

Submission of Federal Rules Under the Congressional Review Act

A 5
209070
109674

President of the Senate

Speaker of the House of Representatives

GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency Department of Defense	2. Subdivision or Office OUSD(AT&L)DPAP(DAR)
3. Rule Title Information Assurance	
4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable) DFARS Case 2002-D020	
5. Major Rule <input type="radio"/> Non-major Rule <input checked="" type="radio"/>	
6. Final Rule <input checked="" type="radio"/> Other <input type="radio"/>	
7. With respect to this rule, did your agency solicit public comments? Yes <input checked="" type="radio"/> No <input type="radio"/> N/A <input type="radio"/>	
8. Priority of Regulation (fill in one) <input checked="" type="radio"/> Economically Significant; or Significant; or Substantive, Nonsignificant <input type="radio"/> Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)	
9. Effective Date (if applicable) June 23, 2004 (estimated)	
10. Concise Summary of Rule (fill in one or both) attached <input checked="" type="radio"/> stated in rule <input type="radio"/>	

Submitted by: *Deidre A. Lee* (signature)

JUN 16 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____

RECEIVED
JUN 21 PM 12:41
SPEAKER'S ROOMS
U.S. HOUSE OF REPS.

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 239 and 252

[DFARS Case 2002-D020]

Defense Federal Acquisition Regulation Supplement;
Information Assurance

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for information assurance in the acquisition of information technology. The rule implements policy issued by the National Security Telecommunications and Information Systems Security Committee.

EFFECTIVE DATE: *[Date of publication in Federal Register]*.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-2022; facsimile (703) 602-0350. Please cite DFARS Case 2002-D020.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1990, the National Security Telecommunications and Information Systems Security Committee (NSTISSC) was established

for the purpose of developing and promulgating national policies applicable to the security of national security telecommunications and information systems. In January 2000, NSTISSC issued Policy No. 11, which addresses the national policy governing the acquisition of information assurance and information assurance-enabled information technology products. Policy No. 11 states that information assurance shall be considered as a requirement for all systems used to enter, process, store, display, or transmit national security information. DoD issued DoD Directive 8500.1, Information Assurance, and DoD Instruction 8500.2, Information Assurance Implementation, to implement Policy No. 11. This final rule makes corresponding changes to DFARS Subpart 239.71 and the clause at DFARS 252.239-7000.

DoD published a proposed rule at 68 FR 28187 on May 23, 2003. One source submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are addressed in the discussion of Comments 4 and 5. In addition, Subpart 239.71 is restructured for clarity by removing the "General" section previously at 239.7101 and relocating its contents to the "Scope" and "Definition" sections in 239.7100 and 239.7101 of the final rule.

1. Comment: The "Scope" section should further specify that the acquisition of information technology includes equipment

(hardware and software), capabilities (building of enterprise architectures), and information technology services. This clarification would help ensure that the appropriate information assurance requirements are included in all information technology acquisition contracts.

DoD Response: The recommended clarification is unnecessary. A comprehensive definition of "information technology" is provided in FAR 2.101.

2. Comment: Under "Policy and responsibilities," the "General" section should also include, as item (a)(7), Public Law 104-191, "Health Insurance Portability and Accountability Act of 1996," which addresses the security and privacy of health data.

DoD Response: Do not agree. The list of policies and statutes in the "General" section is a representative, not a comprehensive, list. The requirements of Public Law 104-191 are addressed in DoD 6025.18-R, DoD Health Information Privacy Regulation.

3. Comment: Under "Policy and responsibilities," paragraph (b) of the "General" section should also specify that the statement of work provided to the contracting officer contain a requirement that offerors provide a list to the contracting officer identifying any foreign nationals that may work on the contract by name, social security number (or other identifying number), and country of origin. In addition, the requiring activity should provide the requirements for disposal or

destruction of information technology storage media.

DoD Response: Do not agree. DoD Directive 8500.1, Information Assurance, and DoD Instruction 8500.2, Information Assurance Implementation, contain references to other DoD publications that outline the numerous security requirements that must be addressed in a statement of work and other contract documents for information technology requirements.

