## PART 1001—[AMENDED]

1. The authority citation for part 1001 would continue to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.952 would be amended by republishing the introductory text and by adding a new paragraph (v) to read as follows:

### § 1001.952 Exceptions

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(v) *Ambulance restocking.* (1) As used in section 1128B of the Act, ''remuneration'' does not include any gift or transfer of drugs or medical supplies (including linens) by a hospital or other receiving facility to an ambulance provider for the purpose of replenishing comparable drugs or medical supplies (including linens) used by the ambulance provider in connection with the transport of an emergency patient to the hospital or other receiving facility if all of the applicable standards in either paragraph (v)(2) or (v )(3) of this section are satisfied.

(2)(i) Except as otherwise provided in paragraph (v)(2)(ii) of this section, the ambulance provider pays the receiving facility fair market value, based on an arms-length transaction, for the replenished drugs or medical supplies (including linens). A non-profit receiving facility will be deemed to meet this standard if it sells replenished drugs or medical supplies to a non-profit ambulance provider at cost in order to comply with the Non-Profit Institutions Act (15 U.S.C. 13(c)), exception to the Robinson-Patman Act (15 U.S.C. 3(a)–(f)).

(ii) If payment is not made contemporaneously with the replenishing of the drugs or medical supplies (including linens), the receiving facility and the ambulance provider make commercially reasonable payment arrangements in advance.

(3)(i) The receiving facility replenishes drugs and medical supplies (including linens) on an equal basis for all ambulance providers who bring emergency patients to the receiving facility.

(ii) The replenishing arrangement must be implemented with the participation of, and monitored by, an oversight entity (as defined in paragraph (v)(4)(ii) of this section) as part of a comprehensive and coordinated regional emergency medical system appropriate to the size and resources of the service area and must be open and available to all emergency ambulance providers and receiving facilities in the service area.

(iii) The replenishing arrangement must be memorialized in writing. The writing may be in the form of—

(A) A contract signed under the auspices of the oversight entity by all participating ambulance providers and receiving facilities or

(B) A generally applicable plan or protocol promulgated or approved by the oversight entity.

(iv) The receiving facility refrains from billing any Federal health care program or Federal health care program beneficiary for the replenished drugs or medical supplies (including linens) and does not write off the cost of such drugs or medical supplies (including linens) as bad debt.

(v) The ambulance provider refrains from billing any Federal health care program or Federal health care program beneficiary *separately* for the replenished drugs or medical supplies (including linens).

(vi) The receiving facility and the ambulance provider maintain records of the replenished drugs and medical supplies (including linens) and make those records available to the Secretary promptly upon request.

(vii) The receiving facility and the ambulance provider otherwise comply with all Federal, State and local laws regulating emergency medical care and the provision of drugs and medical supplies, including, but not limited to, laws relating to the handling of controlled substances.

(4) For purposes of paragraph (v)(3) of this section—

(i) A ''receiving facility'' is a hospital or other facility that provides emergency medical services; and

(ii) An ''oversight entity'' is a regional emergency medical services council or functionally similar entity, association or organization that—

(A) Is described in section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and exempt from taxation under section 501(a) of that Code;

(B) Includes, or is composed of, representatives of a broad array of participants in a service area's emergency medical system (*e.g.,* hospitals, ambulance providers, emergency room physicians, paramedics, public safety organizations, local educational institutions and community residents);

(C) Is open to all interested parties in the service area on equal terms and conditions; and

(D) Has as its mission the improvement of the emergency medical services delivery system in the relevant service area.

Dated: November 2, 1999.

**June Gibbs Brown,**

*Inspector General.*

Approved: November 18, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–12697 Filed 5–19–00; 8:45 am]

BILLING CODE 4150–04–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 209 and 223

**[DFARS Case 2000–D004]**

## Defense Federal Acquisition Regulation Supplement; Pollution Control and Clean Air and Water

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

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

**SUMMARY:** The Acting Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and relocate policy on the level of approval required to except a contract from certain restrictions of the Clean Air Act or the Clean Water Act. The policy is moved from the Pollution Control and Clean Air and Water subpart to the Debarment, Suspension, and Ineligibility subpart of the DFARS, because the Federal Acquisition Regulation (FAR) subpart on Pollution Control and Clean Air and Water has been removed.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before July 21, 2000, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D004 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D004 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, (703) 602–0289.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On December 27, 1999, Item I of Federal Acquisition Circular 97–15 (64 FR 72415) removed Subpart 23.1, Pollution Control and Clean Air and Water, from the FAR. Subpart 23.1 contained policy pertaining to entities that are ineligible for contract award due to a violation of the Clean Air Act or the Clean Water Act. The FAR text was deemed unnecessary, because contracting officers can use the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure that they do not award contracts to ineligible entities. In accordance with Environmental Protection Agency regulations at 40 CFR 32.215(b), FAR Subpart 23.1 permitted an agency head to except a contract from the prohibition on award to a Clean Air Act or Clean Water Act violator if it was in the paramount interest of the United States to do so. DFARS Subpart 223.1 limited delegation of this exception authority to a level no lower than an official who is appointed by and with the advice of the Senate.

This DFARS rule proposes to—

1. Remove the text from DFARS Subpart 223.1, since FAR Subpart 23.1 no longer exists; and relocate the text to DFARS 209.405(b), since the corresponding text at FAR 9.405(b) addresses matters relating to entities on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;

2. Retain a limitation on delegation of the exception authority, but lower the permitted level of delegation to a level no lower than a general or flag officer or a member of the Senior Executive Service; and

3. Designate the text already located at DFARS 209.405 as 209.405(a), and amend the text to clarify that the provisions of 10 U.S.C. 2393 regarding a ''compelling reason'' determination apply only to the conduct of business with entities that are debarred or suspended.

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

### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule pertains only to the exceptional situations where there is a need to conduct business with entities that are debarred or suspended or, because of a violation of the Clean Air Act or the Clean Water Act, are ineligible for award. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D004.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 209 and 223

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 209 and 223 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 209 and 223 continues to read as follows:

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

## PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.405 is revised to read as follows:

#### 209.405 Effect of listing.

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a debarred or suspended contractor can provide the supplies or services;

(2) Urgency requires contracting with a debarred or suspended contractor;

(3) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department of agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code ''H'' annotation in the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs identifies contractors that are declared ineligible for award of a contract or subcontract because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of 40 CFR 32.215(b), the agency head may grant an exception permitting award to a Code ''H'' ineligible contractor if it is in the paramount interest of the United States.

(A) The agency head may delegate this exception authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exception must provide written notice to the Environmental Protection Agency debarring official.

## PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

### Subpart 223.1 [Removed]

3. Subpart 223.1 is removed.

[FR Doc. 00–12414 Filed 5–19–00; 8:45 am]

**BILLING CODE 5000–04–M**

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 215

**[DFARS Case 2000–D300]**

### Defense Federal Acquisition Regulation Supplement; Profit incentives To Produce Innovative New Technologies

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

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

**SUMMARY:** The Acting Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000. Section 813 requires DoD to review its profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.