calling (214) 665–7430 or by e-mail at *peace.michelle@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comments, we are withdrawing the direct final exclusion for ExxonMobil Refining and Supply Company—Beaumont Refinery, published on October 1, 2010, 75 FR 60632. We stated that in the direct final rule that if we received adverse comment by November 1, 2010, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address the comments submitted in a subsequent final action which will be based on the parallel proposed rule also published on October 1, 2010, 75 FR 60689. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: November 16, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

■ Accordingly, the amendments to the rule published on October 1, 2010, 75 FR 60632 are withdrawn as of November 24, 2010 until an action making the exclusion final is published.

[FR Doc. 2010–29630 Filed 11–23–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 234, 242, and 252

RIN 0750–AG46

Defense Federal Acquisition Regulation Supplement; Cost and Software Data Reporting System (DFARS Case 2008–D027)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address DoD Cost and Software Data Reporting system requirements for Major Defense Acquisition Programs and Major Automated Information Systems.

DATES: *Effective Date:* November 24, 2010.

SUPPLEMENTARY INFORMATION:

I. Background

The DoD cost and software data reporting (CSDR) system establishes requirements for proposals and contract performance for major defense acquisition programs (as defined in 10 U.S.C. 2430) and major automated information systems (as defined in 10 U.S.C. 2445a).

During the proposal process, offerors are required to—

• Describe the process to be used to satisfy the requirements of the CSDR Manual (DoD 5000.04–M–1) and the Government-approved CSDR plan; and

• Submit certain cost information with the pricing proposal.

During contract performance, the contractor is required to—

• Use a documented CSDR process for reporting;

• Use the Government-approved contract CSDR plan as the basis for reporting; and

• Require subcontractors to comply with the cost and software data reporting requirements.

DoD published a proposed rule at 75 FR 25165 on May 7, 2010. The public comment period closed July 6, 2010. Two respondents submitted comments that are grouped under four comment categories. Based on public comments, changes were made to the proposed rule. Major changes in the final rule are as follows:

• Explaining that the two principal components of the CSDR system are the contractor cost data reporting (CCDR) and the software resources data reporting (SRDR) (DFARS 234.7100(a)).

• Clarifying the solicitation and contract clause prescriptions (DFARS 234.7101).

• Including the approval authority for applying the CSDR requirements at lower dollar thresholds (DFARS 234.7101(b)(2)).

• Removing the requirement to submit DD Form 1921–2, Progress Curve Report, with the offeror's pricing proposal (DFARS 252.234–7003(b)(6)).

• Removing the reference to DD Form 1921–3, Contractor Business Data Report (DFARS 242.503–2(b) and 252.234–7004, Cost and Software Data Reporting System).

• Restructuring the solicitation provision to clarify proposal submission requirements (DFARS 252.234–7003).

• Providing an Alternate I to the solicitation provision and to the clause to accommodate CSDR requirements at

lower dollar thresholds (DFARS 252.234–7003 and 252.234–7004).

II. Discussion and Analysis

The following paragraphs address the four categories of comments and DoD responses:

1. DD 1921–2, Progress Curve Report

Comment: A respondent noted that DD Form 1921–2 Progress Curve Report, required to be submitted by offerors, in accordance with paragraph (a)(3) of DFARS 252.234–70XX in the proposed rule, is designed to collect unit/lot cost data and is, therefore, not applicable to contracts that do not procure units or lots. The respondent recommended revising the solicitation requirements.

Response: DoD agrees that the DD 1921–2 is not required to be submitted with the contractor's pricing proposal and has revised DFARS provision 252.234–7003 in the final rule accordingly.

2. The DD 1921–3, Contractor Business Data Report

a. Basis for Reporting

Comment: A respondent noted that paragraph (a)(3) of DFARS 252.234–70YY in the proposed rule directs "the Contractor (to) use DD Form 1921–3, Contractor Business Data Report, as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs)." DD Form 1921–3, Contractor Business Data Report, is not a basis for reporting, but is a report to be prepared and submitted by the contractor in accordance with DID DI–FNCL–81765A. The respondent suggested removing the reference to DD Form 1921–3.

Response: DoD agrees and deleted the requirement for DD Form 1921–3, Contractor Business Data Report, from clause 252.234–7004 in the final rule.

b. Exempt Below $50 Million

Comment: One respondent asked if a subcontractor is exempt from reporting if it incurs less than $50 million on a program, or if the reporting requirements apply to all levels of subcontractors regardless of level of participation in the program.

Response: DoD revised the solicitation provision and contract clause to clarify applicability to subcontracts.

c. Specific Guidance Is Necessary

Comment: One respondent had numerous questions concerning the completion of DD Form 1921–3.

