

relation to the cost of work performed by the relevant contractor or subcontractor. The interim DFARS rule language, which implements the requirements of section 852, was made obsolete with the publication of the FAR interim rule at 74 FR 52853 on October 14, 2009.

**DATES:** *Effective Date:* August 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-0302; facsimile 703-602-0350. Please cite DFARS Case 2006-D057.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 852 of the National Defense Authorization Act (NDAA) for Fiscal Year 2007 required DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. DoD published an interim rule at 72 FR 20758 on April 26, 2007, to amend the DFARS to include a solicitation provision and contract clause in DoD contracts to implement the requirements of section 852.

Fourteen sources submitted comments on the interim rule. Public comments were addressed in a second interim rule published at 73 FR 27464 on May 13, 2008, when the interim rule language was revised in response to comments received. DoD determined at that time that it did not expect the rule to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* FAR interim rule 2008-031, published at 74 FR 52853 on October 14, 2009, implemented the requirements of section 866 of the NDAA for FY09 on the issue of excessive pass-through charges. The FAR rule language is duplicative of the interim DFARS rule language implementing section 852.

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 removes interim rule DFARS language made obsolete by publication of FAR rule language on October 14, 2009. Therefore, the Regulatory Flexibility Act does not apply to this final rule because it does not constitute a significant DFARS

revision within the meaning of 41 U.S.C. 418b and FAR 1.501, and publication for public comment was not required.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose additional 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 Parts 215, 231, and 252**

Government procurement.

Ynette R. Shelkin,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 215, 231, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 231, and 252 continues to read as follows:

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

**PART 215—CONTRACTING BY NEGOTIATION**

**215.408 [Amended]**

■ 2. Section 215.408 is amended by removing paragraphs (3) and (4).

**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

**231.201-2 [Removed]**

■ 3. Section 231.201-2 is removed.

**231.203 [Removed]**

■ 4. Section 231.203 is removed.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.217-7003 [Removed and Reserved]**

■ 5. Section 252.217-7003 is removed and reserved.

**252.217-7004 [Removed and Reserved]**

■ 6. Section 252.217-7004 is removed and reserved.

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 252**

[DFARS Case 2009-D024]

**Defense Federal Acquisition Regulation Supplement; Reporting of Commercially Available Off-the-Shelf Items That Contain Specialty Metals—Deletion of Obsolete Clause**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing this final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) by deleting the requirement for contractors to report commercially available off-the-shelf items that contain foreign specialty metals and are incorporated into noncommercial end items.

**DATES:** *Effective Date:* August 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-0328; facsimile 703-602-0350. Please cite DFARS Case 2009-D024.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule deletes DFARS clause 252.225-7029, Reporting of Commercially Available Off-the-Shelf Items that Contain Specialty Metals and are Incorporated into Noncommercial End Items. This requirement was incorporated in the DFARS to implement section 804, paragraph (i), of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Paragraph (i) requires the Government to report to Congress for fiscal years 2008 and 2009 on the use of the exception to the specialty metals restrictions of 10 U.S.C. 2533b for commercially available off-the-shelf items that are incorporated in noncommercial end items. In order to obtain information for this report, the DFARS clause 252.225-7029, Reporting of Commercially Available Off-the-Shelf Items that Contain Specialty Metals and are Incorporated into Noncommercial End Items, was added to the DFARS on July 29, 2009 (74 FR 37626). This requirement is now obsolete, because the reporting requirement does not extend beyond fiscal year 2009.

DoD is issuing this rule as a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore, public comment is not required in accordance with 41 U.S.C. 418b(a).

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule. This rule will not have a significant economic impact upon a substantial number of small entities because this final rule does not constitute a significant DFARS revision within the meaning of 41 U.S.C. 418b

and FAR 1.501, and did not require publication for public comment.

#### **C. Paperwork Reduction Act**

This rule will eliminate 306,800 information collection hours currently approved under Office of Management and Budget Control Number 0704-0459.

#### **List of subjects in 48 CFR Parts 225 and 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

#### **PART 225—FOREIGN ACQUISITION**

##### **225.7003-3 [Amended]**

■ 2. Section 225.7003-3 is amended by removing paragraph (b)(2)(iii).

##### **225.7003-5 [Amended]**

■ 3. Section 225.7003-5 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

##### **252.225-7029 [Removed and Reserved]**

■ 4. Section 252.225-7029 is removed and reserved.

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