

# List of Section 809 Panel Recommendations

*Status as of April 14, 2020*

TALLY OF RECOMMENDATIONS IMPLEMENTED: 24 recommendations implemented in part or in full (38 actions total, including subrecommendations).

## INTERIM REPORT – MAY 2017

#	Recommendation	Page	Status
IR-1	Affirm agency mission as the primary goal of DoD acquisition (“Mission First”).	2	Sec. 801 of FY 2018 NDAA directed DFARS be revised to include certain statements of purpose. DFARS Case 2018-D005 finalized 5/4/2018
IR-2	Increase contract time for fuel storage from 20 years to 30 years.	5	Enacted as Sec. 881 of the FY 2018 NDAA in the form recommended by the Panel. Statutory change only; operational upon enactment.
IR-3	Eliminate the requirement for contractors to use recycled paper.	10	
IR-4	Eliminate FAR section on texting while driving. (FAR Clause 52.223-18)	17	
IR-5	Eliminate the requirement to accept and dispense dollar coins at government business operations.	22	Enacted as Sec. 885 of FY 2018 NDAA and FAR Case 2018-009.

## VOLUME 1 – JANUARY 2018

#	Recommendations	Page	Status
1	Revise definitions related to commercial buying to simplify their application and eliminate inconsistency.	18	Enacted in part in FY 2019 NDAA Section 836; DFARS Case 2018-D066 (in process) and FAR Case 2018-018 (effective 1/1/2020).
2	Minimize government-unique terms applicable to commercial buying.	32	Enacted in part in FY 2019 NDAA Section 837, 839; DFARS Case 2018-D066 and FAR Cases 2018-019 and 2018-013 in process.
3	Align and clarify FAR commercial termination language.	44	
4	Revise DFARS sections related to rights in technical data policy for	46	

	commercial products.		
5	Align DCAA's mission statement to focus on its primary customer, the contracting officer.	64	
6	Revise the elements of DCAA's annual report to Congress to incorporate multiple key metrics.	67	
7	Provide flexibility to contracting officers and auditors to use audit and advisory services when appropriate.	70	Enacted in part in FY2018 NDAA Section 803.
7a	Prior to requesting field pricing/audit assistance, contracting officers should consider other available internal resources and tailor their request for assistance to the maximum extent possible.	71	
7b	Define the term audit.	72	
7c	DCAA should use the full range of audit and nonaudit services available.	72	
7d	Direct a review of the roles of DCAA and DCMA to ensure appropriate alignment and eliminate redundancies.	74	FY 2019 NDAA Section 925; Report by March 2020 to Defense Committees.
8	Establish statutory time limits for defense oversight activities.	76	
9	Permit DCAA to use IPAs to manage resources to meet time limits.	80	
10	Replace system criteria from DFARS 252.242-7006, Accounting System Administration, with an internal control audit to assess the adequacy of contractors' accounting systems.	82	
11	Develop a Professional Practice Guide for DoD's oversight of contractor costs and business systems.	87	
12	Require DCAA to obtain peer review from a qualified external organization.	91	
13	Increase coverage of the effectiveness of contractor internal control audits by leveraging IPAs.	93	
14	Incentivize contractor compliance and manage risk efficiently through robust risk assessment.	95	
15	Clarify and streamline the definition of and requirements for an adequate incurred cost proposal to refocus the purpose of DoD's oversight.	100	
16	Combine authority for requirements, resources, and acquisition in a single, empowered entity to govern DBS portfolios separate from the existing acquisition chain of command.	111	
17	Eliminate separate requirement for annual IRB certification of DBS investments.	130	