4. Comment: The section entitled "Compromising emanations-TEMPEST or other standard" should be amended to add a requirement for a date after which an accreditation would be considered current for purposes of the proposed contract.

DoD Response: Agree. This change has been included in the final rule.

5. Comment: The clause at 252.239-7000, Protection Against Compromising Emanations, should be amended in paragraph (a) to add a requirement for a date after which a required accreditation would be considered current or valid for the contract.

DoD Response: Agree. This change has been included in the final rule.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5

U.S.C. 601, et seq., because the DFARS changes in this rule reflect existing Government policy pertaining to requirements for information assurance in the acquisition of information technology.

C. Paperwork Reduction Act

The information collection requirements in the clause at DFARS 252.239-7000 have been approved by the Office of Management and Budget, under Clearance Number 0704-0341, for use through October 31, 2004.

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Michele P. Peterson,

Executive Editor,

Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 239 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 239 and 252 continues to read as follows:

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

PART 239--ACQUISITION OF INFORMATION TECHNOLOGY

2. Subpart 239.71 is revised to read as follows:

Subpart 239.71--Security and Privacy for Computer Systems

Sec.

239.7100 Scope of subpart.

239.7101 Definition.

239.7102 Policy and responsibilities.

239.7102-1 General.

239.7102-2 Compromising emanations--TEMPEST or other standard.

239.7103 Contract clause.

239.7100 Scope of subpart.

This subpart includes information assurance and Privacy Act considerations. Information assurance requirements are in addition to provisions concerning protection of privacy of individuals (see FAR Subpart 24.1).

239.7101 Definition.

Information assurance, as used in this subpart, means measures that protect and defend information, that is entered, processed, transmitted, stored, retrieved, displayed, or destroyed, and information systems, by ensuring their availability, integrity, authentication, confidentiality, and non-repudiation. This includes providing for the restoration of information systems by incorporating protection, detection, and reaction capabilities.

239.7102 Policy and responsibilities.

239.7102-1 General.

(a) Agencies shall ensure that information assurance is provided for information technology in accordance with current policies, procedures, and statutes, to include--

- (1) The National Security Act;
- (2) The Clinger-Cohen Act;
- (3) National Security Telecommunications and Information

Systems Security Policy No. 11;

- (4) Federal Information Processing Standards;
- (5) DoD Directive 8500.1, Information Assurance; and
- (6) DoD Instruction 8500.2, Information Assurance

Implementation.

(b) For all acquisitions, the requiring activity is responsible for providing to the contracting officer--

(1) Statements of work, specifications, or statements of objectives that meet information assurance requirements as specified in paragraph (a) of this subsection;

(2) Inspection and acceptance contract requirements; and

(3) A determination as to whether the information technology requires protection against compromising emanations.

239.7102-2 Compromising emanations--TEMPEST or other standard.

For acquisitions requiring information assurance against compromising emanations, the requiring activity is responsible for providing to the contracting officer--

(a) The required protections, i.e., an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority;

(b) The required identification markings to include markings for TEMPEST or other standard, certified equipment (especially if to be reused);

(c) Inspection and acceptance requirements addressing the validation of compliance with TEMPEST or other standards; and

(d) A date through which the accreditation is considered current for purposes of the proposed contract.

239.7103 Contract clause.

Use the clause at 252.239-7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.239-7000 is revised to read as follows:

252.239-7000 Protection Against Compromising Emanations.

As prescribed in 239.7103, use the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (JUN 2004)

(a) The Contractor shall provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standards specified by this contract, including the date through which the required accreditation is current or valid for the contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and

acceptance, conduct additional tests to ensure that information technology delivered under this contract satisfies the information assurance standards specified. The Government may conduct additional tests--

(1) At the installation site or contractor's facility; and

(2) Notwithstanding the existence of valid accreditations of information technology prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the Contractor shall correct or replace accepted information technology found to be deficient within one year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered information technology be made by the Contractor, the one-year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient information technology.

(End of clause)