

(11) Has violated section 1128B of the Act by unlawfully offering, paying, soliciting or receiving remuneration in return for the referral of business paid for by Medicare, Medicaid or other Federal health care programs.

\* \* \* \* \*

4. Section 1003.103 is amended by revising paragraph (a); and by adding new paragraphs (g) and (h) to read as follows:

**§ 1003.103 Amount of penalty.**

(a) Except as provided in paragraphs (b) and (d) through (h) of this section, the OIG may impose a penalty of not more than \$10,000 for each item or service that is subject to a determination under § 1003.102.

\* \* \* \* \*

(g) The OIG may impose a penalty of not more than \$25,000 against a health plan for failing to report information on an adverse action required to be reported to the Healthcare Integrity and Protection Data Bank in accordance with section 1128E of the Act and § 1003.102(b)(5)(ii).

(h) For each violation of § 1003.102(b)(11), the OIG may impose—

(1) A penalty of not more than \$50,000, and

(2) An assessment of up to three times the total amount of remuneration offered, paid, solicited or received, as specified in § 1003.104(b).

5. Section 1003.104 is revised to read as follows:

**§ 1003.104 Amount of assessment.**

(a) The OIG may impose an assessment, where authorized, in accordance with § 1003.102 (except for § 1003.102(b)(11)), of not more than three times the amount claimed for each item or service which was a basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State because of that claim.

(b) In accordance with § 1003.102(b)(11), the OIG may impose an assessment of not more than three times the total amount of remuneration offered, paid, solicited or received, without regard to whether a portion of such remuneration was offered, paid, solicited or received for a lawful purpose.

6. Section 1003.105 is amended by revising the section heading, paragraph (a)(1) introductory text and paragraph (b)(1) to read as follows:

**§ 1003.105 Exclusion from participation in Medicare, Medicaid and other Federal health care programs.**

(a)(1) Except as set forth in paragraph (b) of this section, in lieu of or in

addition to any penalty or assessment, the OIG may exclude from participation in Medicare, Medicaid and other Federal health care programs the following persons for a period of time determined under § 1003.107—

\* \* \* \* \*

(b)(1)(i) With respect to determinations under § 1003.102(b)(2) or (b)(3), a physician may not be excluded if the OIG determines that he or she is the sole community physician or the sole source of essential specialized services in a community.

(ii) With respect to determinations under § 1003.102(b)(5)(ii), no exclusion shall be imposed.

\* \* \* \* \*

7. Section 1003.106 is amended by redesignating paragraph (a)(1)(vii) as paragraph (a)(1)(ix); by adding new paragraphs (a)(1)(vii) and (a)(1)(viii); and by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(vi), (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) to read as follows:

**§ 1003.106 Determinations regarding the amount of the penalty and assessment.**

(a) \* \* \*

(1) \* \* \*

(ii) The degree of culpability of the contracting provider, or the person submitting the claim or request for payment, or giving the information;

(iii) The history of prior offenses of the contracting provider (or principals of the contracting provider), or the person submitting the claim or request for payment, or giving the information;

\* \* \* \* \*

(vi) The amount of financial interest involved with respect to § 1003.102(b)(10);

(vii) Whether the contracting provider actually knew of the exclusion when employing or otherwise contracting with an excluded individual or entity in accordance with § 1003.102(a)(2);

(viii) The harm to patients or any Federal or State health care program which resulted or could have resulted from the provision of care by a person or entity with which the contracting provider is expressly prohibited from contracting under section 1128A(a)(6) of the Act; and

(ix) \* \* \*

(2) \* \* \*

(i) The nature and circumstances of the failure to properly report information, or the improper disclosure of information, as required;

(ii) The degree of culpability of the person in failing to provide timely and complete data or in improperly disclosing, using or permitting access to information, as appropriate;

(iii) The materiality, or significance of omission, of the information to be

reported, or the materiality of the improper disclosure of, or use of, or access to information, as appropriate;

\* \* \* \* \*

8. Section 1003.109 is amended by revising paragraph (a) introductory text and paragraph (a)(3) to read as follows:

**§ 1003.109 Notice of proposed determination.**

(a) If the Inspector General proposes a penalty and, when applicable, an assessment, or proposes to exclude a respondent from participation in Medicare, Medicaid and any other Federal health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

\* \* \* \* \*

(3) The reason why such claims, requests for payments or incidents subject the respondent to a penalty, assessment and exclusion;

\* \* \* \* \*

9. Section 1003.114 is amended by revising paragraph (a) to read as follows:

**§ 1003.114 Collateral estoppel.**

(a) Where a final determination pertaining to the respondent's liability under § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

\* \* \* \* \*

Dated: February 4, 1999.

**June Gibbs Brown,**  
*Inspector General.*

Approved: April 8, 1999.

**Donna E. Shalala,**  
*Secretary.*

[FR Doc. 99-18515 Filed 7-21-99; 8:45 am]  
BILLING CODE 4150-04-P

**DEPARTMENT OF DEFENSE**

**48 CFR Part 201**

[DFARS Case 98-D024]

**Defense Federal Acquisition Regulation Supplement; Electronic Publication of DFARS**

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

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal

Acquisition Regulation Supplement (DFARS) to update guidance addressing the issuance and maintenance of the DFARS. The Director of Defense Procurement now publishes the DFARS, and changes thereto, in electronic format.

**EFFECTIVE DATE:** July 22, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Michael Pelkey or Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 98-D024.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends DFARS Part 201 to reflect the current procedures for publication of the DFARS. The DFARS is now available electronically via the World Wide Web at

<http://www.acq.osd.mil/dp/dars/dfars.html>

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

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98-D024.

**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 Part 201**

Government procurement.

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

Therefore, 48 CFR Part 201 is amended as follows:

1. The authority citation for 48 CFR Part 201 continues to read as follows:

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

**PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**201.103 and 201.104 [Redesignated as sections 201.104 and 201.105]**

2. Sections 201.103 and 201.104 are redesignated as sections 201.104 and 201.105, respectively.

**201.104-3 [Removed]**

3. Section 201.104-3 is removed.  
4. Section 201.105-3 is added to read as follows:

**201.105-3 Copies**

The DFARS is available electronically via the World Wide Web at <http://www.acq.osd.mil/dp/dars/dfars.html>.

5. Section 201.304 is amended by revising paragraph (6) to read as follows:

**201.304 Agency control and compliance procedures.**

\* \* \* \* \*

(6) The Director of Defense Procurement publishes changes to the DFARS in the **Federal Register** and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

[FR Doc. 99-18587 Filed 7-21-99; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF DEFENSE**

**48 CFR Part 237**

[DFARS Case 98-D312]

**Defense Federal Acquisition Regulation Supplement; Improved Accounting for Defense Contract Services**

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

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of "advisory and assistance services." The new definition conforms to the definition in Section 911 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999.

**EFFECTIVE DATE:** July 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703)

602-0350. Please cite DFARS Case 98-D312.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 911 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) added provisions at 10 U.S.C. 2212 pertaining to DoD reporting of financial obligations for contract services. This final rule amends DFARS Subpart 237.2 to reflect the definition of the reporting categories for advisory and assistance services included in 10 U.S.C. 2212.

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

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98-D312.

**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 Part 237**

Government procurement.

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

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

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

**PART 237—SERVICE CONTRACTING**

**§ 237.201 Definitions.**

"Advisory and assistance services" means, instead of the definition at FAR 37.201, services in the following three major categories when provided by nongovernmental sources (10 U.S.C. 2212):

(1) *Management and professional support services.* This category consists of services that—

(i) Provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems;