

Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D041.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, (703) 602-0326.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends DFARS Subpart 217.1 to implement Section 820 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314). Section 820 amends the multiyear contracting authority at 10 U.S.C. 2306b(i) to specify that DoD may obligate funds for procurement of an end item under a multiyear contract only if the item is a complete and usable end item; and that DoD may obligate funds for advance procurement of property only for those long-lead items necessary to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

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

**B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to DoD planning and budget considerations with regard to multiyear contracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D041.

**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.*

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 820 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), which restricts the use of multiyear contracts for supplies to only those for complete and usable end items, and restricts the use of advance procurement to only those long-lead items necessary in order to meet a planned delivery schedule for complete major end items. Section 820 became effective upon enactment on December 2, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 217**

Government procurement.

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

■ Therefore, 48 CFR Part 217 is amended as follows:

■ 1. The authority citation for 48 CFR Part 217 continues to read as follows:

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

**PART 217—MULTIYEAR CONTRACTING**

■ 2. Section 217.172 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b) by adding, before the period, the parenthetical “(10 U.S.C. 2306b(a)(6))”; and

■ c. In paragraph (d)(1), in the parenthetical, by removing “10 U.S.C. 2306b(l)(1)” and adding in its place “10 U.S.C. 2306b(l)(1)(B)(i)(II)”. The revised text reads as follows:

**217.172 Multiyear contracts for supplies.**

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law. For additional policies that apply only to multiyear contracts for weapon systems and other multiyear acquisitions specifically authorized by law, see 217.173.

\* \* \* \* \*

■ 3. Section 217.173 is amended as follows:

■ a. By revising the heading and paragraph (b) introductory text;

■ b. By redesignating paragraph (b)(5) as paragraph (b)(7); and

■ c. By adding new paragraphs (b)(5) and (b)(6). The revised and added text reads as follows:

**217.173 Multiyear contracts for weapon systems and other multiyear acquisitions specifically authorized by law.**

\* \* \* \* \*

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section or for other multiyear acquisitions specifically authorized by law:

\* \* \* \* \*

(5) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(6) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(B))).

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■ 4. Section 217.174 is amended by revising paragraphs (a)(1) and (a)(2) and by adding paragraph (c) to read as follows:

**217.174 Multiyear contracts that employ economic order quantity procurement.**

(a) \* \* \*

(1) A multiyear contract providing for economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(l)(1)(B)(i)(I)); or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(l)(1)(B)(ii); Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts).

\* \* \* \* \*

(c) See 217.173(b)(6) for additional provisions regarding procurement of economic order quantities of long-lead items.

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