18	Fund DBSs in a way that allows for commonly accepted software development approaches.	137	
19	Eliminate the Earned Value Management mandate for software programs using Agile methods.	151	
20	Clarify the definitions of personal and nonpersonal services and incorporate in the DFARS a description of supervisory responsibilities for service contracts.	159	FY 2019 NDAA Section 820; report in 6 months to defense committees by SECDEF.
21	Refocus DoD's small business policies and programs to prioritize mission and advance warfighting capabilities and capacities.	169	Partially addressed in Section 879 of FY 2020 NDAA, "Alignment of the Department of Defense Small Business Innovation Research Program and Small Business Technology Transfer Program with the National Defense Science and Technology Strategy"
21a	Establish the infrastructure necessary to create and execute a DoD small business strategy, ensuring alignment of DoD's small business programs with the agency's critical needs.	192	Enacted in part in FY 2019 NDAA Section 851, 858, 859; DoD SB strategy until 10 U.S.C. § 2283 (added by Section 851) due in February of 2019.
21b	Build on the successes of the SBIR/STTR and RIF programs.	193	Partially addressed in Section 878 of FY 2020 NDAA, which increases SBIR funding for DOD to 4% (not the 7% the panel requested) and increases Rapid Innovation funding awards from \$3m to \$6m (panel recommended eliminating the \$3m cap).
21c	Enable innovation in the acquisition system and among industry partners.	194	
22	Eliminate, or sunset within 5 years, the statutory requirement for certain acquisition-related offices and Secretary of Defense designated officials to increase flexibility and/or reduce redundancy.	199	FY 2019 NDAA Section 811; amendment or repeal of sections of law authorizing various offices – see sub-recommendations below. Requires DoD plan 30 days prior to reorganizing to account for the repeals.
22a	Repeal the statutory requirement for Department of Defense Test Resource Management Center, 10 U.S.C. § 196.	199	
22b	Repeal the statutory requirement for Office of Corrosion Policy and Oversight, 10 U.S.C. § 2228.	200	Addressed in FY 2019 NDAA Section 811 (amended, not repealed).
22c	Repeal the statutory requirement for Director for Performance Assessment and Root Cause Analysis (PARCA), 10 U.S.C. § 2438.	201	
22d	Repeal the statutory requirement for Office of Technology Transition, 10	203	Addressed in FY 2019 NDAA Section 811.

	U.S.C. § 2515.		
22e	Repeal the statutory requirement for Office for Foreign Defense Critical Technology Monitoring and Assessment, 10 U.S.C. § 2517.	204	Addressed in FY 2019 NDAA Section 811.
22f	Repeal the statutory requirement at 10 U.S.C. § 204 for a Small Business Ombudsman within each defense audit agency.	206	
22g	Repeal the statutory requirement for Secretary of Defense to designate a competition advocate for the Defense Logistics Agency, 10 U.S.C. § 2318.	207	Partially addressed in FY 2019 NDAA Section 811.
22h	Repeal the statutory requirement for the Hypersonics Development section of Joint Technology Office on Hypersonics, Section 218 of the FY 2007 NDAA (Pub. L. No. 109–364, 120 Stat. 2126; 10 U.S.C. § 2358 note).	208	
22i	Repeal the statutory requirement for Improvement in Defense Research and Procurement Liaison with Israel, Section 1006 of the FY 1989 NDAA (Pub. L. No. 100-456; 10 U.S.C. § 133 note).	210	Addressed in FY 2019 NDAA Section 811.
22j	Repeal the statutory requirement for Coordination of Human Systems Integration Activities Related to Acquisition Programs, Section 231 of the FY 2008 NDAA (Pub. L. No. 110–181, 10 U.S.C. § 1701 note).	211	Addressed in FY 2019 NDAA Section 811.
22k	Repeal the statutory requirement for Focus on Urgent Operational Needs and Rapid Acquisition, Section 902 of the FY 2013 NDAA (Pub. L. No. 112–239; 10 U.S.C. § 2302 note).	213	Addressed in FY 2019 NDAA Section 811.
22l	Repeal the statutory requirement for Senior Official for Dual-Use Science and Technology Projects, Section 203(c) of the FY 1998 NDAA (Pub. L. No. 105–85; 10 U.S.C. § 2511 note).	215	Addressed in FY 2019 NDAA Section 811.
22m	Repeal the statutory requirement for Executive Agent for Printed Circuit Boards, Section 256 of FY 2009 NDAA (Pub. L. No. 110–417; 10 U.S.C. § 2501 note).	216	
22n	Sunset the statutory requirement for Joint Directed Energy Transition Office (JDETO), 10 U.S.C. § 219 (10 U.S.C. § 2431 note) in FY 2023.	218	
23	Establish a permanent, automatic 5-year sunset provision for DoD congressional reporting requirements.	227	
24	Repeal, preserve, or maintain various DoD congressional reporting requirements.	229	FY 2019 NDAA Section 813 – see sub-recommendations below; no corresponding regulatory case needed.
24a	Repeal the statutory requirement for the Defense Test Resource Management Center biennial strategic and budget reports, 10 U.S.C. §	234	

