

Department of Defense  
Defense Federal Acquisition Regulations Supplement: Assessing Contractor Implementation of  
Cybersecurity Requirements  
**DFARS Case 2019-D041**  
Interim Rule Published in the Federal Register on September 29, 2020

**Comments of the National Rural Electric Cooperative Association  
November 30, 2020**

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape.

Electric cooperatives operate at cost and without a profit incentive. NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. The G&Ts generate and transmit power to distribution cooperatives that provide it to the end of line co-op consumer-members. Collectively, cooperative G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives in the nation. The remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

Over one hundred NRECA members serve over one hundred DoD facilities in thirty-nine states. Electric cooperatives own, operate, and maintain the electric distribution grid at 33 military installations through utility privatization (UP) contracts under 10 U.S. Code § 2688.

NRECA appreciates the opportunity to provide comments on the DoD September 29, 2020, interim rule that amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a DoD Assessment Methodology and Cybersecurity Maturity Model Certification (CMMC) framework in order to assess contractor implementation of cybersecurity requirements and enhance the protection of unclassified information with the DoD supply chain. NRECA's comments are provided below.

**Controlled Unclassified Information (CUI) Details and Clarification**

An issue that is and continues to be a critical challenge is the lack of clarity regarding what constitutes CUI. While there is a very short definition of CUI in DoD regulations, there is little, if any, useful clarity or guidance to help DoD contractors/subcontractors determine what information they are or will be required to protect under NIST SP 800-171 or the CMMC. Additionally, the little amount of information on CUI that exists is not in any one central location that is convenient to access or clearly written and easy to understand. Without CUI clarity or guidance, DoD contractors/subcontractors will not be able to properly determine whether they are required to protect certain information, and it will also be nearly impossible to determine the potential cost impacts and staffing requirements. NRECA requests that DoD provide significantly more information and guidance to assist contractors/subcontractors in identifying CUI. NRECA and its member electric cooperatives that serve DoD facilities are prepared to work with DoD in their efforts to develop this critical information and guidance. With this interim rule

becoming effective on November 30, 2020, CUI clarity and guidance is more critical than ever in order to ensure contractors/subcontractors can fully understand their regulatory requirements.

#### Protection of Electric Cooperative Information

NRECA is concerned with the lack of information and certainty regarding how DoD, auditors and other parties, in implementation of the interim and future final rule, will protect the confidentiality of contractor/subcontractor information that resides on laptops, computers, other electronic devices and DoD systems. Some of this information includes NIST SP 800-171 and CMMC assessment results, specific cybersecurity technologies/strategies/plans, IT/OT system and electric cooperative proprietary information. We are also concerned with whether DoD plans to share this information with other federal government agencies. NRECA requests that DoD provide specific provisions in a final rule that clearly identifies how DoD, auditors and other will be required to protect contractor/subcontractor information. Without this, contractors/subcontractors may be hesitant about providing information to DoD and others.

#### Concerns with NIST SP 800-171 and Cybersecurity Maturity Model Certification (CMMC) framework Compliance

NRECA has significant concerns with provisions of NIST SP 800-171 and the CMMC framework, and the potential difficulties associated with compliance with those provisions. As explained above, without the requested CUI clarity and guidance, cost and compliance strategies will be difficult to determine and develop the appropriate implementation plans. Some provisions of NIST SP 800-171 and the CMMC framework will likely present hardships for some electric cooperatives due to the compliance costs:

- Data Loss Prevention (DLP) solutions may be necessary to control the flow of CUI and this could result in extreme cost impacts with potentially limited benefits.
- Multi-Factor Authentication (MFA) for all system users due to electric cooperative/DoD data comingling and other reasons would require significant investment in systems and staff. In some cases, the best solution could be to move CUI to a separate server which is a costly investment, especially for smaller electric cooperatives.
- Cryptography requirements are not clearly defined and could prove to be unfeasible and costly to employ.
- In some cases, it has been suggested by DoD that mapping of its facilities could be considered as CUI which could again require a separate server with significant and potentially unfeasible cost impacts on electric cooperatives.
- New regulatory requirements for additional limitations on physical access to data could also be costly with limited new benefits.

With the new requirements under the interim rule, DoD must provide in a final rule (or another quickly issued interim rule) the ability for contractors/subcontractors to fully recover associated new costs from DoD through existing or revised contracts. Without the ability to fully recover the costs for new regulatory requirements, NRECA will have to consider the remedies it has available to ensure electric cooperatives have the ability to fully recover these new compliance costs. This is critically important for electric cooperatives, which are private not-for-profit organizations that are owned by their consumer-members, without separate shareholders that can absorb additional costs. It is unreasonable to expect an electric cooperative's consumer-members to absorb the costs of new regulatory requirements from DoD.

Another challenging issue for electric cooperatives is the difficulty of attracting highly trained and skilled cybersecurity candidates to the rural parts of the country where most electric cooperatives provide

electric service. If new regulatory requirements necessitate the hiring of such candidates, the electric cooperative must be able to fully recover the costs from DoD related to new staff.

#### Cost Impacts and Regulatory Flexibility Act Analysis

As stated above in several instances, electric cooperatives must have the ability to recover costs from DoD for any new regulatory requirements. New regulatory obligations that do not include the ability to fully recover associated costs would require NRECA to consider the remedies it has available to ensure electric cooperatives can fully recover these new compliance costs.

In the interim rule DoD provided an initial Regulatory Flexibility Act (RFA) analysis because DoD expects the interim rule to have significant economic impacts on a substantial number of small entities. The vast majority of electric cooperatives meet the definition of a small entity as stipulated in the RFA. Therefore, most, if not all, electric cooperatives that serve DoD facilities will experience significant economic impacts related to the regulatory requirements of the interim rule. While we appreciate DoD's efforts to provide potential cost impacts on small entities, it must be understood that the initial DoD cost analysis is a preliminary estimate and does not take into consideration the many specific issues and impacts at each electric cooperative in their efforts to comply with the interim rule. Understanding that and also considering that electric cooperatives do not have clarity on what will be required of them under NIST SP 800-171 (high, medium or low levels) and the CMMC framework (levels 1 through 5), DoD must provide a revised RFA analysis with any new interim or final rules.

The RFA analysis cost estimates are extremely high for most electric cooperatives and only highlights the need for DoD to clearly provide for full cost recovery for new regulatory requirements in the interim and future final rules. DoD must provide for full cost recovery under new, renegotiated and existing contracts.

#### Implementation of Interim and Final Rules

Due to the significant electric cooperative cost impacts and system improvements (and associated budget cycles) related to NIST SP 800-171 and CMMC framework compliance, NRECA requests the issuance of a final (or another quickly issued interim rule) rule that provides for the following changes in the related implementation plans:

- Delay the required compliance with NIST SP 800-171 to 2023 to provide DoD contractors/subcontractors with additional time to fully understand and seek guidance on related requirements.
- Delay the option to require compliance with the CMMC framework to 2025 and delay the required compliance with the CMMC framework to 2030.

Submitted on November 30, 2020, by:  
Barry Lawson  
Senior Director, Regulatory Affairs  
National Rural Electric Cooperative Association  
4301 Wilson Blvd  
11<sup>th</sup> Floor  
Arlington, VA 22203  
703-907-5781  
[Barry.lawson@nreca.coop](mailto:Barry.lawson@nreca.coop)