Response: Questions relating to DD Form 1921–3 preparation guidance are outside the scope of this rule and should be referred directly to the

Defense Cost and Resource Center. References to DD Form 1921–3 have been removed from this final rule.

3. Solicitation Provision and Contract Clause Prescriptions

Comment: A respondent noted that "Paragraphs (a) and (b) of 234.7101, Solicitation provision and contract clause, appear to be intended to distinguish between solicitation instructions and contract requirements, as well as Contractor Cost Data Reporting (CCDR) thresholds (> $50M) versus Software Resources Data Reporting (SRDR) thresholds (> $20M)." Accordingly, the respondent suggested revising the paragraphs to clarify the distinctions.

Response: DoD agrees and has revised the cited paragraphs accordingly.

4. Contractor Cost and Data Reporting Application

Comment: One respondent asked whether cost allocations are going to be considered valid contract costs and if this supersedes FAR 31.201. The respondent also asked what allowance is provided for contractors with accounting software that does not accommodate the additional data fields necessary to map the offeror's accounting system to the CCDR data item descriptions.

Response: DoD notes that the 5000 series regulations express a strong preference for actual cost data. However, the use of cost allocations is not prohibited; clause 252.234–7003 asks for actual cost data to be used "*to the maximum extent possible*" (emphasis added). On the second point, DoD notes that the required mapping does not necessitate unique software applications. DoD expects its contractors to use standard and readily available electronic software applications such as electronic spreadsheets (*e.g.,* MS-Excel®) or word processing formats (*e.g.,* MS-Word®).

III. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 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

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the individual specified herein. The analysis is summarized as follows:

The objective of the rule is to set forth cost and software data reporting (CSDR) system reporting requirements that are essential for DoD to estimate the cost of current and future weapon systems. The data are also very useful in performing contract price analysis, comparing prices of similar systems, and for capturing contractor-provided cost estimates in standard formats to facilitate comparison across several contractors.

The rule will apply to DoD major defense acquisition program (MDAP) and major automated information system (MAIS) contractors. Due to the magnitude of these major programs, most small businesses are not MDAP or MAIS contractors. DoD solicited comments from small entities and other interested parties (proposed rule at 75 FR 25165). No comments were received from small entities on the impact of this rule and none of the comments was in response to the initial regulatory flexibility analysis. Therefore, there is no change to the rule in this regard.

This final rule sets forth existing DoD CSDR requirements for weapon system programs for proposal submission and contract performance.

During the proposal process, in response to solicitations, offerors are required to—

• Describe the standard CSDR process to be used to satisfy the requirements of the CSDR Manual, DoD 5000.04–M–1, and the Government approved CSDR plan, DD Form 2794, and the related Resource Distribution Table (RDT);

• Provide comments on the adequacy of the CSDR contract plan, and the related RDT contained in the solicitation; and,

• Submit with their pricing proposal: DD Form 1921, Cost Data Summary Report, and DD Form 1921–1, Functional Cost-Hour Report.

During contract performance, the contractor will be required to—

• Utilize a documented CSDR process that satisfies the guidelines contained in the DoD 5000.04–M–1, CSDR Manual;

• Use management procedures that provide for generation of timely and reliable information for the two principal components of the CSDR system: Contractor cost data reports and software resources data reports;

• Use the Government-approved contract CSDR plan, DD Form 2794, with the related RDT; and

• Require subcontractors, or subcontracted effort if subcontractors have not been selected, to comply with the CSDR requirements.

This final rule is not expected to have a significant economic impact on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* as most MDAP and MAIS contractors are large businesses. For reporting, contractors are expected to use standard and readily available electronic software applications such as electronic spreadsheets (*e.g.,* MS-Excel®) or word processing formats (*e.g.,* MS-Word®) to show the necessary mapping from their accounting systems into the standard CCDR formats.

V. Paperwork Reduction Act

The information collection requirements associated with this rule were approved by the Office of Management and Budget under Clearance Number 0704–0188, Acquisition Management Systems and Data Requirements Control List. The revisions in the final rule will not change the burden hours approved under Clearance Number 0704–0188.

List of Subjects in 48 CFR Parts 215, 234, 242, and 252

Government procurement.

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

■ Therefore, 48 CFR parts 215, 234, 242, and 252 are amended as follows:
■ 1. The authority citation for 48 CFR parts 215, 234, 242, and 252 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

215.403–5　[Removed]

■ 2. Remove section 215.403–5.

PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Subpart 234.71 is added to read as follows:

Subpart 234.71—Cost and Software Data Reporting

Sec.
234.7100　Policy.
234.7101　Solicitation provision and contract clause.