	196(d) and (e).		
24b	Repeal the statutory requirement for the Ballistic Missile Defense Programs annual budget justification reports, 10 U.S.C. § 223a(a).	235	
24c	Repeal the statutory requirement for the Programs for Combating Terrorism: Annual budget overview report, 10 U.S.C. § 229.	237	
24d	Repeal the statutory requirement for the Annual Long-Term Plan for the Procurement of Aircraft for the Navy and the Air annual strategic plan, 10 U.S.C. § 231a.	238	Enacted in part in FY 2019 NDAA Section 813.
24e	Repeal the statutory requirement for the Cyber Mission Forces annual budget overview report, 10 U.S.C. § 238(a).	240	
24f	Repeal the statutory requirement for the Corrosion Control and Prevention annual budget and policy report, 10 U.S.C. § 2228(e).	241	
24g	Repeal the statutory requirement for the Major Satellite Acquisition Programs annual integration report, 10 U.S.C. § 2275.	243	
24h	Repeal the statutory requirement for the Commercial Space Activities annual Cooperation with DoD report, 10 U.S.C. § 2276(e).	244	Addressed in FY 2019 NDAA Section 813.
24i	Repeal the statutory requirement for the Depot-Level Maintenance overview report, 10 U.S.C. § 2466(d).	246	
24j	Repeal the statutory requirement for the Covered Naval Vessels Repair Work in Foreign Shipyards annual report, 10 U.S.C. § 7310(c).	247	
24k	Repeal the statutory requirement for the Reserve Component Equipment annual procurement report, 10 U.S.C. § 10543(a).	249	
24l	Repeal the statutory requirement for the Reserve Components annual procurement threshold report, 10 U.S.C. § 10543(c).	250	
24m	Repeal the statutory requirement for the Missile Defense Agency annual overview report, FY 2002 NDAA, 232(h)(3).	252	
24n	Repeal the statutory requirement for the Ford-Class Aircraft Carrier annual cost estimate report, FY 2007 NDAA, 122(d)(1).	253	
24o	Repeal the statutory requirement for the Carriage by Vessel annual Repair Work in Foreign Shipyards report, FY 2007 NDAA, 1017(e).	254	
24p	Repeal the statutory requirement for the Bandwidth Capacity annual overview report, FY 2009 NDAA, 1047(d)(2).	255	
24q	Repeal the statutory requirement for the Afghanistan Infrastructure Fund annual overview report, FY 2011 NDAA, 1217(i).	257	
24r	Repeal the statutory requirement for the MDAP Testing and Evaluation annual justification of progress report, FY 2013 NDAA, 904(h)(1) and (2).	258	

