greater than the simplified acquisition threshold but less than $7,777,000.
* * * * *
(b) (1) Use the clause at 252.225-7045, Balance of Payments Program—
Construction Material Under Trade Agreements, in solicitations and
contracts for construction to be performed outside the United States
with a value of $7,777,000 or more, including acquisitions of commercial
items or components.
(2) For acquisitions with a value of
$7,777,000 or more, but less than
$10,074,262, including acquisitions of
commercial items or components, use the
clause with its Alternate I, unless the
acquisition is in support of Afghanistan.
(3) If the acquisition is for
construction with a value of
$10,074,262 or more and is in support
of operations in Afghanistan, use the
clause with its Alternate II.
(4) If the acquisition is for
construction with a value of
$7,777,000 or more, but less than
$10,074,262, and is in support of operations in
Afghanistan, use the clause with its Alternate III.

SUMMARY: DoD is issuing a final rule
amending the Defense Federal
Acquisition Regulation Supplement (DFARS) to add Armenia as a World
Trade Organization Government Procurement Agreement (WTO GPA)
country and a designated country, due to
the accession of Armenia to membership in the World Trade
Organization Government Procurement Agreement.

DATES: Effective Date: January 30, 2012.
FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition
Regulations System, OUSD (AT&L)

DEPARTMENT OF DEFENSE
Defense Acquisition Regulations System
48 CFR Part 252
[Docket No. DARS–2011–0082–0002]
RIN 0750–AH48
Defense Federal Acquisition
Regulation Supplement: New
Designated Country—Armenia (DFARS
Case 2011–D057)
AGENCY: Defense Acquisition
Regulations System, Department of
Defense (DoD).
ACTION: Final rule.

I. Background
On September 15, 2011, Armenia
became a party to the World Trade
Organization Government Procurement
Agreement (WTO GPA). The Trade
Agreements Act (19 U.S.C. 2501 et seq.)
provides the authority for the President
to waive the Buy American Act and
other discriminatory provisions for
eligible products from countries that
have signed an international trade
agreement with the United States (such
as the WTO GPA). The President has
delegated this waiver authority to the
U.S. Trade Representative (see FAR
25.402).

On September 22, 2011, because
Armenia became a party to the WTO
GPA and because the U.S. Trade
Representative has determined that
Armenia will provide appropriate
reciprocal competitive Government
procurement opportunities to United
States products and services and
suppliers of such products and services,
the U.S. Trade Representative
published a notice in the Federal
Register (76 FR 58856) waiving the Buy American Act
and other discriminatory provisions for
eligible products from Armenia.

II. Discussion and Analysis
FAR 25.003 defines WTO GPA
countries by listing the parties to the
WTO GPA, and defines “designated
country” as a WTO GPA country,
Free Trade Agreement country, a least
designated country, or a Caribbean
Basin country.

Because Armenia is now a WTO GPA
country and therefore also a designated
country, as determined by the U.S.
Trade Representative, this final rule
adds Armenia to the lists of WTO GPA
countries within the definition of
designated country” at DFARS
252.225–7021, Trade Agreements, and
252.225–7045, Balance of Payments
Program—Construction Material Under
Trade Agreements. Conforming changes
were also made to the clause date at
252.225–7001(b)(12)(i).

III. Executive Orders 12866 and 13563
Executive Orders (E.O.s) 12866 and
13563 direct agencies to assess all costs
and benefits of available regulatory
alternatives and, if regulation is
necessary, to select regulatory
approaches that maximize net benefits
(including potential economic,
environmental, public health and safety
effects, distributive impacts, and
equity). E.O. 13563 emphasizes the
importance of quantifying both costs
and benefits, of reducing costs, of
harmonizing rules, and of promoting
flexibility. This is a significant
regulatory action and, therefore, was
subject to review under section 6(b) of
E.O. 12866, Regulatory Planning and
Review, dated September 30, 1993. This
rule is not a major rule under 5 U.S.C.
804.

IV. Regulatory Flexibility Act
The Regulatory Flexibility Act does
not apply to this rule because an initial
regulatory flexibility analysis is only
required for proposed or interim rules
that require publication for public
comment (5 U.S.C. 603) and a final
regulatory flexibility analysis is only
required for final rules that were
previously published for public
comment, and for which an initial
regulatory flexibility analysis was

Publication of this final rule for
public comment is not required by
statute (41 U.S.C. 1707) because it
recognizes actions taken by the United
States Trade Representative that do not
have a significant effect on contractors
or offerors or a significant effect beyond
the internal operating procedures of the
Government. Therefore, publication for
public comment under 41 U.S.C. 1707 is
not required.

V. Paperwork Reduction Act
The Paperwork Reduction Act does
apply because the final rule affects
the certification and information collection
requirement in the provisions at DFARS
252.225–7020, Trade Agreements
Certificate, currently approved under
OMB clearance 0704–0229, DFARS Part
225, Foreign Acquisition, and associated
clauses. DFARS provision 252.225–7020
relies on the definition of “designated
country” in DFARS 252.225–7021,
which now includes Armenia. The
impact, however, is negligible.

Comments regarding the burden
estimates or any other aspect of this
collection of information, including
suggestions for reducing the burden, in
response to approved OMB clearance
0704–0229, should be sent, not later
than March 30, 2012 to Ms. Jasmeet
Seehra at the Office of Management and
Budget, Desk Officer for DoD, Room
10236, New Executive Office Building,
Washington, DC 20503, with a copy to
the Defense Acquisition Regulations
System, Attn: Ms. Amy Williams, OUSD
(AT&L) DPAP/DARS, Room 3B855,
3060 Defense Pentagon, Washington, DC
20301–3060.

Requesters may obtain a copy of the
supporting statement for the burden
approved under OMB clearance 0704–0229 from the point of contact identified in this notice. Please cite OMB Control Number 0704–0229, in all correspondence.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin, 
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 is revised to read as follows:


252.212–7001 [Amended].

2. In section 252.212–7001, remove the clause date “(DEC 2011)” and add “(JANUARY 2012)” in its place and in paragraph (b)(13)(i) remove the clause date “(OCT 2011)” and add “(JANUARY 2012)” in its place.

3. In section 252.225–7021, remove the clause date “(OCT 2011)” and add “(JANUARY 2012)” in its place and in paragraph (a), in the definition for “Designated country”, revise paragraph (i) to read as follows:

252.225–7021 Trade agreements.

(a) * * * * *

Designated country * * *

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);


(a) * * * * *

Designated country * * *

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided in Section II.

A. Threshold

Comment: The proposed rule should clarify whether the reporting requirement is triggered by a major contractor’s aggregate IR&D costs or the costs of an individual IR&D project. The threshold for triggering the reporting requirement is low and should be increased. The low threshold of $50,000 magnifies the burden to contractors, ACOs, and DCAA auditors, as this threshold would require the reporting of almost any IR&D project. Respondents recommended a number of alternative thresholds.

Response: The $50,000 contractor annual IR&D threshold has been removed from the final rule. DFARS 231.205–18(c)(iii) applies only to major contractors, which are defined as those contractors whose covered segments allocated a total of more than $11,000,000 in IR&D/Bid and Proposal (B&P) costs to covered contracts during the preceding fiscal year. However, contractors who do not meet the threshold as a major contractor are encouraged to use the DTIC on-line input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors’ IR&D activities.

B. Proprietary Information

Comment: The proposed rule should ensure that contractor trade secret and proprietary information is protected. It is apparent that DoD is seeking to