009”. Select the link “Comment Now” that corresponds with FAR Case 2019–009. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2019–009” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2019–009” in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of

submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential version of the submission.

Any business confidential information should be in an uploaded file that has a file name beginning with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Farpolicy@gsa.gov or call 202–969–4075. Please cite FAR Case 2019–009.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Acquisition Regulations System codifies and publishes uniform policies and procedures for acquisitions by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations, which implement or supplement the FAR.

In order to combat the national security and intellectual property threats that face the United States, section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The statute goes into effect August 13, 2020.

“Covered telecommunications equipment or services,” as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities,

physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

To implement section 889(a)(1)(B) of the NDAA for FY 2019, DoD, GSA, and NASA published the first interim rule at 85 FR 42665 on July 14, 2020. The first interim rule added a representation to the provision at FAR 52.204–24(d)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, which required offerors to represent on an offer-by-offer basis if the offeror “does” or “does not” use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services, and if it does, require the offeror to provide additional disclosures.

This second interim rule further implements section 889(a)(1)(B). It reduces burden on the public by allowing an offeror that represents “does not” in a new annual representation at FAR 52.204–26(c)(2), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation within the provision at FAR 52.204–24(d)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. Updates to the System for Award Management (SAM) were necessary to add this new annual representation and require offerors to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services. These updates to SAM to

reduce the burden of the first interim rule were not available by the effective date of the first interim rule; therefore, these updates are being made in this interim rule.

SAM is used by anyone interested in the business of the Federal Government, including—

- Entities (contractors, Federal assistance recipients, and other potential award recipients) who need to register to do business with the Government, look for opportunities or assistance programs, or report subcontract information;
- Government contracting and grants officials responsible for activities with contracts, grants, past performance reporting and suspension and debarment activities;
- Public users searching for Government business information.

Representations and Certifications are FAR requirements that anyone wishing to apply for Federal contracts must complete. Representations and Certifications require entities to represent or certify to a variety of statements ranging from environmental rules compliance to entity size representation.

Agencies use the SAM entity registration information to verify recipient compliance with requirements. This reduces the duplicative practice of contractors filling out in full all the representations and certifications on an offer-by-offer basis. Instead the representations and certifications may be filled out annually and electronically.

Offerors shall consult SAM to validate whether the equipment or services they are using are from an entity providing equipment or services listed in the definition of “covered telecommunications equipment or services.” The offerors will conduct a reasonable inquiry as to whether they use covered telecommunications equipment or services or any equipment, system, or service that uses covered telecommunications equipment or services.

II. Discussion and Analysis

This second interim rule adds an annual representation to the FAR at 52.204–26, Covered Telecommunications Equipment or Services—Representation, paragraph (c)(2), which requires an offeror to represent, after conducting a reasonable inquiry, whether it “does” or “does not” use covered telecommunications equipment or services, or any equipment, system or service that uses covered telecommunications equipment or services. The commercial item

equivalent is at paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications—Commercial Items. If an offeror represents it “does not,” the offer-by-offer representation at FAR 52.204–24(d)(2) is not required. If the offeror represents it “does,” or has not made any representation in FAR 52.204–26(c)(2) or 52.212–3(v)(2)(ii), the representation at FAR 52.204–24(d)(2) is required. The FAR 52.204–26 representation is prescribed at FAR 4.2105(c) for use in all solicitations.

The purpose of this change is to limit the requirement to represent at FAR 52.204–24(d)(2) to only offerors that use covered telecommunication equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.

This interim rule provides procedures at FAR 4.2103 for contracting officers handling offeror representations in the provisions at FAR 52.204–24 and 52.204–26. A contracting officer may generally rely on an offeror’s representation in the provisions at FAR 52.204–24 and 52.204–26 that the offeror does not use any covered telecommunication equipment or services, or use any equipment, system or service that uses covered telecommunications equipment or services, unless the contracting officer has a reason to question the representation. In such cases the contracting officer shall follow agency procedures (e.g., consult the requiring activity and legal counsel).

III. Regulatory Impact Analysis Pursuant to Executive Orders 12866 and 13563

The costs and transfer impacts of section 889(a)(1)(B) are discussed in the analysis below. This analysis was developed by the FAR Council in consultation with agency procurement officials and the Office of Management and Budget (OMB). We request public comment on the costs, benefits, and transfers generated by this rule.

A. Benefits

This rule provides significant national security benefits to the general public. According to the White House article “A New National Security Strategy for a New Era”, the four pillars of the National Security Strategy (NSS) are to protect the homeland, promote American prosperity, preserve peace through strength, and advance American influence.¹ The purpose of this rule is to align with the NSS pillar

to protect the homeland, by protecting the homeland from the impact of Federal contractors using covered telecommunications equipment or services that present a national security concern.

The United States faces an expanding array of foreign intelligence threats by adversaries who are using increasingly sophisticated methods to harm the Nation.² Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests.³ Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure, and steal sensitive information and industrial secrets.⁴ The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.⁵ The increasing reliance on foreign-owned or controlled telecommunications equipment, such as hardware or software, and services, as well as the proliferation of networking technologies may create vulnerabilities in our nation’s supply chains.⁶ The evolving technology landscape is likely to accelerate these trends, threatening the security and economic well-being of the American people.⁷

Since the People’s Republic of China possesses advanced cyber capabilities that it actively uses against the United States, a proactive cyber approach is needed to degrade or deny these threats before they reach our nation’s networks, including those of the Federal Government and its contractors. China is increasingly asserting itself by stealing U.S. technology and intellectual property in an effort to erode the United States’ economic and military superiority.⁸ Chinese companies, including the companies identified in this rule, are legally required to cooperate with their intelligence services.⁹ China’s reputation for

² National Counterintelligence Strategy of the United States of America 2020–2022.

³ National Counterintelligence Strategy of the United States of America 2020–2022.

⁴ National Counterintelligence Strategy of the United States of America 2020–2022.

⁵ National Counterintelligence Strategy of the United States of America 2020–2022.

⁶ National Counterintelligence Strategy of the United States of America 2020–2022.

⁷ National Counterintelligence Strategy of the United States of America 2020–2022.

⁸ National Counterintelligence Strategy of the United States of America 2020–2022.

⁹ NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

¹ <https://www.whitehouse.gov/articles/new-national-security-strategy-new-era/>.

persistent industrial espionage and close collaboration between its government and industry in order to amass technological secrets presents additional threats for U.S. Government contractors.¹⁰ Therefore, there is a risk that Government contractors using 5th generation wireless communications (5G) and other telecommunications technology from the companies covered by this rule could introduce a reliance on equipment that may be controlled by the Chinese intelligence services and the military in both peacetime and crisis.¹¹

The 2019 Worldwide Threat Assessment of the Intelligence Community¹² highlights additional threats regarding China's cyber espionage against the U.S. Government, corporations, and allies. The U.S.-China Economic and Security Review Commission Staff Annual Reports¹³ provide additional details regarding the United States' national security interests in China's extensive engagement in the U.S. telecommunications sector. In addition, the U.S. Senate Select Committee on Intelligence Open Hearing on Worldwide Threats¹⁴ further elaborates on China's approach to gain access to the United States' sensitive technologies and intellectual property. The U.S. House of Representatives Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE¹⁵ further identifies how the risks associated with Huawei's and ZTE's provision of equipment to U.S. critical infrastructure could undermine core U.S. national security interests.

Currently, Government contractors may not consider broad national security interests of the general public when they make decisions. This rule ensures that Government contractors make decisions in accordance with public national security interests, by ensuring that, pursuant to statute, they do not use covered telecommunications equipment or services that present national security concerns. This rule will also assist contractors in mitigating supply chain risks (e.g., potential theft of trade secrets and intellectual

property) due to the use of covered telecommunications equipment or services.

B. Risks to Industry of Not Complying With 889

As a strictly contractual matter, an organization's failure to submit an accurate representation to the Government constitutes a breach of contract that can lead to cancellation, termination, and financial consequences.

Therefore, it is important for contractors to develop a compliance plan that will allow them to submit accurate representations to the Government in the course of their offers.

C. Contractor Actions Needed for Compliance

The interim rule published at 85 FR 42665 on July 14, 2020, provides a 6 step process for compliance. This second interim rule updates the requirements for step 1 (regulatory familiarization) and step 5 (representation) by requiring familiarization with the new representation within the provision at 52.204–26 and submitting this new representation.

D. Public Costs and Savings

During the first year after publication of the rule, contractors will need to learn about the new representation in the provision at 52.204–26 and its requirements. The DOD, GSA, and NASA (collectively referred to here as the Signatory Agencies) estimate this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation of a general manager.

To estimate the burden to Federal offerors associated with complying with the rule, the percentage of Federal contractors that will be impacted was pulled from Federal databases. According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM. As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small; therefore, it is assumed that out of the 387,967 unique vendors registered in SAM in February 2020, 287,096 entities are unique small entities.

We estimate that this rule will also affect businesses which become Federal contractors in the future. Based on data in SAM for FY16–FY19, the Signatory Agencies anticipate there will be an

average of 79,319¹⁶ new entities registering annually in SAM, of which 74%, 58,696, are anticipated to be small businesses.

1. Time To Review the Rule

Below is a list of compliance activities related to regulatory familiarization that the Signatory Agencies anticipate will occur after issuance of the rule:

Familiarization with paragraph (c)(2) of FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation. The Signatory Agencies assume that it will take all vendors who plan to submit an offer for a Federal award 8¹⁷ hours to familiarize themselves with the representation at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation. The Signatory Agencies assume that all entities registered in SAM, or 387,967¹⁸ entities will complete the representation as it is required in order have a current, accurate, and complete registration in SAM. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$294 million* (= 8 hours × \$94.76¹⁹ per hour × 387,967). Of the 387,967 entities impacted by this part of the rule, it is assumed that 74%²⁰ or 287,096 entities are unique small entities.

In subsequent years, it is estimated that these costs will be incurred by 79,319²¹ new entrants each year. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$60 million* (= 8 hours × \$94.76 per hour × 79,319) per year in subsequent years.

The total cost estimated to review the amendments to the provision and the clause is estimated to be *\$294 million* in the first year after publication. In subsequent years, this cost is estimated to be *\$60 million* annually. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

2. Time To Complete the Representation 52.204–26

For the annual representation at FAR 52.204–26(c)(2), we assume that all entities registered in SAM will fill out the annual representation in order to

¹⁶ This value is based on data on new registrants in SAM.gov on average for FY16, FY17, FY18, and FY19.

¹⁷ The 8 hours are an assumption based on historical familiarization hours and subject matter expert judgment.

¹⁸ According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

¹⁹ The rate of \$94.76 assumes an FY19 GS 13 Step 5 salary (after applying a 100% adjustment for overhead and benefits to the base rate) based on subject matter judgment.

²⁰ As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small.

²¹ This value is based on data on new registrants in SAM.gov on average for FY16, FY17, FY18, and FY19.

¹⁰ NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

¹¹ NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

¹² <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR—SSCI.pdf>.

¹³ <https://www.uscc.gov/annual-reports/archives>.

¹⁴ <https://www.intelligence.senate.gov/sites/default/files/hearings/CHRG-115shrg28947.pdf>.

¹⁵ <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=96>.

maintain a current, accurate, and complete registration in SAM. It is assumed it will take 1²² hour to complete the annual representation. Therefore, the Signatory Agencies assumed the cost for this portion of the rule to be *\$36.8 million* (= 1 hour × \$94.76²³ per hour × 387,967²⁴ entities registered in SAM).

In subsequent years, we assume that all entities that register in SAM will continue to complete the representation to ensure their SAM registration is current, accurate, and complete. Therefore, it is assumed that these costs will be incurred by the 387,967²⁵ entities in SAM that are required to represent at least annually. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *\$36.8 million* (= 1²⁶ hour × \$94.76 per hour × (387,967 entities)) per year in subsequent years.

The FAR Council notes that the annual representation will likely reduce the burden on the public in cases where offerors represent “does not” in the annual representation at FAR 52.204–26(c)(2), Covered Telecommunications Equipment or Services—Representation or in paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications—Commercial Items; offerors can skip the offer-by-offer representation within the provision at FAR 52.204–24(d)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

There is no way for the FAR Council to know how many of the annual representations at FAR 52.204–26(c)(2), Covered Telecommunications Equipment or Services—Representation or in paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, will include a response of “does not”, which would allow offerors to skip the offer-by-offer representation within the provision at FAR 52.204–24(c)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

²² The hours are an assumption based on subject matter expert judgment.

²³ The rate of \$94.76 assumes an FY19 GS 13 Step 5 salary (after applying a 100% adjustment for overhead and benefits to the base rate) based on subject matter expert judgment.

²⁴ According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

²⁵ This number assumes that 79,319 both enter and exit as registrants in SAM with the average number of entities registered each year are 387,967.

²⁶ The hours are an assumption based on subject matter expert judgment.

52.204–24

In the first interim rule, this provision was required for 100% of the offers submitted. For this interim rule, the FAR Council assumes that 20% of entities will no longer have to complete the offer-by-offer representation in year 1, this would result in a cost savings of *\$2.2 billion* = (3²⁷ hours × \$94.76 per hour × (20% * 102,792 unique entities × 378²⁸ responses per entity)).

In subsequent years, it is assumed that more offerors will respond “does not” in the annual representation and will be able to skip the offer-by-offer representation, however, the FAR Council lacks data to estimate this. The FAR Council believes that many entities will take advantage of this flexibility in order to reduce costs, and more will take advantage of the flexibility over time. Therefore, in subsequent years we believe that there will be more cost savings generated by having an annual representation. In the first interim rule, the FAR Council estimated 26% of new entrants would need to complete the offer-by-offer representation. We assume that this rule will reduce this fraction by half. This implies that in year 2 and beyond 50% of the burden calculated in the first interim rule (\$2.2 billion per year) will be eliminated due to the entities each year responding “does not” in the annual representation and skipping the offer-by-offer representations. Therefore, the cost savings is estimated to be *\$1.1 billion*.

The total cost savings of the above Public Cost Estimate by adding the annual representation in Year 1 is at least (Savings – Cost: \$2,200M – 331M Cost): *\$1.6 billion*.

The total costs of the above Cost Estimate Savings by adding the annual representation in Year 2 is at least (Savings – Cost: \$1,100M – \$97M): *\$1,003 million*.

The total costs savings estimate per year by adding the annual representation in subsequent years is at least (Savings – Cost \$1,100M – \$97M): *\$1,003 million*.

The following is a summary of the total public cost savings of this rule calculated in perpetuity at a 3 and 7-percent discount rate:

²⁷ The hours are an assumption based on subject matter expert judgment for an offer-by-offer representation.

²⁸ The responses per entity is calculated by dividing the average number of annual awards in FY16–19 by the average number of unique entities awarded a contract (38,854,291 awards/102,792 unique awardees = 378).

Summary (billions)	Total costs
Present Value (3%)	– \$34.3
Annualized Costs (3%)	– 1.0
Present Value (7%)	– 15.1
Annualized Costs (7%)	– 1.1

The FAR Council acknowledges that there is substantial uncertainty underlying these estimates, including elements for which an estimate is unavailable given inadequate information. As more information becomes available, including through comment in response to this notice, the FAR Council will seek to update these estimates which could increase or decrease the estimated net savings.

E. Government Cost and Savings Analysis

The FAR Council anticipates significant impact to the Government as a result of implementation of section 889(a)(1)(B) of the NDAA for FY 2019. This rule seeks to reduce the overall burden.

The primary cost to the Government will be to review the new annual representation (52.204–26(c)(2)) in SAM. However, there are anticipated savings from the reduction in the number of offer-by-offer representations (52.204–24(d)(2)).

52.204–26

For the annual representation at FAR 52.204–26(c)(2), we assume that the Government will need to review the annual representation at 52.204–26(c)(2) when the representation at 52.204–24(d)(2) has not been completed by the offeror. It is estimated 80 percent of offers received will include a completed offer-by-offer representation; therefore, an estimated 20 percent of offers received will rely on the annual representation. The average total number of awards per fiscal year is 38,854,291.²⁹ The number of offers received for a solicitation that results in an award varies from one to hundreds. A conservative estimate is 3 offers per award. Therefore, the Signatory Agencies estimate the total number of offers the Government receives in a year is 116,562,873. As previously stated, it is estimated that 20 percent of offers received will rely on the annual representation, or 23,312,575 (= 116,562,873 * 20%). At 5 minutes (.083 hour) per review the total cost for year 1 and all subsequent years is estimated to be *\$183.4 million* (= 38,854,291 × 3 × 20% × .083 × \$94.76³⁰).

²⁹ Based on FY16–19 FPDS data.

³⁰ The rate of \$95.76 assumes an FY19 GS 13 Step5 salary (after applying a 100% adjustment for

52.204–24

In the first interim rule, this provision was required for 100% of the offers submitted. For this interim rule, the FAR Council assumes that 20% of entities will no longer have to complete the offer-by-offer representation in year 1, this would result in a cost savings of $\$2.2 \text{ billion} = (20\% \times 3^{31} \text{ hours} \times \$94.76 \text{ per hour} \times 102,792 \text{ unique entities} \times 378^{32} \text{ responses per entity})$ because the Government would have to review less representations for 52.204–24.

