

STATEMENT OF DETERMINATION
DFARS Case 2006-D057, Excessive Pass-Through Charges

1. In accordance with 5 CFR 1320.13, the senior official, or designee, of the Department of Defense has determined that this collection of information is needed prior to the expiration of the time periods under 5 CFR 1320, and that it is essential to the mission of the agency. The agency cannot reasonably follow the normal clearance procedures under 5 CFR1320, since such procedures would delay compliance with section 852 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

2. The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics/Defense Acquisition Regulations System (DARS) is submitting the subject requirement for emergency review and approval. This emergency submission is necessary and appropriate to implement section 852 of Public Law 109-364. Section 852 requires the Secretary of Defense to prescribe regulations, not later than May 1, 2007, to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of the Department of Defense are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The implementing amendments to the Defense Federal Acquisition Regulation Supplement will include requirements for an offeror or contractor to notify the contracting officer when subcontracted effort will exceed 70 percent of the total cost of work to be performed under a contract or subcontract, and to describe the value added by the contractor or the subcontractor that further subcontracts. If this data collection is not approved under an emergency process, it will impede the Department's ability to comply with the requirements of section 852 of Public Law 109-364. OUSD(AT&L)/DARS has coordinated this submission with the OMB Clearance Officer, Ms. Patricia Toppings.

3. The information that is requested is the minimum necessary to comply with the requirements of section 852 of Public Law 109-364. A notice will be published in the Federal Register prior to the submission of a subsequent information collection package to OMB under regular processing timeframes.