24s	Repeal the statutory requirement for the Ticonderoga-Class Cruisers and Dock Landing Ships annual modernization report, FY 2015 NDAA, 1026(d).	260	Addressed in FY 2019 NDAA Section 813.
24t	Repeal the statutory requirement for the Ballistic Missile Defense Systems annual preproduction assessment reports, FY 2015 NDAA, 1662(c)(2) and (d)(2).	261	
24u	Preserve the statutory requirement for the Director of Operational Test and Evaluation annual overview report, 10 U.S.C. § 139(h).	264	
24v	Preserve the statutory requirement for Naval Vessel Construction annual strategic plan report, 10 U.S.C. § 231.	265	
24w	Preserve the statutory requirement for the Director of Operational Test and Evaluation annual program report, 10 U.S.C. § 2399(g).	267	
24x	Terminate in 2021 the statutory requirement for the Ballistic Missile Defense Programs annual acquisition baselines report, 10 U.S.C. § 225(c).	268	
24y	Terminate in 2021 the statutory requirement for Depot-Level Maintenance biennial capability requirements report, 10 U.S.C. § 2464(d).	269	
24z	Terminate in 2021 the statutory requirement for the National Technology and Industrial Base annual policy overview report, 10 U.S.C. § 2504.	271	Addressed in FY 2019 NDAA Section 812(b)(35).
24aa	Terminate in 2021 the statutory requirement for the Distribution of Chemical and Biological Agents to Non-Federal Entities annual overview report, FY 2008 NDAA, 1034(d).	272	
24ab	Terminate in 2021 the statutory requirement for the Research and Development in Defense Laboratories annual funding report, FY 2009 NDAA, 219(c).	274	

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#	Recommendations	Page	Status
25	Streamline and adapt hiring authorities to support the acquisition workforce.	64	Partially addressed by Section 1109 of FY 2020 NDAA
26	Convert the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) from an indefinite demonstration project to a permanent personnel system.	78	
27	Improve resourcing, allocation, and management of the Defense Acquisition Workforce Development Fund (DAWDF).	87	Addressed by FY 2020 NDAA section 1010, which changes the name to Defense Acquisition Workforce Development Account
28	Simplify the selection of sources for commercial products and services.	102	
29	Revise 41 U.S.C. §§ 1501-1506 to designate the Cost Accounting Standards Board as an independent federal organization within the executive branch.	114	Partially addressed by Section 810 of FY 2020 NDAA, which repeals the Defense Cost Accounting Standards Board
30	Reshape CAS program requirements to function better in a changed acquisition environment.	122	CAS Board agenda considers application of CAS to indefinite delivery vehicles (IDVs) and hybrid contracts on 3/19/2020. <a href="https://www.federalregister.gov/d/2020-05687/p-9">https://www.federalregister.gov/d/2020-05687/p-9</a>
31	Eliminate the statutory and regulatory distinction between personal services contracts (PSC) and nonpersonal services (NPS) contracts.	148	
32	Exempt DoD from paying the Federal Retail Excise Tax.	162	
33	Update the Assignment of Claims processes under FAR Part 32.805.	168	
34	Repeal certain Title 10 sections and note sections, create a new Part V under Subtitle A of Title 10, and redesignate sections in Subtitles B–D to make room for Part V to support a more logical organization and greater ease of use.	172	FY 2019 NDAA Sections 801, 806,807, 808, 809 set forth the “china cabinet” structures; Section 812; DFARS Case 2018-D059.

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#	Recommendations	Page	Status
35	Replace commercial buying and existing simplified acquisition thresholds with readily available and readily available with customization for DoD.	17	
36	Transition from a program-centric execution model to a portfolio execution model.	53	