In subsequent years, it is assumed that fewer offerors will respond “does” in the annual representation and will be required to complete the offer-by-offer representation, however, the FAR Council lacks data to estimate this. The FAR Council believes that many entities will take advantage of this flexibility in order to reduce costs, and more will take advantage of the flexibility over time.

This implies that in year 2 and beyond 50% of the burden calculated in the first interim rule ($\$2.2 \text{ billion per year}$) will be eliminated due to the entities each year responding “does not” in the annual representation and skipping the offer-by-offer representations. Therefore, the cost savings is estimated to be $\$1.1 \text{ billion}$.

The total cost savings of the above Government Cost Estimate by adding the annual representation in Year 1 is at least (Savings – Cost: $\$2,200\text{M} - \183.4M Cost): $\$2 \text{ billion}$.

The total cost savings of the above Government Cost Estimate Savings by adding the annual representation in Year 2 is at least (Savings – Cost: $\$1,100\text{M} - \183.4M): $\$0.9 \text{ billion}$.

The total Government cost savings estimate per year by adding the annual representation in subsequent years is at least (Savings – Cost $\$1,100\text{M} - \183.4M): $\$0.9 \text{ billion}$.

The following is a summary of the estimated Government costs savings calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	–\$31.6
Annualized Costs (3%)	– .9
Present Value (7%)	– 14.1
Annualized Costs (7%)	– 1.0

overhead and benefits to the base rate) based on subject matter judgement.

³¹ The hours are an assumption based on subject matter expert judgment for an offer-by-offer representation.

³² The responses per entity is calculated by dividing the average number of annual awards in FY16–19 by the average number of unique entities awarded a contract (38,854,291 awards/102,792 unique awardees = 378).

F. Analysis of Alternatives

The FAR Council could take no further regulatory action to implement this statute. However, this alternative would not provide the more efficient implementation and enforcement of the important national security measures accomplished by this rule as detailed above in section C. As a result, we reject this alternative.

IV. Specific Questions For Comment

To understand the exact scope of this impact and how this impact could be affected in subsequent rulemaking, DoD, GSA, and NASA welcome input on the following questions regarding anticipated impact on affected parties.

- What additional information or guidance do you view as necessary to effectively comply with this rule?
- What challenges do you anticipate facing in effectively complying with this rule?

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

In the first interim rule, the FAR Council determined that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT, commercial item contracts, and contracts for the acquisition of COTS items, from the provision of law. As the second interim rule makes only administrative changes to the process of collecting information, and does not affect the scope of applicability of the prohibition, those determinations remain applicable. This rule adds a representation to the provision at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation, in order to implement section 889(a)(1)(B) of the NDAA for FY 2019, which prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2020, unless an exception applies or a waiver has been granted.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making

acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

In issuing the first interim rule, the FAR Council determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items, and the Administrator for Federal Procurement Policy determined that it is in the best interest of the Government to apply that rule to contracts for the acquisition of COTS items. The changes made in this rule are administrative changes to the process of collecting required information, and do not alter those determinations.

VI. 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 rule has been designated a “significant regulatory action” under E.O. 12866. Accordingly, the OMB has reviewed this rule. This second interim rule is a major rule under 5 U.S.C. 804.

VII. Executive Order 13771

This rule is subject to the requirements of E.O. 13771. The final rule designation, as regulatory or deregulatory under E.O. 13771, will be informed by the comments received from this interim rule. Details of estimates of costs or savings can be found in section III of this preamble.

VIII. Regulatory Flexibility Act

For the first interim rule, DoD, GSA, and NASA performed an Initial Regulatory Flexibility Analysis (IRFA).

Although the second interim rule would on aggregate reduce burdens, DoD, GSA, and NASA expect that this rule may 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.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this second interim rule is to further implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) by allowing offerors to represent annually whether they use any covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

The objective of the rule is to provide an information collection mechanism that relies on an annual representation, thereby reducing the burden of providing information, in some cases, that is required to enable agencies to determine and ensure that they are complying with section 889(a)(1)(B). The legal basis for the rule is section 889(a)(1)(B) of the NDAA for FY 2019, which prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020, unless an exception applies or a waiver has been granted.

To estimate the burden to Federal offerors associated with complying with the rule, the percentage of Federal contractors that will be impacted was pulled from Federal databases. According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM. As of September 2019, about 74 percent of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small; therefore, it is

assumed that out of the 387,967 unique vendors registered in SAM in February 2020, 287,096 entities are unique small entities. We assume that all entities registered in SAM will fill out the annual representation because they are required to fill it out to have a current, accurate, and complete SAM registration.

The solicitation provision at 52.204–26 is prescribed for use in all solicitations. The second interim rule adds a representation at paragraph (c)(2) which requires each vendor to represent, at least annually, that it “does” or “does not” use covered telecommunications equipment or services, or any equipment, system or service that uses covered telecommunications equipment or services. Offerors shall consult the System for Award Management (SAM) to validate whether the equipment or services they are using are from an entity providing equipment or services listed in the definition of “covered telecommunications equipment or services.” The offerors will conduct a reasonable inquiry as to whether they use covered telecommunications equipment or services or any equipment, system, or service that uses covered telecommunications equipment or services.

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

It is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy may be obtained from the Regulatory Secretariat Division upon request. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2019–009) in correspondence.

IX. Paperwork Reduction Act

As part of the first interim rule, the FAR Council was granted emergency processing of a collection currently approved under OMB control number 9000–0201, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.

In the first interim rule, the burden consisted of an offer-by-offer

representation at FAR 52.204–24(d)(2) to identify whether an offeror does or does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services, and a report of identified covered telecommunications equipment and services during contract performance, as required by FAR 52.204–25. In this second interim rule, the burden consists of a representation at FAR 52.204–26(c)(2) to identify whether an offeror does or does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services, and a representation at FAR 52.204–24(d)(2) to identify whether an offeror uses any equipment, system, or service that uses covered telecommunications equipment or services for each offer, unless the offeror selects “does not” in response to the provision at FAR 52.204–26(c)(2) (or its commercial item equivalent at paragraph (v)(2)(ii) of FAR 52.212–3).

With this second interim rule, this existing collection is being revised to reflect a reduction in burden.

With this change in who must complete a representation at FAR 52.204–24(d)(2), the FAR Council has estimated the number of responses required by this provision will drop from 38,854,291 to 31,083,433. With this decrease in responses needed, the burden for 52.204–24(d)(2) is expected to decrease from \$11,045,497,845 to \$8,836,398,333.

The representation added by this rule at 52.204–26(c)(2) is estimated to average 1 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, conduct a reasonable inquiry, and complete the representation. The representation at FAR 52.204–24(d)(2) is estimated to average 3 hours (the average of the time for both positive and negative representations) per response to review the prohibitions, conduct a reasonable inquiry, and either provide a response of “does not” or provide a response of “does” and complete the additional detailed disclosure.

As part of this interim rule, the FAR Council is soliciting comments from the public in order to:

- Evaluate whether the proposed revisions to this collection of information are necessary for the proper performance of the functions of the FAR Council, including whether the information will have practical utility;

- Evaluate the accuracy of the FAR Council's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond including through the use of appropriate collection techniques.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments to the Regulatory Secretariat Division (MVCB) not later than October 26, 2020 through <http://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

Instructions: All items submitted must cite Information Collection 9000-0201, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

X. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that notice and public procedure thereon is unnecessary.

This rule is meant to mitigate risks across the supply chains that provide hardware, software, and services to the U.S. Government and further integrate national security considerations into the acquisition process. Since section 889 of the NDAA for FY 2019 was signed on August 13, 2018, the FAR Council has been working diligently to implement the statute, which has multiple effective dates embedded in section 889. Like many countries, the United States has increasingly relied on a global industrial supply chain. As threats have increased,

so has the Government's scrutiny of its contractors and their suppliers. Underlying these efforts is the concern a foreign government will be able to expropriate valuable technologies, engage in espionage with regard to sensitive U.S. Government information, and/or exploit vulnerabilities in products or services. It is worth noting this rule follows a succession of other FAR and DOD rules dealing with supply chain and cybersecurity that were further described within section VI of the first interim rule published on July 14, 2020, at 85 FR 42665.

Changes necessary to the System for Award Management (SAM) to reduce the burden of the first interim rule were not available by the effective date of the rule, so in order to decrease the burden on contractors from the first rule and increase the effectiveness of the rule, the FAR Council is publishing this second interim rule on section 889(a)(1)(B).

Implementing this rule as soon as the SAM representation is available will reduce the burden on the public and the Government to comply with the critical national security regulation. Publication of a proposed rule would delay the reduction of burden and the achievement of the national security benefits that are expected from this second interim rule.

For the foregoing reasons, pursuant to 41 U.S.C. 1707(d), the FAR Council finds that urgent and compelling circumstances make compliance with the notice and comment and delayed effective date requirements of 41 U.S.C. 1707(a) and (b) impracticable, and invokes the exception to those requirements under 1707(d).

While a public comment process will not be completed prior to the rule's effective date, the FAR Council has taken into account feedback solicited through extensive outreach already undertaken, the feedback received through the two rulemakings associated with section 889(a)(1)(A), and the feedback received so far from the first interim rule published on July 14, 2020, at 85 FR 42665. The FAR Council will also consider comments submitted in response to this interim rule in issuing a subsequent rulemaking.

List of Subjects in 48 CFR Parts 1, 4, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 4, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

- 2. In section 1.106 amend the table by adding in numerical order FAR segment entry "52.204-26" and its OMB control numbers to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB control No.
52.204-26	9000-0199 and 9000-0201

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

- 3. Amend section 4.2103 by revising paragraph (a)(1) to read as follows:

4.2103 Procedures.

(a) * * *

(1)(i) If the offeror selects "does not" in paragraphs (c)(1) and/or (c)(2) of the provision at 52.204-26 or in paragraphs (v)(2)(i) and/or (v)(2)(ii) of the provision at 52.212-3, the contracting officer may rely on the "does not" representation(s), unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If the offeror selects "does" in paragraph (c)(1) of the provision at 52.204-26 or paragraph (v)(2)(i) of the provision at 52.212-3, the offeror will be required to complete the representation in paragraph (d)(1) of the provision at 52.204-24.

(iii) If the offeror selects "does" in paragraph (c)(2) of the provision at 52.204-26 or paragraph (v)(2)(ii) of the provision at 52.212-3, the offeror will be required to complete the representation in paragraph (d)(2) of the provision at 52.204-24.

* * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 52.204-24 by revising the date of provision and the introductory text to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Oct 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in paragraph (c)(1) in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it “does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services” in paragraph (c)(2) of the provision at 52.204–26, or in paragraph (v)(2)(ii) of the provision at 52.212–3.

* * * * *

- 5. Amend section 52.204–26 by—
- a. Revising the date of the provision;
- b. In paragraph (a), removing “has” and adding “and “reasonable inquiry” have” in its place; and
- c. Revising paragraph (c).

The revisions read as follows:

52.204–26 Covered Telecommunications Equipment or Services—Representation.

* * * * *

Covered Telecommunications Equipment or Services—Representation (OCT 2020)

* * * * *

(c) *Representations.* (1) The Offeror represents that it [] does, [] does not provide covered telecommunications

equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [] does, [] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

* * * * *

- 6. Amend section 52.212–3 by—
- a. Revising the date of the provision;
- b. In paragraph (a) adding the definition “Reasonable inquiry” in alphabetical order;
- c. Removing from paragraph (v) introductory text “of Public” and adding “and section 889 (a)(1)(B) of Public” in its place; and
- d. Revising paragraph (v)(2).

The revisions and addition read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Oct 2020)

* * * * *

(a) * * *
Reasonable inquiry has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

(v) * * *
 (2) The Offeror represents that—
 (i) It [] does, [] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(ii) After conducting a reasonable inquiry for purposes of this representation, that it [] does, [] does not use covered telecommunications

equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

* * * * *

[FR Doc. 2020–18772 Filed 8–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket No. FAR–2020–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–09; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–09, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–09, which precedes this document. These documents are also available via the internet at <https://www.regulations.gov>.

DATES: August 27, 2020.

FOR FURTHER INFORMATION CONTACT: Farpolicy@gsa.gov or call 202–969–4075. Please cite FAC 2020–09, FAR case 2019–009.

RULE LISTED IN FAC 2020–09

Subject	FAR case
* Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	2019–009



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Implementation Guidance for Section 889(a)(1)(B) Prohibition on Contracting with
Entities Using Certain Telecommunications and Video Surveillance Services or
Equipment on Other Transactions for Prototype Projects

This memorandum provides implementation guidance for section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232), which prohibits executive agencies from entering into, extending, or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The section 889(a)(1)(B) prohibition goes into effect August 13, 2020, and applies to Other Transactions (OTs) for Prototype Projects under section 2371b of title 10, United States Code (U.S.C.).

The Federal Acquisition Regulation (FAR) Council published interim FAR rule 2019-009 on July 14, 2020, to amend the FAR to implement the prohibitions in section 889(a)(1)(B). The interim rule requires offerors, after conducting a reasonable inquiry, to provide a representation regarding use of covered telecommunications equipment or services when submitting an offer. Defense Pricing and Contracting (DPC) subsequently issued a memorandum on July 23, 2020, to facilitate implementation of the section 889(a)(1)(B) requirements as implemented in the interim FAR rule.

While the interim rule and DPC implementation memorandum are directed to FAR-based contracts, the principles and requirements provided therein shall apply to OTs for Prototype Projects agreements authorized under 10 U.S.C. § 2371b.

Any solicitation issued for an OT for Prototype Project agreement on or after August 13, 2020 must contain the provision, FAR 52.204-24, Representation Regarding Certain

Telecommunications and Video Surveillance Services or Equipment, that requires the offeror to represent if it uses any equipment, system, or service that uses covered telecommunications equipment or services. The provision can be found at https://www.acq.osd.mil/dpap/dars/far/doc/52_204_24.docx. Refer to the DPC memorandum from July 23, 2020, for requirements on how to proceed after a representation is received, which can be found at <https://www.acq.osd.mil/dpap/policy/policyvault/USA001557-20-DPC.pdf>

Further, any OT for Prototype Project agreement awarded on or after August 13, 2020, must contain the clause, FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, which requires reporting of use of covered telecommunications equipment or services when discovered during performance of the agreement. The clause can be found at https://www.acq.osd.mil/dpap/dars/far/doc/52_204_25.docx

In addition, if any OT for Prototype Project agreement is modified to extend or renew the agreement, or move to a new phase on or after August 13, 2020, prior to any such extension or renewal, the FAR 52.204-25 clause must be added to the agreement and the contractor must complete the FAR 52.204-24 representation. If OT for Prototype Project authority under 10 U.S.C. § 2371b(f) was used to enter a FAR-based contract for production, then the interim rule and DPC implementation memorandum apply to the FAR-based prototype production contract.

This memorandum does not apply to grants and other agreements (e.g., cooperative agreements, basic research agreements) that fall under the authority of the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). The point of contact for grants and other agreements in OUSD(R&E) is Ms. Barbara Orlando, who may be reached at 571-372-6413 or by email at barbara.j.orlando.civ@mail.mil.

My point of contact is Mr. Larry McLaury, at 571-309-0940 or larry.j.mclaury2.civ@mail.mil.

HERRING
TON.KIM.1
507719313

Digitally signed by
HERRINGTON.KI
M.1507719313
Date: 2020.08.13
17:28:26 -04'00'

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

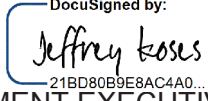


8/6/2020

GSA Office of Governmentwide Policy

Class Deviation CD-2020-15

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES 
 SENIOR PROCUREMENT EXECUTIVE
 OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: GSAR Class Deviation for GSA's Lease Acquisitions and CSOs - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

A. Purpose.

GSA supports the Federal Government's efforts to combat a national security threat posed by certain telecommunications equipment and services identified by Congress in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA). The recently published Federal Acquisition Regulation (FAR) Case 2019-009 and the previously-published FAR Case 2018-017 provide implementing guidance for FAR-based contracts. Because the NDAA applies to all Federal contracts, not just to FAR-based contracts, this class deviation applies the FAR representations and reporting requirements to GSA's leasing of real property (lease acquisitions) and commercial solution opening procurements (CSOs).¹

The Office of Government-wide Policy will provide further implementing instructions, including greater clarity on the waiver process and on GSA Supply Chain Risk Management procedures via a separate policy document in the next two to three weeks.

Specifically, this class deviation adds to the General Services Administration Acquisition Regulation (GSAR) requirements that GSA lease acquisitions and CSOs follow the representation and reporting requirements as stated at FAR 4.2105.² Note that this class deviation does not make GSA's lease acquisitions and CSO subject to other FAR provisions.

¹ This class deviation supersedes a previous class deviation, CD-2019-11. As explained in Addendum 1 to CD-2019-11, that class deviation's application of the representation and reporting requirements at FAR 4.2105 to GSA lease acquisitions and CSOs are stayed. The stay of the previous deviation, coupled with the adoption of this class deviation, however, does not affect GSA lease acquisitions or CSOs because this class deviation adopts the previous class deviation's application of the representation and reporting requirements at FAR 4.2105 to GSA lease acquisitions and CSOs.

² FAR 4.2105 was added through FAR Case 2018-017, which was published at 84 FR 40216 on August 13, 2019, and at 84 FR 68314 on December 13, 2019, and updated by FAR Case 2019-009, which was published at 85 FR 42665 on July 14, 2020.