Subpart 234.71—Cost and Software Data Reporting

234.7100　Policy.

(a) The cost and software data reporting (CSDR) requirement is mandatory for major defense acquisition programs (as defined in 10 U.S.C. 2430), and major automated information system programs (as defined in 10 U.S.C. 2445a) as specified in DoDI

5000.02, Operation of the Defense Acquisition System and the DoD 5000.04–M–1, CSDR Manual. The CSDR system is applied in accordance with the reporting requirements established in DoDI 5000.02. The two principal components of the CSDR system are contractor cost data reporting and software resources data reporting.

(b) Prior to contract award, contracting officers shall consult with the Defense Cost and Resource Center to determine that the offeror selected for award has proposed a standard CSDR system, as described in the offeror's proposal in response to the provision at 252.234–7003, that is in compliance with DoDI 5000.02, Operation of the Defense Acquisition System, and the DoD 5000.04–M–1, CSDR Manual.

(c) Contact information for the Defense Cost and Resource Center and the Deputy Director, Cost Assessment, is located at PGI 234.7100.

234.7101 Solicitation provision and contract clause.

(a)(1) Use the provision at 252.234–7003, Notice of Cost and Software Data Reporting System, in all solicitations that include the clause at 252.234–7004, Cost and Software Data Reporting.

(2) Use the provision with its Alternate I when the clause at 252.234–7004, Cost and Software Data Reporting, is used with its Alternate I.

(b)(1) Use the clause at 252.234–7004, Cost and Software Data Reporting System, in all solicitations and contracts for major defense acquisition programs and major automated information system programs that exceed $50 million.

(2) Use the clause with its Alternate I in solicitations and contracts for major defense acquisition programs and major automated information system programs with a value equal to or greater than $20 million but less than or equal to $50 million, when so directed by the program manager with the approval of the OSD Deputy Director, Cost Assessment.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. Designate the current text of section 242.503–2 as paragraph (a) and add new paragraph (b) to read as follows:

242.503–2 Postaward conference procedure.

* * * * *

(b) For contracts that include the clause at 252.234–7004, Cost and Software Data Reporting, postaward conferences shall include a discussion of the contractor's standard cost and

software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04–M–1, CSDR Manual, and the requirements in the Government-approved CSDR plan for the contract, DD Form 2794, and related Resource Distribution Table.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 252.234–7003 to read as follows:

252.234–7003 Notice of Cost and Software Data Reporting System. (NOV 2010)

As prescribed in 234–7101(a)(1), use the following provision:

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2010)

(a) This solicitation includes—
(1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and
(2) The related Resource Distribution Table.

(b) As part of its proposal, the offeror shall—
(1) Describe the process to be used to satisfy the requirements of the DoD 5000.04–M–1, CSDR Manual, and the Government-approved CSDR plan for the proposed contract;
(2) Demonstrate how contractor cost and data reporting (CCDR) will be based, to the maximum extent possible, upon actual cost transactions and not cost allocations;
(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;
(4) Describe how recurring and nonrecurring costs will be segregated;
(5) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table; and
(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form 1921–1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors at any tier with a subcontract that exceeds $50 million. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort in this category.

(End of provision)

Alternate I (NOV 2010). As prescribed in 234.7101(a)(2), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) CSDR reporting will be required for subcontractors for selected subcontracts identified in the CSDR contract plan as requiring such reporting. The offeror shall identify, by providing comments on the Resource Distribution Table, the

subcontractors, or, if the subcontractors have not been selected, the subcontracted effort.

■ 6. Add section 252.234–7004 to read as follows:

252.234–7004 Cost and Software Data Reporting System. (NOV 2010)

As prescribed in 234.7101(b)(1), use the following clause:

COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2010)

(a) In the performance of this contract, the Contractor shall use—
(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04–M–1, CSDR Manual;
(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and
(3) The Government-approved CSDR plan for this contract, DD Form 2794, and the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions.

(b) The Contractor shall require CSDR reporting from subcontractors at any tier with a subcontract that exceeds $50 million. If, for subcontracts that exceed $50 million, the Contractor changes subcontractors or makes new subcontract awards, the Contractor shall notify the Government.

(End of clause)

Alternate I (NOV 2010). As prescribed in 234.7101(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall require CSDR reporting from selected subcontractors identified in the CSDR contract plan as requiring such reporting. If the Contractor changes subcontractors or makes new awards for selected subcontract effort, the Contractor shall notify the Government.

[FR Doc. 2010–29496 Filed 11–23–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217, 234, and 235

RIN 0750–AG76

Defense Federal Acquisition Regulation Supplement; Contract Authority for Advanced Component Development or Prototype Units (DFARS Case 2009–D034)

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

ACTION: Confirmation of interim final rule.