37	Implement a defensewide capability portfolio framework that provides an enterprise view of existing and planned capability, to ensure delivery of integrated and innovative solutions to meet strategic objectives.	64	
38	Implement best practices for portfolio management.	76	
39	Leverage a portfolio structure for requirements.	87	
40	Professionalize the requirements management workforce.	98	
41	Establish a sustainment program baseline, implement key enablers of sustainment, elevate sustainment to equal standing with development and procurement, and improve the defense materiel enterprise focus on weapon system readiness.	102	
42	Reduce budgetary uncertainty, increase funding flexibility, and enhance the ability to effectively execute sustainment plans and address emergent sustainment requirements.	121	
43	Revise acquisition regulations to enable more flexible and effective procurement of consumption-based solutions.	136	Partially addressed by Directive Report Language in FY 2020 NDAA, which requires a feasibility study on consumption-based solutions.
44	Exempt DoD from Clinger–Cohen Act Provisions in Title 40.	149	
45	Create a pilot program for contracting directly with information technology consultants through an online talent marketplace.	162	
46	Empower the acquisition community by delegating below threshold reprogramming decision authority to portfolio acquisition executives.	177	
47	Restore reprogramming dollar thresholds to match their previous levels relative to inflation and the DoD budget.	186	
48	Increase to 50 percent the lesser of 20 percent restriction that creates artificially low reprogramming thresholds for smaller programs.	192	
49	Provide increased flexibility to the time periods within which contract obligations are permitted to occur.	195	
50	Enact regular appropriations bills on time.	230	
51	Mitigate the negative effect of continuing resolutions by allowing congressional regular appropriations to remain available for a standardized duration from date of enactment.	232	
52	Permit the initiation of all new starts, provided Congress has appropriated sufficient funding.	236	
53	Permit the initiation of all production rate increases, provided Congress has appropriated sufficient funding.	239	



54	Permit the initiation of multiyear procurements under a CR.	241	
55	Raise the Prompt Payment Act threshold.	242	
56	Use authority in Section 1077 of the FY 2018 NDAA to establish a revolving fund for information technology modernization projects and explore the feasibility of using revolving funds for other money-saving investments.	250	
57	Modify fiscal law to extend the duration of when funds cancel from 5 years to 8 years in expired status to align program acquisitions with funding periods and prevent putting current funds at risk and to support meeting appropriation intent.	256	
58	Address the issue of over-age contracts through (a) establishing an end-to-end, integrated, streamlined process, (b) codifying DCMA's Quick Close Out class deviation in the DFARS, and (c) extending DCMA's Low Risk Quick Close Out initiative by 2 years.	263	
59	Revise the Defense Acquisition Workforce Improvement Act to focus more on building professional qualifications.	273	Addressed in Section 861 of FY 2020 NDAA, "Defense acquisition workforce certification, education, and career fields."
60	Implement acquisition career paths that are integrated with an institutionalized competency model tailored to mission needs.	285	Addressed in Section 861 of FY 2020 NDAA, "Defense acquisition workforce certification, education, and career fields."
61	Create a comprehensive public-private exchange program for DoD's acquisition workforce.	305	Addressed in Section 863 of FY 2020 NDAA, "Modification of temporary assignments of Department of Defense employees to a private-sector organization."
62	Update the FAR and DFARS to reduce burdens on DoD's commercial supply chain to decrease cost, prevent delays, remove barriers, and encourage innovation available to the Military Services.	324	
63	Create a policy of mitigating supply chain and performance risk through requirements documents.	326	Related: Supply chain management and risk mitigation assessed broadly in FY 2020 NDAA Section 836 and Sections 845-85; conference direct report language mentions 809 panel recommendation.
64	Update socioeconomic laws to encourage purchasing from nontraditional suppliers by (a) adopting exceptions for DoD to domestic purchasing preference requirements for commercial products, and (b) adopting a public interest exception and procedures for the Berry Amendment identical to the ones that exist for the Buy American Act.	330	