FAR 4.2105 requires insertion of provisions (FAR 52.204-24 and 52.204-26) and a clause (FAR 52.204-25) in solicitations and contracts, and this class deviation requires the inclusion of those same provisions and clause in GSA's lease acquisitions and CSOs. The provision at FAR 52.204-24 requires offerors to represent whether they will provide covered telecommunications equipment or services to the Government and whether they use covered telecommunications equipment or services or any equipment, system, or service that uses covered telecommunications equipment or services. The clause at FAR 52.204-25 requires contractors to report if they identify covered telecommunications equipment or services used during contract performance.

The class deviation also adds to the GSAR and General Services Administration Acquisition Manual (GSAM) requirements that GSA lease acquisitions and CSOs follow GSA's Supply Chain Risk Management procedures at GSAM subpart 504.70.³

B. Background.

The NDAA prohibits executive agencies from either:

- (a) Procuring or obtaining, or extending or renewing "a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system"⁴
- (b) Entering into (or extending or renewing) a contract with "an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system."

GSA is committed to the most effective and efficient implementation of the prohibitions of the NDAA while maintaining its ability to meet its mission and to support the mission needs of Federal agencies across the Government. Regulations for GSA lease acquisitions and CSOs are found in the GSAR; they are not FAR-based. This class deviation is necessary to require GSA lease acquisitions and CSOs to include the language of the representation and reporting requirements at FAR 4.2105 before the GSAR is revised via rulemaking.

First, this class deviation requires GSA lease acquisitions and CSOs to follow the representation and reporting requirements at FAR 4.2105:

1. Offer-by-Offer Representation: FAR 4.2105(a) was issued through an interim rule for FAR Case 2018-017 and requires the provision at FAR 52.204-24 to be inserted into all solicitations. The provision at FAR 52.204-24 was updated by an interim rule for FAR Case 2019-009 and now requires each offeror to provide two representations. First, that it "will[or] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation" and, second, that it "does[or] does not use

³ GSAM subpart 504.70 was added through GSAM Case 2018-G505, which was published via GSA Order ADM 2800.12B Change 101 on July 17, 2019.

⁴ Covered telecommunications equipment and services is defined at FAR 52.204-25(a).

covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.”

2. Reporting: FAR 4.2105(b) was issued as a part of the same interim rule for FAR Case 2018-017 and requires the clause at FAR 52.204-25 to be inserted into all solicitations and contracts. Paragraph (d) of the clause at FAR 52.204-25 requires contractors that identify that “covered telecommunications equipment or services [was] used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance” to report information required by FAR 52.204-25(d)(2) to the contracting officer.
3. Entity Representation: FAR 4.2105(c) was issued through a second interim rule for FAR Case 2018-017 and requires the provision at FAR 52.204-26 to be inserted into all solicitations.⁵ The provision at FAR 52.204-26 requires each offeror to provide a representation, via the System for Award Management (SAM), that it “does[or] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument”.⁶

Second, this class deviation requires GSA lease acquisitions and CSOs to follow GSA’s Supply Chain Risk Management procedures at GSAM subpart 504.70.

C. Applicability.

1. Deviation Implementation.

a. GSAR Class Deviation.

The GSAR class deviation applies the representation and reporting requirements at FAR 4.2105 to GSA lease acquisitions and CSOs. The GSAR class deviation also applies GSA’s Supply Chain Risk Management procedures at GSAM subpart 504.70 to CSOs. See Attachment A for the GSAR deviation text implementing this class deviation.

b. GSAM Class Deviation.

⁵ Note that if a solicitation includes any of the following, no further action is required (the solicitation does not need to be updated because the provision at FAR 52.204-26 is already included by reference): FAR 52.204-7, System for Award Management (OCT 2018), FAR 52.204-19, Incorporation by Reference of Representations and Certifications (DEC 2014), FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (JUN 2020).

⁶ The provision at FAR 52.204-26 (DEC 2019) will be updated via a future FAR rule to include an additional representation as to whether entities do or do not “use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.” FAR 4.2103 will also be updated by the same FAR rule to allow entities to not provide a response to the provision at FAR 52.204-24 when submitting offers if they have, in response to the provision at FAR 52.204-26, represented that they both do not provide and do not use covered telecommunications equipment or services. Note that if a lease offeror uses the flexibility of Acquisition Letter MV-20-04, which allows lease offerors to submit offers prior to SAM registration (provided that the lease offeror is registered prior to award), any lease offers must include the representation required by the provision at FAR 52.204-24.

The GSAM class deviation applies GSA's Supply Chain Risk Management procedures at GSAM subpart 504.70 to GSA lease acquisitions. See Attachment B for the GSAM deviation text implementing this class deviation.

2. Implementation Timelines.

a. Representation Provision at FAR 52.204-24.

All new lease and CSO solicitations, issued on or after August 13, 2020, shall include the language from the provision at FAR 52.204-24 (AUG 2020).

For lease or CSO solicitations that were issued prior to August 13, 2020 that have not closed, or awards that have not been made by August 13, 2020, the contracting officer shall either amend the solicitation to include the language from the provision at FAR 52.204-24 (AUG 2020) or incorporate it into the award of the apparent successful offeror.

b. Reporting Clause at FAR 52.204-25.

All lease acquisitions and CSOs awarded on or after August 13, 2020 shall include the language from the clause at FAR 52.204-25 (AUG 2020).

All existing lease acquisitions and CSOs shall be modified to include the language from the clause at FAR 52.204-25 (AUG 2020) as they are modified to extend their periods of performance, such as upon the exercise of options.

c. Representation Provision at FAR 52.204-26.

All new lease and CSO solicitations, issued on or after August 13, 2020, shall include the language from the provision at FAR 52.204-26 (DEC 2019).

For lease or CSO solicitations that were issued prior to August 13, 2020 that have not closed, or awards that have not been made by August 13, 2020, the contracting officer shall either amend the solicitation to include the language from the provision at FAR 52.204-26 (DEC 2019) or incorporate it into the award of the apparent successful offeror.

Note that if a solicitation includes any of the following, no further action is required (the solicitation does not need to be updated because the provision at FAR 52.204-26 is already included by reference): FAR 52.204-7, System for Award Management (OCT 2018), FAR 52.204-19, Incorporation by Reference of Representations and Certifications (DEC 2014), FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (JUN 2020).⁷

Once the future FAR rule is published and FAR 52.204-26 (DEC 2019) is updated, follow the FAR rule to again update new and existing solicitations.

⁷ If a lease solicitation includes the provision at GSAM 552.270-33, System for Award Management - Leasing or its Alternate, authorized by Acquisition Letter MV-20-04 for use in lieu of FAR 52.204-7, the solicitation likewise does not be updated.

D. Authority.

This class deviation is issued under the authority of GSAM 501.404.

E. Effective Date.

This class deviation is effective on August 13, 2020, and it remains in effect until rescinded or incorporated into the GSAR. See Section C.2 for implementation timelines.

F. Federal Acquisition Service (FAS) and Public Building Service (PBS) Guidance.

FAS and PBS will revise applicable policies, such as solicitation and ordering guides, issue implementation guidance, revise contract templates, and provide training, as appropriate, to align with this class deviation.

G. Resources.

The following Section 889 resources are available on the “Prohibited Sources and Supply Chain Risk Management (SCRM)” Acquisition Portal Page (<https://insite.gsa.gov/scrm>):

- Link to Information for Industry
- Overview Flyer
- Frequently Asked Questions (FAQs)
- Training for Government-wide acquisition workforce
- Training for GSA acquisition workforce
- Acquisition Letter (MV-20-10) for GSA’s FAR-Based Contracts

H. Points of Contact.

For questions concerning:

- This class deviation, send inquiries to gsarpolicy@gsa.gov
- Leasing implementation, send inquiries to pbsleasingsection889@gsa.gov
- CSO implementation, send inquiries to the appropriate innovation advocate on <https://insite.gsa.gov/acquisitioncontacts>

Attachment A - GSAR Deviation Text

Attachment B - GSAM Deviation Text

ATTACHMENT A

GSAR Deviation Text

- Additions to baseline made by this class deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by this class deviation are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a subsection

GSAR Baseline: Change 110 effective 06/24/2020

Part 501—General Services Administration Acquisition Regulation System

Subpart 501.1—Purpose, Authority, Issuance

501.106 OMB approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.
***	***
[570.701(a)]	[3090-XXXX]
[571.001]	[3090-XXXX]
***	***

Part 570—Acquiring Leasehold Interests in Real Property

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

If . . .	Then include . . .
(a) the estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101	52.204-3 Taxpayer Identification. 52.204-6 Data Universal Numbering System (DUNS) Number. 52.204-7 System for Award Management. [52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.]
* * *	* * *

* * * * *

Part 571—Pilot Program for Innovative Commercial Items

Subpart 571.1—General

[571.001 Applicability.

Procurements under the CSO Pilot Program must be compliant with the requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, must include the language of the representation and reporting requirements at FAR 4.2105, and must comply with subpart 504.70.]

* * * * *

ATTACHMENT B

GSAM Deviation Text

- Additions to baseline made by this class deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by this class deviation are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a subsection

GSAM Baseline: Change 110 effective 06/24/2020

Part 570—Acquiring Leasehold Interests in Real Property

Subpart 570.1—General

570.101 Applicability.

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in addition to the GSAR requirements identified in [570.101\(b\)](#).

GSAM Applicable to Acquisitions of Leasehold Interests in Real Property			

[504.70]			

October 1, 2020, through September 30, 2021.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Program Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202-208-7642, or by email at travelpolicy@gsa.gov. Please cite Notice of GSA Per Diem Bulletin FTR 21-01.

SUPPLEMENTARY INFORMATION:

Background

The CONUS per diem reimbursement rates prescribed in Bulletin 21-01 may be found at <https://www.gsa.gov/perdiem>. GSA bases the maximum lodging allowance rates on the average daily rate that the lodging industry reports to an independent organization. If a maximum lodging allowance rate and/or a meals and incidental expenses (M&IE) per diem reimbursement rate is insufficient to meet necessary expenses in any given location, Federal executive agencies can request that GSA review that location. Please review questions six and seven of GSA's per diem Frequently Asked Questions page at <https://www.gsa.gov/perdiem> for more information on the special review process. In addition, the Federal Travel Regulation (FTR) allows for actual expense reimbursement as provided in §§ 301-11.300 through 301-11.306.

For FY 2021, one new non-standard area (NSA) location was added for Albuquerque, New Mexico (Bernalillo County). The standard CONUS lodging rate will remain unchanged at \$96. The M&IE reimbursement rate tiers were also unchanged for FY 2021. The standard CONUS M&IE rate remains at \$55, and the M&IE NSA tiers remain at \$56-\$76.

Notices published periodically in the **Federal Register** now constitute the only notification of revisions in CONUS per diem reimbursement rates to agencies, other than the changes posted on the GSA website.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2020-17938 Filed 8-14-20; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0201; Docket No. 2020-0053; Sequence No. 6]

Information Collection; Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019-009)

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension of information collection 9000-0201 concerning representations and reporting associated with implementation of Federal Acquisition Regulation (FAR) rule 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment. OMB authorized information collection 9000-0201 as an emergency collection. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by October 16, 2020.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through <http://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

Instructions: All items submitted must cite Information Collection 9000-0201, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019-009). Comments received generally will be posted without change to [regulations.gov](https://www.regulations.gov), including any personal and/or business

confidential information provided. To confirm receipt of your comment(s), please check [regulations.gov](https://www.regulations.gov), approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: FAR Policy at telephone 202-969-4075, or farpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000-0201, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019-009).

B. Need and Uses

This information collection supports implementation of subparagraph (a)(1)(B) of Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232). DoD, GSA, and NASA published an interim rule (FAR Case 2019-009) at 85 FR 42665 on July 14, 2020 to implement section 889(a)(1)(B) of the NDAA. This section prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020, unless an exception applies or a waiver has been granted.

This requirement is implemented in the Federal Acquisition Regulation (FAR) through the provision at FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and the clause at FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Information collected under the provision at 52.204-24 will be used to identify if an offeror uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, and their intended use in order to determine whether the prohibition applies.

Information collected under the clause at FAR 52.204-25 will consist of reports from contractors who have identified, post-award, the use of any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical

technology as part of any system, and requires a disclosure that will be used by agency personnel to identify and consult with legal counsel and the program office on next steps regarding the prohibited equipment or services.

If the Government seeks a waiver from the prohibition, the offeror will be required to provide a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain, a phase-out plan to eliminate such covered telecommunications equipment or services from the offeror's systems, and any other information necessary for the agency to process the waiver.

C. Annual Burden

The annual public reporting burden for this collection of information is estimated as follows:

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

FAR Clause: 52.204–24.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 102,792.

Average Responses per Respondents: 378.

Total Estimated Number of Responses: 38,854,291.

Average Time (for both positive and negative representations) per Response: 3 hours.

Total Annual Time Burden: 116,562,873.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

FAR Clause: 52.204–25.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 5,140.

Average Responses per Respondents: 5.

Total Estimated Number of Responses: 25,700.

Average Time per Response: 3 hours.

Total Annual Time Burden: 77,100.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Waiver from Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

FAR Clause: 52.204–25.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 20,000.

Average Responses per Respondents: 1.

Total Estimated Number of Responses: 20,000.

Average Time per Response: 160 hours.

Total Annual Time Burden: 3,200,000.

The public reporting burden for this collection of information consists of a representation to identify whether an offeror uses covered telecommunications equipment or services for each offer as required by 52.204–24 and reports of identified use of covered telecommunications equipment or services as required by 52.204–25. The representation at 52.204–24 is estimated to average 3 hours per response to review the prohibitions, research the source of the product or service, and complete the additional detailed disclosure, if applicable. Reports required by 52.204–25 are estimated to average 3 hours per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

If the Government seeks a waiver from the prohibition, the offeror will be required to provide a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain and a phase-out plan to eliminate such covered telecommunications equipment or services from the offeror's systems. There is no way to estimate the total number of waivers at this time. For the purposes of complying with the PRA analysis, the FAR Council estimates 20,000 waivers; however there is no data for the basis of this estimate. This estimate may be higher or lower once the rule is in effect.

D. Public Comments

DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of

automated collection techniques or other forms of information technology.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000–0201, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019–009).

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–17695 Filed 8–14–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10751]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services, HHS

ACTION: Notice.

SUMMARY: The Centers for Medicare and Medicaid Services (CMS) is requesting that a new information collection request (ICR) associated with the Temporary Policy on 2020 Premium Credits Associated with the COVID–19 Public Health Emergency be processed under the emergency clearance process. Due to agencies inability to update CMS systems for IRS reporting purposes in time for tax season if the normal non-emergency clearance procedures are followed, an emergency clearance is requested. Once the emergency information collection request is approved, CMS plans to seek public comments during the required 60-day and 30-day notice and comment periods associated with obtaining a standard (non-emergency) OMB approval. The use of normal clearance procedures will not allow CMS to update its enrollment data timely and is therefore is reasonably likely to prevent accurate and timely distribution of 1095–A tax forms to affected consumers. Health Insurance Exchanges furnish Form 1095–A to individuals to allow them to reconcile the credit on their returns with advance payments of the premium

Indian Tribe in which that biological parent was enrolled.

(e) If trust personalty does not descend under paragraph (d) of this section, then:

(1) To the Indian Tribe in which the decedent's biological grandparents were enrolled; if all enrolled biological grandparents were enrolled in the same Tribe;

(2) To the Indian Tribes in which the decedent's biological grandparents were enrolled, in equal shares, if two or more of the decedent's biological grandparents were enrolled in different Tribes; or

(3) If only one biological grandparent was enrolled in an Indian Tribe, to the Indian Tribe in which that biological grandparent was enrolled.

(f) If trust personalty does not descend under paragraph (e) of this section, then to an Indian Tribe selected by the judge, in consideration of the following factors:

(1) The origin of the funds in the decedent's IIM account;

(2) The Tribal designator contained in the owner identification number or IIM account number assigned to the decedent by BIA; and

(3) The geographic origin of the decedent's Indian ancestors.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Scott Cameron,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

[FR Doc. 2020–28306 Filed 1–6–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 158

[Docket ID: DOD–2020–OS–0015]

RIN 0790–AK81

Operational Contract Support (OCS) Outside the United States

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The DoD is issuing this rule to update the policies and procedures for operational contract support (OCS) outside the United States. These changes include broadening the range of applicable operational scenarios, eliminating content internal to the Department, and making updates to comply with law and policy. Changes

include designating contractor personnel as part of the DoD total force, incorporating requirements for accountability and reporting, and clarifying responsibilities. Through these updates, the Department will also address open recommendations from the Government Accountability Office (GAO). OCS is a segment of the GAO High Risk Area of DoD Contract Management and while the latest update in March 2019 acknowledged progress, GAO cited the need to revise and reissue guidance to address several open recommendations.

