



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 204, 209, and 252**

**[Docket DARS-2020-0030]**

**RIN 0750-AK89**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision and Clause on Reserve Officer Training Corps and Military Recruiting on Campus (DFARS Case 2020-D002)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a provision and a clause that are no longer necessary.

**DATES:** Effective **[Insert date of publication in the FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DFARS provision 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus-Representation, and DFARS clause 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, are included in all solicitations and contracts with institutions of higher education. The provision

and clause implement 10 U.S.C. 983, which prohibits funds from being provided via a contract to institutions of higher education that prohibit or prevent: (1) the maintenance, establishment, or operation of a Senior Reserve Officer Training Corps (ROTC) unit at the institution, or (2) a student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education; and/or (3) the Secretary of a military department or Secretary of Homeland Security from gaining access to campuses, or students on campuses, for military recruiting purposes, or (4) access by military recruiters, for the purposes of military recruiting, to certain information pertaining to students enrolled at the institution.

The provision advises offerors that, by submitting an offer, they represent that the institution does not have any prohibitive policies or practices subject to the statute. The clause requires contractors, during performance of the contract, to not have any policies or practices subject to the prohibition at 10 U.S.C. 983, and identifies the actions available to the Government as a result of a contractor's misrepresentation or noncompliance with the clause.

10 U.S.C. 983(d)(1) states that the prohibition applies to any funds made available for: DoD; the Department of Homeland Security; the National Nuclear Security Administration of the Department of Energy; the Department of Transportation; the Central Intelligence Agency; and any department or agency for

which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act. As the legislation applies to several Federal agencies, a FAR clause has been implemented to create a single standard for all agencies that are subject to the statute. A final rule (85 FR 67619) issued under FAR case 2018-021 amended the FAR to implement the requirements of 10 U.S.C. 983 for all affected Federal agencies. As such, DFARS provision 252.209-7003 and clause 252.209-7005 are duplicative and no longer necessary, and can be removed from the DFARS.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. Public comment was received on the provision. The respondents advised that the provision only applies to institutions of higher education, yet it appears in the System for Award Management (SAM) as a provision all contractors must complete in order to register as

a vendor in SAM. As a result of this final rule, DFARS provision 252.209-7003 will be removed from SAM.

The DoD Task Force reviewed the requirements of DFARS provision 252.209-7003 and DFARS clause 252.209-7005, and determined that the DFARS coverage would not be necessary, and recommended removal, contingent upon a similar clause being implemented in the FAR that is available for use by all Federal agencies, when applicable.

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

This rule only removes obsolete DFARS provision 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus-Representation, and DFARS clause 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

## **III. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to

the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing an obsolete provision and clause from the DFARS.

#### **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 is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

#### **VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 204, 209, and 252**

Government procurement.

**Jennifer D. Johnson,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 204, 209, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204, 209, and 252 continues to read as follows:

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

#### **PART 204—ADMINISTRATIVE AND INFORMATION MATTERS**

##### **204.1202 [Amended]**

2. Amend section 204.1202 by—
  - a. Removing paragraph (2)(iii); and

- b. Redesignating paragraphs (2)(iv) through (xvi) as paragraphs (2)(iii) through (xv).

**PART 209—CONTRACTOR QUALIFICATIONS**

**209.470 [Removed and Reserved]**

3. Remove and reserve section 209.470.

**209.470-1 through 209.470-4 [Removed]**

4. Remove sections 209.470-1 through 209.470-4.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.204-7007 [Amended]**

5. Amend section 252.204-7007 by—
  - a. Removing the clause date of “(DEC 2019)” and adding “(NOV 2020)” in its place;
  - b. Removing paragraph (d)(1)(ii); and
  - c. Redesignating paragraphs (d)(1)(iii) through (ix) as paragraphs (d)(1)(ii) through (viii).

**252.209-7003 [Removed and Reserved]**

6. Remove and reserve section 252.209-7003.

**252.209-7005 [Removed and Reserved]**

7. Remove and reserve section 252.209-7005.