65	Increase the acquisition thresholds of the Davis–Bacon Act, the Walsh–Healey Public Contracts Act, and the Services Contract Act to \$2 million.	334	
66	Establish a purpose statement for bid protests in the procurement system to help guide adjudicative bodies in resolving protests consistent with said purpose and establish a standard by which the effectiveness of protests may be measured.	341	
67	Reduce potential bid protest processing time by eliminating the opportunity to file a protest with the COFC after filing at the GAO and require the COFC to issue a decision within 100 days of ordering a procurement be delayed.	345	
68	Limit the jurisdiction of GAO and COFC to only those protests of procurements with a value that exceeds, or are expected to exceed, \$75,000.	355	
69	Provide as part of a debriefing, in all procurements where a debriefing is required, a redacted source selection decision document and the technical evaluation of the vendor receiving the debriefing.	358	
70	Authorize DoD to develop a replacement approach to the inventory of contracted services requirement under 10 U.S.C. § 2330a.	360	Senate Report on FY 2020 NDAA (S. Rpt 116-48) directs Secretary of Defense to review management and oversight of service contracts, including service contract inventories.
71	Adopt a professional practice guide to support the contract audit practice of DoD and the independent public accountants DoD may use to meet its contract audit needs, and direct DoD to establish a working group to maintain and update the guide.	375	
72	Replace 18 system criteria from DFARS 252.242-7006, Accounting System Administration, with an internal control audit to assess the adequacy of contractors’ accounting systems based on seven system criteria.	379	
73	Revise the definition of system deficiencies to more closely align with generally accepted auditing standards.	381	
74	Eliminate redundant documentation requirements or superfluous approvals when appropriate consideration is given and documented as part of acquisition planning.	395	
75	Revise regulations, instructions, or directives to eliminate non-value-added documentation or approvals.	408	Rec. 75b implemented in Section 865 of FY 2019 NDAA.
76	Revise the fair opportunity procedures and require their use in task and delivery order competitions.	416	
77	Require role-based planning to prevent unnecessary application of security	422	

	clearance and investigation requirements to contracts.		
78	Include the supply of basic energy as an exemption under FAR 5.202.	427	
79	Enable enhanced use of advanced payments, at time of contract award, to small businesses.	431	
80	Preserve the preference for procuring commercial products and services when considering small business set-asides.	434	
81	Clarify and expand the authority to use Other Transaction agreements for production.	440	
82	Provide Armed Services Board of Contract Appeals authority to require filing of contract appeals through an electronic case management system.	448	
83	Raise the monetary threshold to provide agency boards of contract appeals accelerated, small business, and small claims (expedited) procedures to \$250,000 and \$150,000 respectively.	450	
84	Direct DoD to communicate with the marketplace concerning acquisition from development of the need/requirement through contract closeout, final payment, and disposal.	456	
85	Establish a Market Liaison at each acquisition activity to facilitate communications with industry.	463	OMB Myth-busting Memo #4 (April 2019) requires each CFOA agency to designate an industry liaison.
86	Encourage greater interaction with industry during market research.	467	
87	Establish a market intelligence capability throughout DoD to facilitate communication that enhances the government's industry knowledge through open, two-way communication.	472	
88	Use existing defense business system open-data requirements to improve strategic decision making on acquisition and workforce issues.	477	
89	Direct DoD to consolidate or eliminate competing data architectures within the defense acquisition and financial system.	483	
90	Reorganize Title 10 of the U.S. Code to place all of the acquisition provisions in a single part, and update and move acquisition-related note sections into the reorganized acquisition part of Title 10.	500	
91	Require the Administrator of General Services and the Secretary of Defense to maintain the FAR and DFARS respectively, as electronic documents with references to the related statutes, Executive Orders, regulations, and policies, and with hyperlinks to Federal Register Notices.	506	
92	Minimize the flowdown of government-unique terms in commercial buying by implementing the Section 809 Panel's Recommendation 2.	512	

93	Create a Center for Acquisition Innovation located at the National Defense University, Eisenhower School.	516	Section 835 of FY 2020 NDAA creates “extramural acquisition innovation and research activities, which shall include an acquisition research organization within a civilian college or university” and includes archiving and tracking Section 809 Panel recommendations.
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