DATES: Comments must be received by March 8, 2021.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

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

- *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Livingston, 703–692–3032, donna.m.livingston.civ@mail.mil.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Rule

The Joint Force relies on contracted support in nearly every mission and operational setting. Operational Contract Support (OCS) is how the Department plans for and integrates contracted capabilities and associated contractor personnel providing support to operations within a designated geographic area. Since 2007, the Department has been heavily focused on better oversight, management, and accounting of contractors supporting U.S. military operations. Concurrently, there has been increasing demand from commanders for more visibility of contractor personnel. Successfully planning for, procuring, and integrating contracted support requires that

commanders have a full understanding of what contracted support is needed and when; how requirements can be optimized and executed; and how the Department includes contracted support as part of the total force. The existing part describes, in detail, the specific DoD policy, responsibilities, and procedures that enable and substantiate OCS and enable both the DoD and its commercial partners to plan for contractor support when operating with U.S. Armed Forces in applicable operations. Contractors are currently required to load their employees' information in the Synchronized Pre-deployment Operational Tracker—Enterprise System (SPOT–ES) when an employee deploys under a contract to support U.S. military operations overseas, and this revision neither increases nor decreases the burden of this requirement. The changes resulting from the revised rule increase transparency of new policies and better inform the DoD's commercial partners.

B. Background

Operational contract support was born in the aftermath of significant reporting on DoD acquisition and contracting operations in Iraq and Afghanistan, including the 2008 “Commission on Army Acquisition and Program Management in Expeditionary Operations” and the 2011 “Commission on Wartime Contracting in Iraq and Afghanistan.” The Commission on Wartime Contracting in Iraq and Afghanistan published findings that identified deficiencies related to contract management and oversight that required DoD's attention. As a result, the DoD has invested heavily in efforts to address these findings and enhance oversight, better define contract requirements, and improve the visibility and accounting of contractors supporting U.S. operations overseas. There has been persistent scrutiny of the DoD's progress to close these deficiencies, namely by the GAO. The GAO has reviewed the Departments' progress on OCS on multiple occasions, and classified OCS as a segment within the DoD Contract Management High Risk Area. In the last report (GAO–19–157SP) published in March 2019 (available at <https://www.gao.gov/products/GAO-19-157SP>), GAO recognized the progress made on OCS and affirmed that it could remove its high-risk status. Removal could come quickly once the DoD successfully completes the few remaining GAO recommendations. By implementing the GAO recommendations, updating internal policies especially DoD Instruction 3020.41 “Operational

Contract Support” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302041p.pdf>), and revising this CFR part, the DoD will address the vital need for greater efficiency and accountability. Improved policy and guidance will foster an environment focused on operational planning of contracted support to operations and improved readiness, and will result in cost savings by reducing the potential for waste, fraud, and abuse.

C. Summary of Major Provisions

This proposed rule: (1) Broadens the types of operations when contracted support may be employed, beyond contingency operations; (2) describes and clarifies contractors’ responsibilities related to theater admission requirements for their personnel deploying in support of operations outside the United States; (3) clarifies contractors’ responsibilities to provide personnel who meet specific medical and dental fitness standards; (4) details the services the U.S. Government is authorized to provide to contractors; and (5) removes all internally facing information to promote efficiency and streamline communication with the public.

To address GAO recommendations to improve the ability to track contracts and contractor personnel in contingency and other operations and to help ensure that DoD possesses the capability to collect and report statutorily required information and to clarify responsibilities and procedures, § 158.5(g) was updated to address SPOT minimum reporting requirements, system requirements, and references to the SPOT business rules were included which include area specific requirements.

D. Legal Authority

The legal authority for this rule is found in Section 861, *Memorandum of Understanding on Matters Relating to Contracting*, of the *National Defense Authorization Act for Fiscal Year 2008* (Pub. L. 110–181), and Section 854, *Additional Contractor Requirements and Responsibilities Relating to Alleged Crimes By or Against Contractor Personnel in Iraq and Afghanistan*, of the *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009* (Pub. L. 110–417).

II. Regulatory History

An interim final rule for this part was published on December 29, 2011 (76 FR 81807). The DoD adopted the interim final rule as a final rule without change on December 3, 2013 (78 FR 72573). The 2011 rule action procedurally closed gaps that existed in planning, oversight, and management of DoD contractors supporting contingency operations. The rule was necessary to address legislative mandates, remove confusion with other policies, and better reflect the practices and procedures in place at that time. The rule was crucial at the time due to the sustained employment of a large number of contractors in the U.S. Central Command area of responsibility; the importance of contractor oversight in support of counter-insurgency operations in Afghanistan; and the requirement to manage contractors effectively during the withdrawal of U.S. forces from Iraq in 2011.

III. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “not significant regulatory action” and has been determined not to be economically significant under section 3(f) of Executive Order 12866.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This rule is not significant under Executive Order 12866; therefore, it is not subject to the requirements of Executive Order 13771.

b. Summary

This rule broadens the range of operations in which contracted support

may be employed; updates requirements for the development of contractor oversight plans; increases visibility and accountability; reinforces requirements for adequate military personnel necessary to execute contract oversight; and describes U.S. Government standards for medical care available to deployed contractor personnel, when authorized. It also updates policy resulting from changes in law and policy. Lastly, the rule has been streamlined to show only information relevant to the public and removes internally facing responsibilities and procedures.

c. Affected Population

The existing rule provides information relevant to contractors and their personnel that may provide contracted support to the DoD during applicable operations outside the United States. The following populations are expected to continue to be stakeholders in the content of the revised rule:

- Contractor personnel—Provides information and describes the requirements the DoD imposes on employees of commercial industry partners who may be employed in support of DoD operations conducted outside the United States.
- Companies or organizations—Provides information for commercial industry partners to understand how contractor personnel are managed and accounted for and includes deployment requirements necessary to provide support to DoD in applicable operations.

d. Costs

A negligible burden reduction to the public may be achieved by the clarifications and increased transparency provided by this revision. Contractors may save time by having increased access to DoD policy requirements and in avoiding unnecessary duplication or providing personnel not suitable or prepared to support applicable operations outside the United States. The changes implemented by this rule are not expected to alter significantly the baseline burden that was calculated as part of the most recent SPOT-ES system collection, Control Number 0704–0460, approved by the OMB in 2019 in accordance with the Public Law 96–511, “Paperwork Reduction Act.”

Collection instrument (SPOT database)	2016 approved estimates	2019 approved estimates
Estimation of Respondent Burden Hours		
Number of Respondents	1670	964.
Number of Responses per Respondent	56	77.
Number of Total Annual Responses	93,520	74,561.
Response Time (Amount of time needed to complete the collection instrument) .....	.5	.5.
Respondent Burden Hours (Total Annual Responses multiplied by Response Time) Please compute these into hours).	46,760	37,291.
Labor Cost of Respondent Burden		
Number of Responses	93,520	74,561 (decrease of 18,959).
Response Time per Response .....	.5	.5.
Respondent Hourly Wage	\$36.00	\$32.11.
Labor Burden per Response (Response Time multiplied by Respondent Hourly Wage)	\$18.00	\$16.06.
Total Labor Burden (Number of Respondents multiplied by Response Time multiplied by Re- spondent Hourly Wage).	\$1,683,360	\$1,197,077 (decrease of \$486,283).

The burden and cost decreased due to contractor deployments to ongoing contingencies having been reduced since 2016. Thus, the number of responses required was reduced from 93,520 to 74,561. This drove the associated calculations down and resulted in a decrease in cost of \$486,283. In addition, the difference in the respondent hourly range is attributed to the respondent labor category from a management labor category in 2016 to human resources specialist in 2019. Wage information is based on data from the Department of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm).

Based on data from the Federal Procurement Data System—Next Generation for contract actions for fiscal year 2019 with a place of performance outside the United States, approximately 15,742 of 2.4 million (or 1 percent), are to small businesses. This amounts to \$2,438,406,319 of \$36,747,264,771 (or less than 8 percent) of contracts obligated to small businesses worldwide.

e. Benefits

OCS is a force multiplier, giving commanders more options, and supports force optimization. When properly planned for and integrated into operations, OCS can be leveraged to support the Secretary of Defense's objective of restoring military readiness and to close any gaps in fulfilling requirements associated with maintenance, material, intelligence information, or translation services, which can be filled by either short- or long-term commercial capabilities. This rule most significantly improves and refines DoD policy for planning and integrating contracted support in applicable operations. The Department

has been working for more than a decade to establish OCS as a core defense capability; one that minimizes risk, increases readiness and flexibility, and improves effectiveness. This rule codifies policy that implements a programmatic approach and improves oversight of contracted support, reducing the likelihood that historical instances of waste, fraud, and abuse will be repeated. This rule furthermore ensures contractors supporting applicable operations are fully prepared to meet the requirements necessary to support operations outside the United States.

f. Alternatives

The DoD has considered the following alternatives:

- No action—maintain the status quo. If no action is taken, the significant improvements made to accounting and managing, planning for, and overseeing contracted support will not be codified, raising the risk that past mismanagement will persist, resulting in significant waste, fraud, and abuse. In addition, the rule must be updated and published before an update to the associated DoD issuance, DoD Instruction 3020.41, "Operational Contract Support (OCS)," may be issued. Publishing the updated policy is required to remove the OCS element of DoD Contract Management as a GAO High-Risk Area.

- Publish proposed rule. Codify changes in policy and statute that result in improved management of contract requirements, contractor management and visibility and accountability of contractors. These improvements will support removing OCS as a sub-area under the GAO High Risk Area of DoD Contract Management.

In summary, if the status quo is maintained, resolution of the GAO recommendations cannot be implemented.

B. Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The DoD certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. Based on data from the Federal Procurement Data System—Next Generation for contract actions for fiscal year 2019 with a place of performance outside the United States, approximately 15,742 of 2.4 million (or 1 percent), are to small businesses. This amounts to \$2,438,406,319 of \$36,747,264,771 (or less than 8 percent) of contracts obligated to small businesses worldwide. Therefore, the requirements of the Regulatory Flexibility Act do not apply.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The DoD will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

D. Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)

(2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments.

E. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 158 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. This SPOT–ES system collection has been reviewed and approved by the OMB and assigned OMB Control Number 0704–0460 (cleared through September 30, 2022). The SPOT–ES collection package encapsulated the requirement for all DoD, Department of State (DOS), and United States Agency for International Development (USAID) contractor personnel to register in the SPOT–ES database. Within the current collection, 87 percent of contractor personnel records were related to DoD contracts and less than 13 percent were from other government agencies. This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

System of Records Notices (SORNs) and Privacy Impact Assessments (PIAs) (<https://www.dmdc.osd.mil/appj/dwp/documents.jsp>) have been accomplished under SORN Identifier DMDC 18 DoD (<https://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570569/dmdc-18-dod/>), “Synchronized Predeployment Operational Tracker Enterprise Suite.”

F. Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. The changes in this rule will not have a substantial effect on State and local governments and do not implicate federalism.

List of Subjects in 32 CFR Part 158

Accountability/visibility, Accounting, Armed forces, Combating trafficking in persons, Deployment and redeployment, Government contracts, Medical clearances, Passports and visas, Planning, Security measures, Support to contractors, Transportation.

■ Accordingly, 32 CFR part 158 is proposed to be revised to read as follows:

PART 158—OPERATIONAL CONTRACT SUPPORT (OCS) OUTSIDE THE UNITED STATES

Sec.

- 158.1 Purpose.
- 158.2 Applicability.
- 158.3 Definitions.
- 158.4 Policy.
- 158.5 Procedures.
- 158.6 Guidance for contractor medical and dental fitness.

Authority: Public Law 110–181; Public Law 110–417.

§ 158.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for operational contract support (OCS), including contract support integration, contracting support, management, and deployment of defense contractor personnel in applicable operations outside the United States.

§ 158.2 Applicability.

This part applies to contracts and contractor personnel supporting DoD Components operating outside the United States in contingency operations, humanitarian assistance, or peace operations and other activities, including operations and exercises as determined by a Combatant Commander or as directed by the Secretary of Defense.

§ 158.3 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this part.

Acquisition. The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Applicable operations. Contingency operations, humanitarian assistance, or peace operations conducted outside the United States and other activities, including operations and exercises outside the United States as determined

by a combatant commander (CCDR) or as directed by the Secretary of Defense.

Austere environment. Areas where applicable operations may be conducted that are in remote, isolated locations, where access to modern comforts and resources may be limited or non-existent.

Civil augmentation program. External support contracts designed to augment Military Department logistics capabilities with contracted support in both preplanned and short-notice operations.

Contingency contract. A legally binding agreement for supplies, services, and/or construction let by a U.S. Government contracting officer in the operational area, or that has a prescribed area of performance within an operational area.

Contingency operation. A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law as defined in 10 U.S.C. 101(a)(13).

Contract administration. The processes and procedures of contracting, from contract award through closeout, that includes oversight efforts by contracting professionals and designated non-contracting personnel to ensure that supplies, services, and/or construction are delivered and/or performed in accordance with the terms and conditions of the contract.

Contract support integration. The coordination and synchronization of contracted support executed in a designated operational area in support of military operations.

Contracting. Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contracting officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas.

Contracting Officer's Representative (COR). An individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Contracting support. The coordination of contracts and execution of contracting authority by a warranted contracting officer that legally binds commercial entities to perform contractual requirements in support of DoD operational requirements.

Contractor management. The oversight and integration of contractor personnel and associated equipment providing support to military operations.

Contractor personnel. Any individual, employed by a firm, corporation, partnership, or association, employed under contract with the DoD to furnish services, supplies, or construction. Contractor personnel may include U.S. citizens and host nation and third country national (TCN) individuals.

Contractor personnel accountability. The process of identifying, capturing, and recording the personally identifiable information and assigned permanent duty location of an individual contractor employee through the use of a designated database.

Contractor personnel visibility. Information on the daily location, movement, status, and identity of contractor personnel.

Contractors Authorized to Accompany the Force (CAAF). Contractor personnel and all tiers of subcontractor personnel authorized to accompany U.S. Armed Forces in applicable operations outside of the United States who have been afforded this status through the issuance of a Letter of Authorization (LOA). CAAF generally include all U.S. citizen and TCN employees not normally residing within the operational area whose area of performance is in the direct vicinity of the U.S. Armed Forces and who are routinely co-located with the U.S. Armed Forces. In some cases, CCDR subordinate commanders may designate mission-essential host nation (HN) or local national (LN) contractor personnel (e.g., interpreters) as CAAF. CAAF includes contractor personnel previously identified as contractors deploying with the force. CAAF status does not apply to contractor personnel within U.S. territory working in support of contingency operations outside the United States.

Defense contractor. Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly

with the DoD to furnish services, supplies, or construction.

DoD Components. Includes the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands (CCMDs), the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

Essential contractor service. A service provided by a firm or an individual under contract to the DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

Expeditionary Contract Administration (ECA). Contract administration conducted during joint or other expeditionary operations. Formerly known as the Contingency Contract Administrative Services or CCAS.

Expeditionary operations. Activities organized to achieve a specific objective in a foreign country.

External support contracts. Contracts awarded by contracting organizations whose contracting authority does not derive directly from the theater support contracting head(s) of contracting activity or from systems support contracting authorities.

Host nation (HN). A nation that permits, either in writing or other official invitation, government representatives or agencies and/or agencies of another nation to operate, under specified conditions, within its borders.

Hostile environment. Operational environment in which local government forces, whether opposed to or receptive to operations that a unit intends to conduct, do not have control of the territory and population in the intended operational area.

Isolated personnel. U.S. military, DoD civilians, and contractor personnel (and others designated by the President or Secretary of Defense) who are unaccounted for as an individual or a group while supporting an applicable operation and are, or may be, in a

situation where they must survive, evade, resist, or escape.

Law of war. The treaties and customary international law binding on the United States that regulate: The resort to armed force; the conduct of hostilities and the protection of war victims in international and non-international armed conflict; belligerent occupation; and the relationships between belligerent, neutral, and non-belligerent States. Sometimes also called the "law of armed conflict" or "international humanitarian law," the law of war is specifically intended to address the circumstances of armed conflict.

Letter of authorization (LOA). A document issued by a contracting officer or his or her designee that authorizes contractor personnel to accompany the force to travel to, from, and within an operational area, and outlines U.S. Government authorized support authorizations within the operational area, as agreed to under the terms and conditions of the contract. For more information, see 48 CFR subpart 225.3.

Local national (LN). An individual who is a permanent resident of the nation in which the United States is conducting operations.

Long-term care. A variety of services that help a person with comfort, personal, or wellness needs. These services assist in the activities of daily living, including such things as bathing and dressing. Sometimes known as custodial care.

Mission-essential functions. Those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect the DoD's ability to provide vital services or exercise authority, direction, and control.

Non-CAAF. Personnel who are not designated as CAAF, such as LN employees and non-LN employees who are permanent residents in the operational area or TCNs not routinely residing with the U.S. Armed Forces (and TCN expatriates who are permanent residents in the operational area), who perform support functions away from the close proximity of, and do not reside with, the U.S. Armed Forces. U.S. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of the U.S. Armed Forces.

Operational area. An overarching term encompassing more descriptive terms (such as area of responsibility and joint operations area) for geographic areas where military operations are conducted.

Operational contract support (OCS). The ability to orchestrate and synchronize the provision of integrated contract support and management of contractor personnel providing support to command-directed operations within a designated operational area.

Operationally critical support. A critical source of supply for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the U.S. Armed Forces in applicable operations.

Prime contractor. Any supplier, distributor, vendor, or firm that has entered into a contract with the United States government.

Replacement centers. Centers at selected installations that ensure necessary accountability, training, and processing actions are taken to prepare personnel for onward movement and deployment to a designated operational area.

Requiring activity. A military or other designated supported organization that identifies the need for and receives contracted support to meet mission requirements during military operations.

Subcontractor. Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Synchronized Pre-deployment Operational Tracker-Enterprise System (SPOT-ES). A common joint database used to maintain contractor personnel visibility and accountability in applicable operations. References to SPOT-ES in this part will refer to that system or any database system that supersedes it for use in OCS.

Systems support contract. Contracts awarded by Military Service acquisition program management offices that provide fielding support, technical support, maintenance support, and, in some cases, repair parts support, for selected military weapon and support systems.

Theater business clearance. A CCDR policy or process to ensure visibility of and control over systems support and external support contracts executing or delivering support in designated areas of operations.

Theater support contract. A type of contract awarded by contracting officers deployed to an operational area serving under the direct contracting authority of

the Military Service component, special operations force command, or designated joint contracting authority for the designated operation.

Total force. The organizations, units, and individuals that comprise the DoD resources for implementing the National Security Strategy. It includes DoD Active and Reserve Component military personnel, military retired members, DoD civilian personnel (including foreign national direct- and indirect-hires, as well as nonappropriated fund employees), contractors, and host-nation support personnel. (For source information, see paragraph (a) of appendix A to this part.)

Uncertain environment. Operational environment in which host government forces, whether opposed to or receptive to operations that a unit intends to conduct, do not have totally effective control of the territory and population in the intended operational area.

§ 158.4 Policy.

It is DoD policy that:

(a) Defense contractor personnel are part of the total force. (See paragraph (a) of appendix A of this part.)

(b) DoD Components implement OCS functions, including contract support integration, contracting support, and contractor management, during applicable operations.

(c) DoD Components will use contracted support only in appropriate situations, consistent with 48 CFR subpart 7.5, 48 CFR subpart 207.5, and Office of Federal Procurement Policy (OFPP) Policy Letter 11-01 (available at <https://www.federalregister.gov/documents/2011/09/12/2011-23165/publication-of-the-office-of-federal-procurement-policy-ofpp-policy-letter-11-01-performance-of>), and paragraph (b) of appendix A to this part.

(d) Generally, contractors are responsible for providing their employees with all life, mission, medical, logistics, and administrative support necessary to perform the contract. However, in many operations, especially in those in which conditions are austere, hostile, and/or non-permissive, the contracting officer may decide it is in the interest of the U.S. Government to allow for selected life, mission, medical, logistics, and administrative support to be provided to contractor personnel to ensure continuation of essential contractor services. Contractors authorized to accompany the force (CAAF) may receive U.S. Government-furnished support commensurate with the operational situation in accordance with the terms of the contract.

(e) A common joint database (*i.e.*, the Synchronized Predeployment and Operational Tracker-Enterprise Suite (SPOT-ES) or its successor) will be used to maintain contractor personnel visibility and accountability in applicable operations. References to SPOT-ES in this part will refer to that system or any database system that supersedes it for contractor personnel visibility and accountability.

(f) Solicitations and contracts will:

(1) Require defense contractors to provide personnel who are ready to perform contract duties in applicable operations and environments by verifying the medical, dental, and psychological fitness of their employees and, if applicable, by ensuring currency of any professional qualifications and associated certification requirements needed for employees to perform contractual duties.

(2) Incorporate contractual terms and clauses into the contract that are consistent with applicable host nation (HN) laws and agreements or designated operational area performance considerations.

(g) Contracts for highly sensitive, classified, cryptologic, or intelligence projects and programs must implement this rule to the maximum extent possible, consistent with applicable laws, Executive orders, presidential directives, and relevant DoD issuances. To the extent that contracting activities are unable to comply with this rule, they should submit a request for a waiver to the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)). Waiver requests should include specific information providing the rationale regarding the inability to comply with this rule.

§ 158.5 Procedures.

(a) **Planning considerations and requirements; requirements for publication.** CCDRs will make management policies and specific OCS requirements for contractual support available to affected contractor personnel. The Geographic Combatant Commander (GCC) OCS web page will set forth the following:

(1) Theater business clearance (TBC) requirements for contracts currently being performed and delivering contracted support in the CCDR's AOR.

(2) Restrictions imposed by applicable local laws, international law, status of forces agreements (SOFAs), and other agreements with the HN.

(3) CAAF-related deployment requirements, including, but not limited to:

(i) Pre-deployment and required individual protective equipment (IPE) training.

(ii) Physical health standards.

(iii) Immunization and medical requirements.

(iv) Deployment procedures and theater reception.

(4) Reporting requirements for accountability and visibility of contractor personnel and associated contracts.

(5) Operational security (OPSEC) plans and restrictions.

(6) Force protection policies.

(7) Personnel recovery procedures.

(8) Availability of medical and other authorized U.S. Government support (AGS).

(9) Redeployment procedures, including disposition of U.S. Government-furnished equipment.

(b) *Contractual relationships.* The contract provides the only legal basis for the contractual relationship between the DoD and the contractor. The contracting officer is the only individual with the legal authority to enter into such a binding relationship with the contractor.

(1) Commanders have the ability to restrict installation access, and contractor personnel must comply with applicable CCDR and local commander force protection policies. However, military commanders or unit personnel do not have contracting authority over contractors or contractor personnel and may not direct contractors or contractor personnel to perform contractual tasks. Moreover, the contract does not provide a basis for commanders to exercise operational control or tactical control over contractors or their personnel or to assign or attach contractors or their personnel to a command or organization.

(2) The contract must specify:

(i) The terms and conditions under which the contractor is to perform, including minimum acceptable professional and technical standards.

(ii) The method by which the contracting officer will notify the contractor of the deployment procedures to process contractor personnel who are deploying to the operational area.

(iii) The specific contractual support terms and agreement between the contractor and DoD.

(iv) The appropriate flow-down of provisions and clauses to subcontractors and state that the service performed by contractor personnel is not considered to be active duty or active service. For more information, see paragraph (c) in appendix A to this part, and 38 U.S.C. 106, "Active Duty Service

Determinations for Civilian or Contractual Groups."

(3) The contract must contain applicable clauses to ensure efficient deployment, accountability, visibility, protection, and redeployment of contractor personnel and detail authorized levels of health service, sustainment, and other support that is authorized to be provided to contractor personnel supporting applicable operations outside the United States.

(c) *Restrictions on contractors performing inherently governmental functions.* (1) Paragraph (c) of appendix A of this part, 48 CFR subpart 7.5, 48 CFR subpart 207.5; Public Law 105-270 and Office of Management and Budget Circular No. A-76 (available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf) bar inherently governmental functions and duties from private sector performance.

(2) Contractor personnel may provide support during applicable operations, including, but not limited to:

(i) Transporting munitions and other supplies.

(ii) Providing communications support.

(iii) Performing maintenance functions for military equipment.

(iv) Providing force protection and private security services.

(v) Providing foreign language interpretation and translation services.

(vi) Providing logistics services, such as billeting and messing.

(vii) Intelligence surveillance and reconnaissance support.

(viii) Commercial air assets.

(3) The requiring official will review each service performed by contractor personnel in applicable operations on a case-by-case basis to ensure compliance with paragraph (b) of appendix A of this part and applicable laws and international agreements.

(4) Restrictions on use of contractor personnel for private security services. A contractor may be authorized to provide private security services only if such authorization is consistent with applicable U.S., local, and international law, including applicable agreements with the HN or other applicable international agreements, and 32 CFR part 159. For more information, see paragraph (b) of appendix A of this part and 48 CFR subpart 252.2, which provide specific procedures and guidance.

(d) *Combating trafficking in persons.* Trafficking in persons is a violation of U.S. law and internationally recognized human rights, and is incompatible with DoD core values.

(1) 48 CFR subpart 222.17 and 48 CFR 52.222-50 also known and referred to as Combating Trafficking in Persons, describe how contractors, contracting officers and their representatives, and commanders must deter activities such as prostitution, forced labor, and other related activities contributing to trafficking in persons. For more information, see paragraph (d) of appendix A to this part.

(2) Contracts in support of applicable operations will include terms and provisions that require that the contractor remove personnel from the performance of the contract and return any of its personnel who have been determined to have engaged in any of the activities mentioned in paragraph (h)(4)(v)(H) of this section from the operational area to the home of record, point of origin, or an authorized location at the end of contract performance or sooner as directed by the contracting officer. Once notified of such an incident, the contracting officer will notify the commander responsible in the AOR and provide any information required to support an investigation. For more information, see 48 CFR subpart 222.17.

(e) *CAAF designation, legal status, credentialing, and security clearance requirements—*(1) *CAAF designation.* (i) CAAF designation is provided to contractor personnel, including all tiers of subcontractor personnel, through a letter of authorization (LOA). CAAF generally include all U.S. citizen and third country national (TCN) employees not normally residing within the operational area whose area of performance is in the direct vicinity of the U.S. Armed Forces and who routinely are co-located with the U.S. Armed Forces, especially in non-permissive environments. Personnel co-located with the U.S. Armed Forces will be afforded CAAF status through an LOA.

(ii) In some cases, CCDRs or subordinate commanders may designate mission-essential HN or LN contractor personnel as CAAF unless otherwise precluded by HN law, a SOFA, or other agreement. In general, LNs are only afforded CAAF status when they assume great personal risk to perform an essential function.

(iii) Personnel who do not receive a CAAF designation are referred to as non-CAAF. Individuals' CAAF status may change depending on where their employers or the provisions of their contract details them to work. CAAF designation may affect, but does not necessarily affect, a person's legal status under the law of war and the treatment to which that person is entitled under

the 1949 Geneva Conventions if that person falls into the power of the enemy during international armed conflict. Although CAAF are regarded as "persons authorized to accompany the armed forces," personnel who are not CAAF may also receive this status under the law of war. For more information, see § 4.15 of paragraph (e) of appendix A of this part. In addition, although CAAF designation and access to AGS often coincide, CAAF status does not determine AGS provided.

(2) *Legal status.* In implementing this part, the DoD Component heads must abide by applicable laws, regulations, international agreements, and DoD policy as they relate to contractor personnel performing contractual support in support of applicable operations.

(i) *HN and third country laws.* All contractor personnel must comply with applicable HN and third country laws. The applicability of HN and third country laws may be affected by international agreements (e.g., agreements between the United States and the HN) and customary international law (e.g., limits imposed by customary international law on the reach of third country laws).

(A) U.S., HN, or other countries may hire contractor personnel whose status may change (e.g., from non-CAAF to CAAF) depending on where in the operational AOR their employers or the provisions of their contracts detail them to work.

(B) CCDRs, as well as subordinate commanders, Military Service Component commanders, the Directors of the Defense Agencies, and Directors of DoD Field Activities should recognize limiting factors regarding the employment of LN and TCN personnel. Limiting factors include, but are not limited to:

- (1) Imported labor worker permits.
- (2) Workforce and hour restrictions.
- (3) Medical, life, and disability insurance coverage.
- (4) Taxes, customs, and duties.
- (5) Cost of living allowances.
- (6) Hardship differentials.
- (7) Access to classified information.
- (8) Hazardous duty pay.
- (ii) *U.S. laws.* U.S. citizens and CAAF, with some exceptions, are subject to U.S. laws and U.S. Government regulations.

(A) All U.S. citizen and TCN CAAF are subject to potential prosecutorial action under the criminal jurisdiction of the United States, including, but not limited to, 18 U.S.C. 3261, also known and referred to in this part as the Military Extraterritorial Jurisdiction Act of 2000 (MEJA). MEJA extends U.S.

federal criminal jurisdiction to certain contractor personnel for offenses committed outside U.S. territory.

(B) The March 10, 2008, Secretary of Defense Memorandum states that contractor personnel are subject to prosecution pursuant to 10 U.S.C. Chapter 47, also known and referred to in this part as the Uniform Code of Military Justice (UCMJ), when serving overseas in support of a declared war or contingency, and provides guidance to commanders on the exercise of this UCMJ jurisdiction.

(C) Other U.S. law may allow prosecution of offenses by contractor personnel (e.g., 18 U.S.C. 7).

(3) *1949 Geneva Conventions.* The 1949 Geneva Conventions, including the Geneva Convention Relative to the Treatment of Prisoners of War, may be applicable to certain contractor personnel who fall into the power of the enemy during international armed conflict.

(i) All contractor personnel may be at risk of injury or death incidental to enemy actions while supporting military operations.

(ii) Contractor personnel with CAAF status will receive an appropriate identification card required by the Geneva Convention Relative to the Treatment of Prisoners of War, consistent with paragraph (f) of appendix A to this part.

(iii) CAAF may be used in support of applicable operations, consistent with the terms of U.S. Government authorization. If they fall into the power of the enemy during international armed conflict, contractor personnel with CAAF status are entitled to prisoner of war status.

(4) *Credentialing.* Contracts must require CAAF to receive an identification card with the Geneva Convention's category of persons authorized to accompany the armed forces. For more information, see paragraphs (f) through (h) of appendix A to this part. At the time of identification card issuance, CAAF must present their SPOT-ES-generated LOA as proof of eligibility.

(i) Sponsorship must incorporate the processes for confirming eligibility for an identification card. The sponsor is the person affiliated with the DoD or another Federal agency that takes responsibility for verifying and authorizing an applicant's need for a Geneva Convention identification card. A DoD official or employee must sponsor applicants for a common access card (CAC).

(ii) Individuals who have multiple DoD personnel category codes (e.g., an individual who is both a reservist and

a contractor) will receive a separate identification card in each personnel category for which they are eligible. Individuals under a single personnel category code may not hold multiple current identification cards of the same form.

(5) *Security clearance requirements.* To the extent necessary, the contract must require the contractor to provide personnel who have the appropriate security clearance or who are able to satisfy the appropriate background investigation requirements to obtain access required to perform contractual requirements in support of the applicable operation.

(f) *Considerations for support to contractors—(1) U.S. Government support.* Generally, contracts supporting applicable operations must require contractors to provide to their personnel all life, mission, medical, and administrative support necessary to perform the contractual requirements and meet CCDR guidance posted on the GCC OCS web page. In some operations, especially those in which conditions are austere, uncertain, or non-permissive, the CCDR may decide it is in the U.S. Government's interest for the DoD to allow contractor personnel access to selected AGS. The contract must state the level of access to AGS in its terms and conditions.

(i) In operations where conditions are austere, uncertain, or non-permissive, the contracting officer will consult with the requiring activity to determine if it is in the U.S. Government's interests to allow for selected life, mission, medical, and administrative support to certain contractor personnel.

(ii) The solicitation and contract must specify the level of AGS that the U.S. Government will provide to contractor personnel and what support provided to the contractor personnel is reimbursable to the U.S. Government.

(iii) Access to DoD benefits facilitated by the identification card may be granted to contractors under certain circumstances. For more information, see paragraph (i) of appendix A to this part.

(2) *IPE.* When necessary or directed by the CCDR, the contracting officer will include language in the contract authorizing the issuance of military IPE (e.g., chemical, biological, radiological, nuclear (CBRN) protective ensemble, body armor, ballistic helmet) to contractor personnel as part of AGS.

(i) Typically, IPE will be issued by the central issue facility at the deployment center before deployment to the designated operational area and must be accounted for and returned to the U.S. Government or otherwise accounted for,

in accordance with appropriate DoD Component regulations, directives, and instructions.

(ii) Contractor personnel deployment training will include training on the proper care, fitting, and maintenance of protective equipment, whether issued by the U.S. Government or provided by the contractor in accordance with the contractual requirements. This training will include practical exercises within mission-oriented protective posture levels.

(iii) When the terms and conditions of a contract require a contractor to provide IPE, such IPE must meet minimum standards as defined by the contract.

(3) *Clothing.* Contractors, or their personnel, must provide their own personal clothing, including casual and work clothing required to perform the contract requirements.

(i) Generally, CCDRs will not authorize the issuance of military clothing to contractor personnel or will not allow the wearing of military or military look-alike uniforms. Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the CCDR. However, a CCDR or subordinate joint force commander (JFC) deployed forward may authorize contractor personnel to wear standard uniform items for operational reasons. Contracts must include terms and clauses that require that this authorization be provided in writing by the CCDR and that the uniforms are maintained in the possession of authorized contractor personnel at all times.

(ii) When commanders issue any type of standard uniform item to contractor personnel, care must be taken to ensure that contractor personnel are distinguishable from military personnel through the use of distinctive patches, arm bands, nametags, or headgear, consistent with force protection measures, and that contractor personnel carry the CCDR's written authorization with them at all times.

(4) *Weapons.* Contractor personnel are not authorized to possess or carry firearms or ammunition during applicable operations, except as provided in paragraph (h)(2)(ii) of this section and 32 CFR part 159. The contract will provide the terms and conditions governing the possession of firearms by contractor personnel. Information on all weapons authorized for contractors and their personnel will be entered into the SPOT-ES database.

(5) *Mortuary affairs.* The DoD Mortuary Affairs Program, as described in paragraph (j) of appendix A to this part, covers all CAAF who die while

performing contractual requirements in support of the U.S. Armed Forces. Mortuary affairs support and transportation will be provided on a reimbursable basis for the recovery, identification, and disposition of remains and personal effects of CAAF.

(i) Every effort must be made to identify remains and account for unrecovered remains of contractor personnel and their dependents who die in military operations, training accidents, and other incidents. The remains of contractor personnel who die as the result of an incident in support of military operations are afforded the same dignity and respect afforded to military remains. For more information, see paragraph (k) of appendix A to this part.

(ii) The DoD may provide mortuary affairs support and transportation on a reimbursable basis for the recovery, identification, and disposition of remains and personal effects of non-CAAF at the request of the Department of State (DOS) and in accordance with this rule, applicable agreements with the HN, and applicable contract provisions. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will coordinate this support with the DOS, including for cost reimbursement to the DoD Component for the provision of this support.

(iii) The responsibility for coordinating the transfer of non-CAAF remains to the HN or affected nation resides with the GCC in coordination with the DOS, through the respective embassies, or through the International Committee of the Red Cross, the International Federation of the Red Cross or Red Crescent Societies, as appropriate, and in accordance with applicable contract clauses.

(6) *Medical support and evacuation.* Generally, the DoD will provide only resuscitative care, stabilization, and hospitalization at military medical treatment facilities (MTFs) and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. The DoD Foreign Clearance Guide (FCG) and the GCC OCS web pages contain theater-specific contract language to provide contract terms to clarify available healthcare for contractor personnel. During operations in austere, uncertain, or hostile environments, CAAF may encounter situations in which they cannot access adequate medical support in the local area.

(i) All costs associated with the treatment and transportation of contractor personnel to the selected civilian facility are reimbursable to the U.S. Government and are the

responsibility of contractor personnel, their employers, or their health insurance providers. For more information, see paragraph (l) of appendix A to this part. Nothing in this paragraph is intended to affect the allowability of costs incurred under a contract.

(ii) Medical support and evacuation procedures:

(A) All CAAF will normally be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF who are injured while in the vicinity of the U.S. Armed Forces while supporting applicable operations also normally will receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include:

(1) Examination and initial treatment of victims of sexual assault.

(2) Refills of prescriptions for life-dependent drugs.

(3) Repair of broken bones, lacerations, and infections.

(4) Traumatic injuries to the teeth.

(B) MTFs normally will not authorize or provide primary medical or dental care to CAAF. When required and authorized by the CCDR or subordinate JFC, this support must be specifically authorized under the terms and conditions of the contract and detailed in the corresponding LOA. Primary care is not authorized for non-CAAF. Primary care includes:

(1) Routine inpatient and outpatient services.

(2) Non-emergency evacuation.

(3) Pharmaceutical support (with the exception of emergency refills of prescriptions for life-dependent drugs).

(4) Non-emergency dental services.

(5) Other medical support, as determined by the CCDR or JFC based on recommendations from the cognizant medical authority and the existing capabilities of the forward-deployed MTFs.

(C) The DoD will not provide long-term care to contractor personnel.

(D) The CCDR or subordinate commander has the authority to quarantine or restrict movement of contractor personnel. For more information, see paragraph (m) of appendix A to this part.

(E) When CAAF are evacuated for medical reasons from the designated operational area to MTFs funded by the Defense Health Program, normal reimbursement policies will apply for services rendered by the facility. If CAAF require medical evacuation

outside the United States, the sending MTF staff will assist the CAAF in making arrangements for transfer to a civilian facility of the CAAF's choice. When U.S. forces provide emergency medical care to LN contractor personnel, these patients will use HN transportation means, when possible, for evacuation or transportation to their local medical systems. For more information, see paragraph (n) of appendix A to this part.

(7) *Other AGS.* 48 CFR subpart 225.3 lists types of support that may be authorized for contractor personnel who are deployed with or otherwise provide support to applicable operations, which may include transportation to and within the operational area, mess operations, quarters, phone service, religious support, and laundry.

(i) Contractor personnel of U.S. owned-contractors who are supporting DoD activities may be authorized the use of the military postal service. For more information, see paragraph (o) of appendix A to this part. The extent of postal support will be set forth in the contract. The provisions for postal support in such contracts must be reviewed and approved by the applicable CCDR, or the designated representative, and the Military Department concerned before execution of the contract.

(ii) Morale, welfare, and recreation and exchange services are authorized for contractor personnel who are U.S. citizens supporting DoD activities outside the United States. For more information, see paragraphs (p) and (q) of appendix A to this part.

(g) *Accountability and visibility of contracts and contractor personnel.* (1) During applicable operations, contractors will use SPOT-ES as follows:

(i) All CAAF will register in SPOT-ES by name.

(ii) Non-CAAF will be registered in SPOT-ES by name if they are performing on a DoD contract for at least 30 consecutive days unless a lesser number of days is requested by the CCDR or if they require access to a U.S. or coalition-controlled installation. Contracting officers will ensure non-CAAF who require access to U.S. or coalition-controlled installations are registered in SPOT-ES before requesting or receiving installation access.

(iii) All private security contractor personnel and all other contractor personnel authorized to carry weapons, regardless of the length of the performance or contract value, will register in SPOT-ES by name.

(iv) During operations other than contingency operations, humanitarian

assistance, or peace operations, contractors will use SPOT-ES in situations required by the CCDR and as follows:

(2) To account for:

(i) All U.S. citizen and TCN contractor personnel.

(ii) All private security contractor personnel and all other contractor personnel authorized to carry weapons, where the designated area and place of performance are outside the United States, regardless of the length of performance or contract value.

(3) The contracting officer will account for an estimated total number of LNs employed under the contract, by country or on a monthly basis.

(4) Contract linguists will register in SPOT-ES in the same manner as other contractor personnel and will also be tracked using the Contract Linguist Enterprise-wide Database. For more information, see paragraph (r) of appendix A to this part.

(5) LNs should be registered in SPOT-ES by name to improve data quality and reduce confusion during a transition to accountability requirements during a contingency operation, which will require by-name accountability.

(6) The DoD has designated SPOT-ES as the joint web-based database to assist the CCDRs in maintaining awareness of the nature, extent, and potential risks and capabilities associated with contracted support for contingency operations, humanitarian assistance, and peacekeeping operations, or military exercises designated by the CCDR. To facilitate integration of contractors and other personnel, as directed by the USD(A&S) or the CCDR, and to ensure the accurate forecasting and provision of accountability, visibility, force protection, medical support, personnel recovery, and other related support, the following procedures will help establish, maintain, and validate the accuracy of information in the database.

(i) SPOT-ES will:

(A) Serve as the central repository for deployment status and reporting on the contractor personnel as well as other U.S. Government agency contractor personnel, as applicable. For additional information, see paragraph (s) of appendix A to this part.

(B) Track information for all DoD contracts that are awarded in support of applicable operations outside of the United States, in accordance with the SPOT Business Rules and as directed by the USD(A&S), 48 CFR subpart 225.3, or the CCDR. SPOT-ES will collect and report on:

(1) The total number of contractor personnel working under contracts

entered into as of the end of each calendar quarter.

(2) The total number of contractor personnel performing security functions under contracts entered into with the DoD.

(3) The total number of contractor personnel killed or wounded who were performing under any contracts entered into with the DoD.

(C) Provide personnel accountability via unique identifier (e.g., Electronic Data Interchange Personnel Identifier or Foreign Identification Number) of contractor personnel and other personnel, as directed by the USD(A&S), 48 CFR subpart 225.3, or the CCDR.

(D) Contain, or link to, minimum contract information necessary to:

(1) Establish and maintain accountability of the personnel in paragraph (g) of this section.

(2) Maintain information on specific equipment related to the performance of private security contracts.

(3) Maintain oversight information on the contracted support in applicable operations.

(E) Comply with:

(1) The personnel identity protection program requirements found in paragraphs (t) and (u) of appendix A to this part.

(2) The DoD Information Enterprise architecture. For more information, see paragraph (v) of appendix A to this part.

(3) The interoperability and secure sharing of information requirements found in paragraphs (w) through (y) of appendix A to this part.

(ii) Before registering in SPOT-ES, contracting officers, company administrators, and U.S. Government administrators or authorities must meet minimum training requirements in the SPOT Business Rules.

(iii) The contractor must enter all required data into SPOT-ES before its employees may deploy to or enter a theater of operations, and maintain such data, as directed by the USD(A&S), 48 CFR subpart 225.3, or the CCDR.

(iv) The contracting officer will enter the DoD contract services or capabilities for all contracts that are awarded in support of applicable operations, including theater support, external support, and systems support contracts, into SPOT-ES consistent with 48 CFR 252.225-7040.

(v) In accordance with applicable acquisition policy and regulations and under the terms and conditions of each affected contract, all contractors awarded contracts that support applicable operations must input employee data and maintain accountability, by name, of designated

contractor personnel in SPOT-ES as required by 48 CFR 252.225-7040.

(A) Contractors must maintain current status of the daily location of their employees and, when requested, submit to the COR up-to-date, real-time information reflecting all personnel deployed or to be deployed in support of applicable operations.

(B) Prime contractors must enter up-to-date information regarding their subcontractors at all tiers into SPOT-ES.

(vi) In all cases, users providing classified information in response to the requirements of this part must report and maintain that information on systems approved for the level of classification of the information provided.

(7) The contracting officer or his or her designee will ensure a SPOT-ES-generated LOA has been issued to all CAAF who are approved to deploy, as required by 48 CFR 252.225-7040, and selected non-CAAF (e.g., LN and non-LN employees who are permanent residents in the operational area, or TCNs not routinely residing with the U.S. Armed Forces who perform support functions away from the close proximity of, and do not reside with, the U.S. Armed Forces, and private security contractors), pursuant to 48 CFR subpart 225.3, or as otherwise designated by the CCDR.

(i) The contract will require that all contractor personnel issued an LOA carry the LOA with them at all times.

(ii) Reserved.

(h) *Theater admission requirements.* Special area, country, and theater personnel clearance documents must be current, in accordance with the DoD FCG, and coordinated with affected agencies to ensure that entry requirements do not adversely affect accomplishment of mission requirements.

(1) CAAF employed in support of DoD missions are considered DoD-sponsored personnel for DoD FCG purposes.

(2) Contracting officers must ensure contracts include a requirement for contractor personnel to meet theater personnel clearance requirements and obtain personnel clearances through the Aircraft and Personnel Automated Clearance System before entering a designated theater of operations. For more information, see paragraph (z) of appendix A to this part.

(3) Contracts must require contractor personnel to obtain proper identification credentials, such as passports, visas, and other documents required to enter and exit a designated operational area, and have a required Geneva Conventions identification card,

or other appropriate DoD credential from the deploying center.

(i) *Deployment procedures.* Contracts must contain terms and conditions that detail the need for contractors to follow these credentialing requirements, as required by 48 CFR subpart 225.3, 48 CFR 252.225-7040, and as outlined in the DoD FCG. At a minimum, contracting officers must ensure that contracts address operational area-specific contract requirements and the means by which the DoD will inform contractor personnel of the requirements and procedures applicable to their deployment.

(1) *Deployment center designation.* A formally designated group, joint, or Military Department deployment center will be used to conduct deployment and redeployment processing for CAAF, unless contractor-performed theater admission preparation is authorized or waived by the CCDR or designee pursuant to DoDI 3020.41, "Operational Contract Support (OCS)." If the contract contains clauses that specify another U.S. Government-authorized process that incorporates all the functions of a deployment center, such process may also be used by a contractor to conduct deployment and redeployment processing for CAAF.

(2) *Medical preparation.* (i) In accordance with 32 CFR 158.7, contracts must require that contractors provide medically and physically qualified contractor personnel to perform duties in applicable operations, as outlined in the contract.

(A) Any CAAF deemed unsuitable to deploy during the deployment process due to medical or dental reasons will not be authorized to deploy.

(B) The Secretary of Defense may direct immunizations as mandatory for CAAF performing essential contractor services.

(C) For contracts that employ CAAF who are U.S. citizens, the contract must require that contractors make available the medical and dental records of deploying employees who authorize release for this purpose based on this section, applicable cognizant medical authority guidance, and relevant Military Department policy. These records should include current panoramic x-rays. For more information see paragraph (aa) of appendix A to this part.

(ii) U.S. Government personnel may not involuntarily immunize contractor personnel or require contractor personnel to disclose their medical records involuntarily. Therefore, the contracting officer will provide contractors time to notify and/or hire employees who voluntarily consent to

U.S. Government medical requirements, including to receiving U.S. Government-required immunizations and disclosing their private medical information to the U.S. Government.

(iii) All CAAF will receive medical threat pre-deployment briefings at the deployment center to communicate health risks and countermeasures in the designated operational area. For more information, see paragraph (bb) of appendix A to this part.

(A) In accordance with GCC or JFC plans and orders, contracts must include terms and conditions that fully specify health readiness and force health protection capability, either as a responsibility of the contractor or the DoD Components, to ensure appropriate medical staffing in the operational area.

(B) Health surveillance activities must include plans for CAAF. For more information, see paragraphs (bb) and (cc) of appendix A to this part. Section 158.7 of this rule further addresses deoxyribonucleic acid (DNA) collection and other medical requirements.

(3) *Training.* Joint training policy and guidance for the Military Services, including contractors, is provided. For more information, see paragraph (dd) of appendix A to this part. CCDRs will place standing training requirements on the GCC OCS web pages for reference by contractors. Other training requirements that are specific to an applicable operation will be placed on the GCC OCS web pages shortly after identifying the requirement so that contracting officers can incorporate the training requirement into the appropriate contracts as soon as possible. Training requirements:

(i) Must be included, or incorporated by reference in contracts employing contractor personnel supporting applicable operations.

(ii) Include specific requirements established by the CCDR and training required in accordance with this rule, 32 CFR part 159, and paragraphs (ee) through (hh) of appendix A to this part.

(4) *Deployment center procedures.* Affected contracts must require that all CAAF deploying from outside the operational area process through a designated deployment center or a U.S. Government-authorized, contractor-performed deployment processing facility before deploying to an applicable operation and redeploy in the same manner. Upon receiving the contracted company's certification that employees meet deployability requirements, the contracting officer or representative will digitally sign the LOA, which CAAF will then present to officials at the deployment center. The

deployment process includes, but is not limited to:

- (i) Verifying registration in SPOT-ES.
- (ii) Issuing applicable U.S. Government-furnished equipment.
- (iii) Verifying the completion of medical and dental screening before arrival.

(iv) Administering required theater-specific immunizations and medications not available through healthcare providers in the general public.

(v) Verifying and, when necessary, providing required training, country and cultural awareness briefings, and other training and briefings, as required by the CCDR. Examples of required training include, but are not limited to:

- (A) Law of war, including the 1949 Geneva Conventions.
- (B) Law and policy applicable to detainee operations and intelligence interrogation operations, as appropriate.
- (C) General orders.
- (D) Standards of conduct.
- (E) Force protection.
- (F) Personnel recovery.
- (G) First aid.
- (H) Combatting trafficking in persons.
- (I) OPSEC.
- (J) Anti-terrorism.
- (K) Counterintelligence reporting.
- (L) The use of CBRN protective ensemble.

(M) Deployment health threats briefing.

(5) *Certification.* Contracts supporting applicable operations must include terms and conditions requiring contractors to certify to the authorized U.S. Government representative, before deployment, that each individual has completed all required deployment processing actions.

(6) *Legal.* Contractor personnel are not entitled to military legal assistance in-theater or at the deployment center. Individual contractor personnel must have their personal legal affairs in order (e.g., preparing and completing powers of attorney, wills, trusts, and estate plans) before reporting to deployment centers.

(7) *Waivers.* For required contracted support of 17 days or less in an operational area, the CCDR or designee may waive a portion of the formal procedural requirements pursuant to DoDI 3020.41, "Operational Contract Support (OCS)," which may include the CCDR or designee waiving the requirement in writing for processing through a deployment center. However, the CCDR or designee may not waive the requirements to possess proper identification cards and to establish and maintain accountability for all contractor personnel, or any medical requirement without the prior approval

of the cognizant medical authority or their designee. If a contract authorizes contractor personnel to be armed, the requirements of paragraphs (c)(4) and (k)(2) of this section may not be waived.

(j) *Reception—(1) Designated reception site.* In applicable operations, all CAAF must enter into the operational area through a designated reception site.

(i) Based upon a visual inspection of the LOA, the site will verify that contractor personnel are entered in SPOT-ES and meet theater-specific entry requirements.

(ii) Contractor personnel already in the designated operational area when a contingency is declared must report to the designated reception site as soon as it is operational based on the terms and conditions of the contract.

(iii) When entering a designated reception site for theater entry processing, if any CAAF does not have the proper documentation to perform in an area, he or she will be refused entry into the theater, and the contracting officer will notify the contractor to take the necessary action to resolve the issue. Should the contractor fail to take action, the CAAF individual will be sent back to his or her departure point, or directed to report to the Military Service Component command or Defense Agency responsible for that specific contract for theater entrance processing.

(2) *Contractor integration.* It is critical that CAAF brought into an operational area are properly integrated into the military operation through a formal reception process. At a minimum, they will:

- (i) Meet theater entry requirements and be authorized to enter the theater.
- (ii) Be accounted for in SPOT-ES.
- (iii) Possess any required IPE, including CBRN protective ensemble.
- (iv) Be authorized any contractually required AGS and force protection.

(k) *In-theater management—(1) Conduct and discipline.* Contract terms and conditions must require that CAAF comply with CCDR theater orders, applicable directives, laws, and regulations. Non-CAAF who require base access to perform contractual requirements must follow base force protection and security-related procedures, as applicable.

(i) The contracting officer may appoint a designee (usually a COR) as a liaison between the contracting officer and the contractor and requiring activity. This designee monitors and reports contractor performance and requiring activity concerns to the contracting officer. In emergency situations (e.g., enemy or terrorist actions or natural disaster), the

cognizant military commander may recommend or issue warnings or messages urging contractor personnel to take emergency actions to remove themselves from harm's way or to take other appropriate self-protective measures. During armed conflict, contractor personnel are not exempt from the authority that commanders may exercise to control the movement of persons and vehicles within the immediate vicinity of operations. For more information, see §§ 5.2.2.1, 13.8, and 14.6 of paragraph (e) of appendix A to this part.

(ii) The contractor is responsible for disciplining contractor personnel, as necessary and appropriate. However, in accordance with paragraph (h)(1) of 48 CFR 252.225-7040, the contracting officer may direct the contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment, who threaten force protection measures, or who fail to comply with or violate applicable requirements of the contract. Such action may:

(A) Include contractor personnel whose actual field performance (certification or professional standard) is below the contractual requirement.

(B) Be taken at U.S. Government discretion without prejudice to the contractor's rights under any other provision of the contract. A commander also has the authority to take certain actions affecting contractor personnel, such as the ability to revoke or suspend security access or impose restrictions from access to military installations or specific worksites.

(iii) CAAF, or individuals employed by or accompanying the Military Services outside the United States, are subject to potential prosecutorial action under the criminal jurisdiction of the United States, pursuant to Sections 7, 2441, 2442, or 3261 of Title 18, U.S.C., or other provisions of U.S. law, including the UCMJ.

(A) Commanders possess significant authority to act whenever criminal acts are committed by anyone subject to the MEJA and UCMJ that relates to or affects the commander's responsibilities. This includes situations in which the alleged offender's precise identity or actual affiliation is undetermined. The March 10, 2008, Secretary of Defense Memorandum provides guidance to commanders on the exercise of this UCMJ jurisdiction over DoD contractor personnel serving with or accompanying the U.S. Armed Forces overseas during declared war and in contingency operations.

(B) Contracting officers will ensure that contractors are aware of their

employees' status and liabilities as CAAF and the required training associated with this status.

(C) CCDRs retain authority to respond to an incident, restore safety and order, investigate, apprehend suspected offenders, and otherwise address the immediate needs of the situation.

(iv) The Department of Justice may prosecute misconduct under applicable Federal laws, including MEJA and 18 U.S.C. 2441. Contractor personnel also are normally subject to the domestic criminal law of the local country. When confronted with disciplinary problems involving contractor personnel, commanders should seek the assistance of their legal staff, the contracting officer responsible for the contract, and the contractor's management team.

(v) In the event of an investigation of reported offenses allegedly committed by or against contractor personnel, appropriate investigative authorities will keep the contracting officer informed, to the extent possible without compromising the investigation, if the alleged offense has a potential contract performance implication.

(2) *Force protection and weapons issuance.* CCDRs must include contractor personnel in their force protection planning and communicate the results to contracting activities and contractors via the GCC OCS web page. In general, contractors are responsible for the security of their own personnel. Contractor personnel working within a U.S. military facility or in close proximity to the U.S. Armed Forces may receive incidentally the benefits of measures taken to protect the U.S. Armed Forces. For more information, see paragraph (ee) of appendix A to this part. However, where additional security is needed to achieve force protection, and it is not operationally or cost effective for contractors to do so individually, the commander may determine it is in the interests of the U.S. Government to provide security for contractor personnel. When security is provided through military means, contractor personnel should receive a level of force protection equal to that of DoD civilian employees.

(i) When the CCDR deems military force protection and legitimate civil authority are unavailable or insufficient, he or she may authorize, in writing, contractor personnel to be armed for self-defense purposes only. In authorizing contractor personnel to be armed, the contractor, the armed contractor personnel, and the U.S. military must adhere to:

(A) Applicable U.S., HN, and international law;

(B) Relevant SOFAs and other agreements;

(C) Other arrangements with local authorities; and

(D) The rules for the use of force, and guidance and orders regarding the possession, use, safety, accountability of weapons and ammunition that are issued by the CCDR.

(ii) Depending on the operational situation and the specific circumstances of contractor personnel, the contractor may apply for its personnel to be armed for self-defense purposes on a case-by-case basis. The appropriate Staff Judge Advocate (or their designee) to the CCDR will review all applications to ensure there is a legal basis for approval. In reviewing applications, CCDRs will apply the criteria mandated for arming contractor personnel for private security services consistent with 32 CFR part 159.

(A) In such cases, the contractor will validate to the contracting officer, or designee, that the contractor personnel have received weapons familiarization, qualification, and briefings regarding the rules for the use of force, in accordance with CCDR policies.

(B) Acceptance of weapons by contractor personnel is voluntary. In accordance with paragraph (j) of 48 CFR 252.225–7040, the contract must require contractors to ensure that applicable U.S. law does not prohibit personnel from possessing firearms.

(C) Contracts must require all contractor personnel to comply with applicable CCDR and local commander force protection policies. When armed for personal protection, the contract may only authorize contractor personnel to use force for self-defense and must require contractors to ensure that U.S. law does not prohibit its personnel from possessing firearms, in accordance with paragraph (j) of 48 CFR 252.225–7040. Unless not subject to local laws or HN jurisdiction by virtue of an international agreement or customary international law, the contract must include terms and conditions setting forth that the inappropriate use of force could subject contractor personnel to U.S. and/or local or HN prosecution and civil liability.

(3) *Personnel recovery, missing persons, and casualty reporting.* (i) The DoD personnel recovery program applies to all CAAF regardless of their citizenship. For more information, see paragraph (ii) of appendix A to this part. If a CAAF individual becomes isolated or unaccounted for, the contractor must promptly file a search and rescue incident report to the theater's personnel recovery architecture (e.g., the component personnel recovery

coordination cell or the CCMD joint personnel recovery center).

(ii) Upon recovery following an isolating event, a CAAF returnee must enter the first of the three phases of reintegration. For more information, see paragraph (jj) of appendix A to this part. The contractor must offer the additional phases of reintegration to the returnee to ensure his or her physical and psychological well-being while adjusting to the post-captivity environment.

(iii) The contractor must report all CAAF and non-CAAF casualties. For more information, see paragraph (s) of appendix A to this part.

(l) *Redeployment procedures.* The considerations in this section apply during the redeployment of CAAF. At the end of the performance period of a contract, or in cases of early redeployment, CAAF must complete the redeployment process to adjust AGS requirements and turn in U.S. Government-provided equipment.

(1) *Preparation for redeployment.* CAAF must complete intelligence out-briefs and customs and immigration briefings and inspections in accordance with CCDR policy and applicable HN law. CAAF are subject to customs and immigration processing procedures at all designated stops and their final destination during their redeployment. CAAF returning to the United States are subject to U.S. reentry customs requirements in effect at the time of reentry.

(2) *Transportation out of theater.* The terms and conditions of the contract will state whether the U.S. Government will provide transportation out of theater.

(i) Upon completion of the deployment or other authorized release, the U.S. Government must provide contractor personnel transportation from the theater of operations to the location from which they deployed, in accordance with each individual's LOA and unless otherwise directed. If commercial transportation is not available, it should be stated in the LOA in accordance with paragraph (l) of appendix A to this part. CAAF are also required to depart from the operational area through the designated reception site.

(ii) Before redeployment, the contractor personnel, through his or her contractor, will coordinate exit times and transportation with the continental U.S. replacement center or designated reception site.

(3) *Redeployment center procedures.* In most instances, the deployment center or site that prepared the CAAF for deployment will serve as the return

processing center. As part of CAAF redeployment processing, the designated reception site personnel will screen contractor records, recover U.S. Government-issued identification cards and equipment, and conduct debriefings, as appropriate. The returning CAAF will spend the minimum amount of time possible at the return processing center in order to complete the necessary administrative procedures.

(i) Contractor personnel must return all U.S. Government-issued identification and access badges (e.g., badges, key cards, and other access devices, including CACs).

(ii) Contractor personnel must return any issued clothing and equipment and report any lost, damaged, or destroyed clothing and equipment in accordance with procedures of the issuing facility. Contractor personnel also will receive a post-deployment medical briefing on signs and symptoms of potential diseases (e.g., tuberculosis (TB)). As some countries hosting an intermediate staging base may not permit certain items to enter their territory, certain clothing and equipment, whether issued by the contractor, purchased by the employee, or provided by the DoD, may not be permitted to be removed from the AOR. In this case, CCDR or JFC guidance and contract terms and conditions will provide alternate methods of accounting for U.S. Government-issued equipment and clothing.

(4) *Update to SPOT-ES.* Contracting officers or their designated representatives must verify that contractors have updated SPOT-ES to reflect their employee's change in status within three days of a contractor employee's redeployment, close out the deployment, and collect or revoke the LOA.

(5) *Transportation to home destination.* Transportation of CAAF from the deployment center or site to their home destinations is the employer's responsibility.

§ 158.6 Guidance for contractor medical and dental fitness.

(a) *General.* (1) DoD contracts requiring the deployment of CAAF must include medical and dental fitness requirements as specified in this section. Under the terms and conditions of their contracts, contractors will employ personnel who meet such medical and dental requirements. Replacement of non-medically qualified contractor personnel already deployed to theater will be at the contractor's cost.

(2) The GCC concerned will establish force health protection policies and

programs for the protection of all forces assigned or attached to their command in accordance with force health protection (FHP) standards and applicable medical and dental standards of fitness in order to promote and sustain a healthy and fit force. For more information, see paragraph (kk) of appendix A to this part. When the requiring activity requests exceptions to these standards through the contracting officer, the CCDR concerned will establish a process for reviewing such exceptions and ensuring that a mechanism is in place to track and archive all approved and denied waivers, including the medical condition supporting the basis for the waiver.

(3) The GCC concerned will ensure that processes and procedures are in place to remove contractor personnel in theater who are not medically qualified, once so identified by a healthcare provider. The GCC concerned will ensure development of appropriate procedures and criteria for requiring removal of contractor personnel identified as "no longer medically qualified," and post such language on the GCC OCS web page. Contracting officers will incorporate the language into clauses for all contracts for performance in the AOR.

(4) Unless otherwise stated in the contract terms and conditions, all medical evaluations and treatment are the contractor's responsibility.

(b) Medical and dental evaluations.

(1) All CAAF deploying in support of an applicable operation must be medically, dentally, and psychologically fit for deployment pursuant to paragraph (kk) of appendix A to this part and CCDR guidance. Fitness specifically includes the ability to accomplish the tasks and duties unique to a particular operation and the ability to tolerate the environmental and operational conditions of the deployed location. Under the terms and conditions of their contracts, contractors will employ medically, dentally, and psychologically fit contractor personnel to perform contractual duties.

(2) All CAAF must undergo a medical and dental assessment within 12 months before arrival at the designated deployment center or U.S. Government-authorized contractor-performed deployment processing facility. This assessment, conducted by the contractor's medical health provider, should emphasize diagnosing system disease conditions (e.g., cardiovascular, pulmonary, orthopedic, neurologic, endocrinologic, dermatologic, psychological, visual, auditory, dental) that may preclude the CAAF from

performing the functional requirements of the contract, especially in the austere work environments encountered in some applicable operations.

(3) CAAF will receive a health threat and countermeasures briefing from the applicable Military Service before deployment to the operational area. For more information, see paragraph (bb) of appendix A to this part.

(4) In general, CAAF who have any of the medical conditions listed in paragraph (j) of this section should not be deployed.

(5) Individuals who are deemed "not medically fit" at the deployment center or at any period during the deployment process based upon an individual assessment by a licensed medical provider, or who require extensive preventive dental care (see paragraph (j)(2)(xxv) of this section), are not authorized to deploy.

(6) Non-CAAF shall be medically screened by a U.S. Government designee when required by the requiring activity and the contract, for the class of labor under consideration (e.g., LNs working in a dining facility).

(7) Contracts will require contractors to replace individuals who develop conditions that cause them to become medically unqualified to perform contractual requirements at any time during contract performance.

(8) Contracts must require that CAAF complete a post-deployment health assessment in the Defense Medical Surveillance System at the end of their deployment or within 30 days of redeployment. For more information, see paragraph (bb) of appendix A to this part.

(c) *Glasses and contact lenses.* (1) If contractor personnel require vision correction, they must have two pairs of glasses, and if applicable, eyeglass inserts for a chemical protective mask. The contractor personnel may also provide a written prescription to the supporting military medical component in order to prepare eyeglass inserts for use in a compatible chemical protective mask. If the type of protective mask to be issued is known and time permits, the military medical component should attempt to complete the preparation of eyeglass inserts before deployment.

(2) Wearing contact lenses in a field environment is not recommended and is at the contractor personnel's own risk due to the potential for irreversible eye damage caused by debris, chemical or other hazards present, and the lack of ophthalmologic care in a field environment.

(d) *Medications.* Other than those force health protection prescription products provided by the U.S.

Government to CAAF and selected non-CAAF, contracts must require that contractor personnel deploy with a minimum 90-day supply of any required medications obtained at their own expense. For more information, see paragraph (bb) of appendix A to this part.

(1) Contractor personnel must know that deployed medical units are equipped and staffed to provide emergency care to healthy adults and are unable to provide or replace many medications required for routine treatment of chronic medical conditions, such as high blood pressure, heart conditions, and arthritis.

(2) The contract must require contractor personnel to review both the amount of the medication and its suitability in the foreign area with their personal physician and make any necessary adjustments before deploying. The contract must also hold the contractor personnel responsible for the re-supply of required medications.

(e) *Comfort items.* The contract must require that contractor personnel take spare hearing-aid batteries, sunglasses, insect repellent, sunscreen, and any other supplies related to their individual physical requirements. DoD sources will not provide these items.

(f) *Immunizations.* A list of immunizations, both those required for entry into the designated area of operations and those recommended by medical authorities, will be produced by the cognizant medical authority for each deployment; posted to the GCC OCS web page and DoD FCG; and incorporated in contracts for performance in the designated AOR.

(1) The GCC, upon the recommendation of the cognizant medical authority, will provide contractor personnel who are deploying to the applicable theater of operation guidance and a list of immunizations required to protect against communicable diseases assessed to be a potential hazard to their health. The cognizant medical authority will prepare and maintain this list.

(2) The contract must require that CAAF be immunized appropriately before completing the pre-deployment process.

(3) During pre-deployment processing, the DoD will provide contractor personnel, at no cost to the contractor, any theater-specific immunizations and medications not available to the general public. Contractor personnel must obtain all other immunizations before arrival at the deployment center, documented on the International Certificate of Vaccinations or Prophylaxis as

approved by the World Health Organization or the Department of Health and Human Services Centers for Disease Control and Prevention Form 731. However, the contract must stipulate that CAAF and selected non-CAAF obtain all other necessary immunizations before their arrival at the deployment center. The TB skin test is required for all contractor personnel within three months before they are deployed.

(4) The DoD will provide theater-specific medical supplies and force health protection prescription products to CAAF and selected non-CAAF. Additionally, these personnel will receive deployment medication information sheets for all vaccines or deployment-related medications that are to be dispensed or administered.

(5) Contractors will ensure that individuals with a positive TB skin test be evaluated for targeted diagnosis and treatment of latent TB infection in accordance with the procedures outlined in the World Health Organization Guidelines on the Management of Latent Tuberculosis Infection.

(6) The contract must stipulate that CAAF and selected non-CAAF bring a current copy of the International Certificate of Vaccination or Prophylaxis to the pre-deployment processing center and to the operational area.

(g) *Human Immunodeficiency Virus (HIV) Testing.* HIV testing is not mandatory for contractor personnel unless specified by the GCC CCDR or by host nation requirements. HIV testing, if required, must occur within one year before deployment.

(h) *Armed Forces Repository of Specimen Samples for the Identification of Remains (AFRSSIR).* For identification of remains purposes, contractors whose CAAF members are U.S. citizens will obtain a dental panograph and will forward a specimen sample suitable for DNA analysis to, and ensure it is on file with, the AFRSSIR before or during deployment processing and recorded in SPOT-ES. The DoD Components must ensure that all contracts require CAAF who are U.S. citizens to provide DNA specimen samples for AFRSSIR as a condition of deployment. For more information, see paragraph (II) of appendix A to this part.

(1) All CAAF who are U.S. citizens processing through a deployment center will have a DNA specimen sample collected and forwarded to the AFRSSIR for storage. Contracts must require contractors to verify in SPOT-ES or its successor that AFRSSIR has received the DNA specimen sample or that the

contractor has collected the DNA specimen sample.

(2) If CAAF who are U.S. citizens do not process through a deployment center, or the contractor is authorized to process its own personnel, the contract must require that the contractor collect and forward DNA specimen samples for all contractor personnel who are deployed as CAAF to the AFRSSIR. Regardless of what specimen collection and storage arrangements are made, all contractors deploying CAAF who are U.S. citizens must provide the CAAF's name and Social Security number, location of the DNA specimen sample, facility contact information, and retrieval plan to AFRSSIR. If the AFRSSIR is not used and a CAAF who is a U.S. citizen becomes a casualty, the contractor must be able to retrieve identification media for use by the Armed Forces Medical Examiner (AFME) or other competent authority to conduct a medical-legal investigation of the incident and identification of the victim or victims. These records must be retrievable within 24 hours for forwarding to the AFME when there is a reported incident that would necessitate their use for identifying human remains. The contractor shall have access to the location of its employees' fingerprint, medical, and dental records, including panographs.

(3) AFRSSIR is responsible for implementing special rules and procedures to ensure the protection of privacy interests in regards to the specimen samples and any DNA analysis of those samples. Specimen samples shall only be used for the purposes outlined in paragraph (II) of appendix A to this part.

(i) *Pre-existing medical conditions.* All evaluations of pre-existing medical conditions should occur before contractor personnel deploy. Personnel who have pre-existing medical conditions may deploy if:

(1) The condition is not of such a nature it is likely to have a medically grave outcome or a negative impact on mission execution if it unexpectedly worsens.

(2) The condition is stable and reasonably anticipated by the pre-deployment medical evaluator not to worsen during the deployment under contractor-provided medical care in-theater in light of the physical, physiological, psychological, environmental, and nutritional effects of the duties and location.

(3) Any required ongoing health care or medications must be available or accessible to contractor personnel, independent of the military health system, and not be subject to special

handling, storage, or other requirements (e.g., refrigeration requirements and/or cold chain, electrical power requirements) that cannot be met in the specific theater of operations.

(4) The condition does not and is not anticipated to require duty limitations that would preclude performance of contractual requirements or to require accommodation by the DoD component or requiring activity. When necessary, the cognizant medical authority (or delegated representative) is the appropriate authority to evaluate the suitability of an individual's limitations in theater.

(5) There is no need for routine out-of-theater evacuation for continuing diagnostics or other evaluations.

(j) *Conditions usually precluding medical clearance.* This section is not intended to be comprehensive. A list of all possible diagnoses, including relevant severity levels that should preclude approval by the cognizant medical authority or designee would be too expansive to list in this part. These are minimum requirements. Contractor personnel may have additional medical clearance requirements based on their occupation and local laws. It is the responsibility of the contractor to ensure that its employees' medical clearances comply with any applicable local occupation-specific medical requirements.

(1) In general, individuals with the conditions in paragraph (b) of § 158.7, based on an individual assessment pursuant to paragraph (bb) of appendix A to this part, will not normally be approved for deployment to provide contractual support in applicable operations. The medical evaluator must carefully consider whether climate; altitude; the nature of available food and housing available; the nature of medical, behavioral health, and dental services; or other environmental or operational factors may prove hazardous to the deploying person's health because of a known physical or mental condition.

(2) Medical clearance for deployment of persons with any of the conditions in this section shall be granted by the contracting officer only after consultation with the appropriate cognizant medical authority or a designated representative. The cognizant medical authority makes recommendations and serves as the GCC's advisor on conditions precluding the medical clearance of deploying personnel; however, the geographic CCDR is the final approval or disapproval authority except as provided in paragraph (k)(3) of this section. The cognizant medical authority or designated representative

may determine if adequate treatment facilities and specialist support are available at the duty station for:

(i) Physical or psychological conditions resulting in the inability to wear IPE effectively, if wearing IPE may be reasonably anticipated or required in the deployed location.

(ii) Conditions that prohibit immunizations or use of force health protection prescription products required for the specific deployment. Depending on the applicable threat assessment, required force health protection prescription products, vaccines, and countermeasures may include atropine, epinephrine, and/or 2-pam chloride auto-injectors, certain antimicrobials, antimalarials, and/or pyridostigmine bromide.

(iii) Any chronic medical conditions that require frequent clinical visits, fail to respond to adequate conservative treatment, or necessitate significant limitation of physical activity.

(iv) Any medical conditions that require durable medical equipment or appliances or periodic evaluation or treatment by medical specialists not readily available in theater (e.g., Continuous Positive Airway Pressure (CPAP) machine for sleep apnea).

(v) Any unresolved acute or chronic illness or injuries that would impair duty performance in a deployed environment during the duration of the deployment.

(vi) Active TB or known blood-borne diseases that may be transmitted to others in a deployed environment. (For HIV infections, see paragraph (j)(2)(xvii) of this section.)

(vii) An acute exacerbation of a physical or mental health condition that could affect duty performance.

(viii) Recurrent loss of consciousness for any reason.

(ix) Any medical condition that could result in sudden incapacitation including a history of stroke within the last 24 months, seizure disorders, and diabetes mellitus type I or II, treated with insulin or oral hypoglycemic agents.

(x) Hypertension not controlled with medication or that requires frequent monitoring to achieve control.

(xi) Pregnancy.

(xii) Cancers for which individuals are receiving continuing treatment or that require periodic specialty medical evaluations during the anticipated duration of the deployment.

(xiii) Precancerous lesions that have not been treated or evaluated and that require treatment or evaluation during the anticipated duration of the deployment.

(xiv) Any medical conditions that require surgery or for which surgery has been performed that requires rehabilitation or additional surgery to remove devices.

(xv) Asthma that has a Forced Expiratory Volume-1 (FEV-1) of less than or equal to 50 percent of predicted FEV-1 despite appropriate therapy, that has required hospitalization at least two times in the last 12 months, or that requires daily systemic oral or injectable steroids.

(xvi) Any musculoskeletal conditions that significantly impair performance of duties in a deployed environment.

(xvii) HIV antibody positive with the presence of progressive clinical illness or immunological deficiencies. The contracting officer should consult the cognizant medical authority in all instances of HIV seropositivity before medical clearance for deployment.

(xviii) Hearing loss. The requirement for use of a hearing aid does not necessarily preclude deployment. However, the individual must have sufficient unaided hearing to perform duties safely.

(xix) Loss of vision. Best corrected visual acuity must meet job requirements to perform duties safely.

(xx) Symptomatic coronary artery disease.

(xxi) History of myocardial infarction within one year of deployment.

(xxii) History of coronary artery bypass graft, coronary artery angioplasty, carotid endarterectomy, other arterial stenting, or aneurysm repair within one year of deployment.

(xxiii) Cardiac dysrhythmias or arrhythmias, either symptomatic or requiring medical or electrophysiologic control, such as the presence of an implanted defibrillator and/or pacemaker.

(xxiv) Heart failure.

(xxv) Individuals without a dental exam within the last 12 months or who are likely to require dental treatment or reevaluation for oral conditions that are likely to result in dental emergencies within 12 months.

(xxvi) Psychotic and/or bipolar disorders. For detailed guidance on deployment-limiting psychiatric conditions or psychotropic medications, see paragraph (mm) of appendix A to this part.

(xxvii) Psychiatric disorders under treatment with fewer than three months of demonstrated stability.

(xxviii) Clinical psychiatric disorders with residual symptoms that impair duty performance.

(xxix) Mental health conditions that pose a substantial risk for deterioration

or recurrence of impairing symptoms in the deployed environment.

(xxx) Chronic medical conditions that require ongoing treatment with antipsychotics, lithium, or anticonvulsants.

(k) *Exceptions to medical standards (waivers)*. If a contractor believes an individual CAAF with one of the conditions listed in paragraphs (j)(2)(i) through (xxx) of this section can accomplish his or her tasks and duties and tolerate the environmental and operational conditions of the deployed location, the contractor may request a waiver for that individual through the contracting officer to the CCDR for approval.

(1) It is unlikely that the CCDR will grant waivers for contractor personnel. Thus, the contractor must provide an explanation as to why it has no other qualified employees available who meet the medical standards to fulfill the deployed duties. Contractors will include a summary of a detailed medical evaluation or consultation concerning the medical condition or conditions in the requests for waivers. Since maximization of mission accomplishment and the protection of the health of personnel are the ultimate goals, justification for the waiver will include:

(i) Statement indicating the CAAF individual's experience.

(ii) The position the CAAF individual will occupy and the nature and scope of contractual duties assigned.

(iii) Any known specific hazards of the position.

(iv) Anticipated availability and need for care while deployed.

(v) The benefit expected to accrue from the waiver.

(2) Medical clearance to deploy or continue serving in a deployed environment for persons with any of the conditions in paragraphs (j)(2)(i) through (xxx) of this section must have the concurrence of the cognizant medical authority, or designee, who will recommend approval or disapproval to the GCC. The GCC, or designee, is the final decision authority for approvals and disapprovals.

(3) For CAAF employees working with Special Operations Forces personnel who have conditions in paragraphs (j)(2)(i) through (xxx) of this section, medical clearance may be granted by the contracting officer after consultation with the appropriate Theater Special Operations Command (TSOC) surgeon. The TSOC surgeon, in coordination with the CCMD cognizant medical authority and senior in-theater medical authority, will ascertain the capability and availability of treatment

facilities and specialist support in the general duty area versus the operational criticality of the particular SOF member. The TSOC surgeon will recommend approval or disapproval to the TSOC Commander. The TSOC Commander is the final approval or disapproval authority.

Appendix A to Part 158—Related Policies

The Operational Contract Support Outside the United States Program is supported by the following policies:

(a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512402p.pdf>).

(b) DoD Instruction 1100.22, "Policy and Procedures for Determining Workforce Mix" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110022p.pdf>).

(c) DoD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/100020p.pdf>).

(d) DoD Instruction, "Combating Trafficking in Persons (CTIP)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/220001p.pdf>).

(e) DoD Law of War Manual (June 2015, Updated Dec. 2016) (available at https://ogc.osd.mil/images/law_war_manual_december_16.pdf).

(f) DoD Instruction 1000.01, "Identification (ID) Cards Required by the Geneva Conventions" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100001p.pdf>).

(g) DoD Instruction 1000.13, "Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100013p.pdf>).

(h) DoD Manual 1000.13, "DoD Identification (ID) Cards: ID Card Life-Cycle" Volume 1 (available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/100013_vol1.pdf).

(i) DoD Manual 1000.13, "DoD Identification (ID) Cards: ID Card Life-Cycle", Volume 2 (available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/100013_vol2.pdf).

(j) DoD Directive 1300.22, "Mortuary Affairs Policy" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/130022p.pdf>).

(k) DoD Instruction 1300.18, "Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130018p.pdf>).

(l) DoD Instruction 4515.13, "Air Transportation Eligibility" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/451513p.pdf>).

(m) DoD Instruction 6200.03, "Public Health Emergency Management (PHEM)

within the DoD" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/620003p.pdf>).

(n) DoD Instruction 6000.11, "Patient Movement (PM)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/600011p.pdf>).

(o) DoD 4525.6-M, "Department of Defense Postal Manual" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/452506m.pdf>).

(p) DoD Instruction 1015.10, "Military Morale, Welfare, and Recreation (MWR) Programs" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/101510p.pdf>).

(q) DoD Directive 1330.21, "Armed Services Exchange Regulations" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133021p.pdf>).

(r) DoD Directive 5160.41E, "Defense Language, Regional Expertise, and Culture (LREC) Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/516041Ep.pdf>).

(s) Synchronized Predeployment and Operational Tracker (SPOT) Business Rules (available at <https://www.acq.osd.mil/LOG/PS/spot.html>).

(t) DoD 5400.11-R, "Department of Defense Privacy Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>).

(u) DoD Manual 6025.18, "Implementation of the Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule in DoD Health Care Programs" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/602518m.pdf>).

(v) DoD Directive 8000.01, "Management of the Department of Defense Information Enterprise (DoD IE)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/800001p.pdf>).

(w) DoD Instruction 8320.02, "Sharing Data, Information, and Information Technology (IT) Services in the Department of Defense" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/832002p.pdf>).

(x) DoD Instruction 8330.01, "Interoperability of Information Technology (IT), Including National Security Systems (NSS)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/833001p.pdf>).

(y) DoD Instruction 8500.01, "Cybersecurity" (available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/850001_2014.pdf).

(z) DoD Directive 4500.54E, "DoD Foreign Clearance Program (FCP)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/450054E.pdf>).

(aa) DoD Directive 6485.02E, "DoD Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) Prevention Program (DHAPP) to Support Foreign Militaries" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/648502E.pdf>).

(bb) DoD Instruction 6490.03, "Deployment Health" (available at <https://>

www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649003p.pdf.

(cc) DoD Directive 6490.02E, "Comprehensive Health Surveillance" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/649002Ep.pdf>).

(dd) CJCS Instruction 3500.01H, "Joint Training Policy for the Armed Forces of the United States" (available at https://www.jcs.mil/Portals/36/Documents/Library/Instructions/3500_01.pdf).

(ee) DoD Instruction 2000.12, "DoD Antiterrorism (AT) Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/200012p.pdf>).

(ff) DoD Directive 2310.01, "DoD Detainee Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231001e.pdf>).

(gg) DoD Directive 2311.01, "DoD Law of War Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101e.pdf>).

(hh) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/311509p.pdf>).

(ii) DoDD 3002.01, "Personnel Recovery in the Department of Defense" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/300201p.pdf>).

(jj) DoD Instruction 3002.03, "DoD Personnel Recovery—Reintegration of Recovered Personnel" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300203p.pdf>).

(kk) DoD Directive 6200.04, "Force Health Protection (FHP)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/620004p.pdf>).

(ll) DoD Instruction 5154.30, "Armed Forces Medical Examiner System (AFMES) Operations" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/515430p.pdf>).

(mm) Assistant Secretary of Defense for Health Affairs Memorandum, "Policy Guidance for Deployment-Limiting Psychiatric Conditions and Medications," November 7, 2006 (available at http://www.ha.osd.mil/policies/2006/061107_deployment-limiting_psych_conditions_meds.pdf).

Dated: October 30, 2020.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2020-27694 Filed 1-6-21; 8:45 am]

BILLING CODE 5001-06-P

POSTAL SERVICE

39 CFR Part 111

Extra Services Refund Time Limit

AGENCY: Postal Service™.

ACTION: Proposed rule; revision; additional comment period.

SUMMARY: The Postal Service is revising its pending proposal to amend *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) in subsection 604.9.2 to revise the time limit for extra service refunds.

DATES: Submit comments on or before February 8, 2021.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260-5015. If sending comments by email, include the name and address of the commenter and send to PC.FederalRegister@usps.gov, with a subject line of "Extra Services Refund Time Limit". Faxed comments are not accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202-268-2906.

FOR FURTHER INFORMATION CONTACT:

Sheila Marano at (202) 268-4257, Adaisja Johnson at (202) 268-6724, or Garry Rodriguez at (202) 268-7281.

SUPPLEMENTARY INFORMATION: On May 14, 2020, the Postal Service published a notice of proposed rulemaking (85 FR 28917–28918) to revise the time limit for extra service refunds on all classes of mail except Priority Mail Express®. The Postal Service has elected to issue a second revised proposed rule that also includes revising the timelines for Priority Mail Express® with an extra service.

Currently, DMM Exhibit 604.9.2.1, *Postage and Fees Refunds*, provides that for Priority Mail Express with an extra service a customer must apply for an extra service refund no sooner than 10 days, or no later than 30 days, and for all other classes of mail with an extra service a customer must apply for an extra service refund no sooner than 10 days, or no later than 60 days, from the date the service was purchased.

Certain extra services (e.g., Certified Mail®) have workflow timelines that extend beyond the current 10-day limit to initially file for a refund. As a result,

to meet the required workflow timelines for these extra services, and for consistency in application of the refund processes, the Postal Service is proposing to extend the current Priority Mail Express with an extra service timelines to no sooner than 30 days, or no later than 60 days. For all other classes of mail with an extra service, the 10-day time limit will be extended to a 30-day time limit before a customer can file for a refund.

We believe this proposed revision will provide customers with a more efficient process and a more consistent customer experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

- (1) in subsection (a)(1), by inserting after “senior executive of the agency” the following: “, who has significant program and project management oversight responsibilities,”; and
- (2) in subsection (b)(4) by striking “twice” and inserting “four times”.

SEC. 885. DISCLOSURE OF BENEFICIAL OWNERS IN DATABASE FOR FEDERAL AGENCY CONTRACT AND GRANT OFFICERS.

Section 2313(d) of title 41, United States Code, is amended—

- (1) in paragraph (3), by inserting “, and an identification of any beneficial owner of such corporation,” after “to the corporation”; and

- (2) by adding at the end the following new paragraph:

“(4) DEFINITIONS.—In this subsection:

“(A) BENEFICIAL OWNERSHIP.—The term ‘beneficial ownership’ has the meaning given under section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1505; 10 U.S.C. 2509 note).

“(B) CORPORATION.—The term ‘corporation’ means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.”.

SEC. 886. REPEAL OF PILOT PROGRAM ON PAYMENT OF COSTS FOR DENIED GOVERNMENT ACCOUNTABILITY OFFICE BID PROTESTS.

Section 827 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1467; 10 U.S.C. 2304 note) is repealed.

SEC. 887. AMENDMENTS TO SUBMISSIONS TO CONGRESS RELATING TO CERTAIN FOREIGN MILITARY SALES.

Section 887(b) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 22 U.S.C. 2761 note) is amended—

- (1) by striking “December 31, 2021” each place it appears and inserting “December 31, 2022”; and

- (2) by adding at the end the following new paragraph:

“(3) APPLICABILITY.—The requirements of this subsection apply only to foreign military sales processes within the Department of Defense.”.

SEC. 888. REVISION TO REQUIREMENT TO USE FIRM FIXED-PRICE CONTRACTS FOR FOREIGN MILITARY SALES.

Section 830 of the National Defense Authorization Act for Fiscal Year 2017 (22 U.S.C. 2762 note) is repealed.

SEC. 889. ASSESSMENT AND ENHANCEMENT OF NATIONAL SECURITY INNOVATION BASE.

(a) IN GENERAL.—The Secretary of Defense shall assess the economic forces and structures shaping the capacity of the national security innovation base, and develop policies to address such forces and structures.

(b) ELEMENTS.—The assessment required under subsection (a) shall review the following matters as they pertain to the innovative and manufacturing capacity of the national security innovation base: