DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227 and 252

[Docket DARS–2019–0048]

RIN 0750–AK71

Defense Federal Acquisition Regulation Supplement: Validation of Proprietary and Technical Data (DFARS Case 2018–D069)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that amended the statutory presumption of development exclusively at private expense for commercial items in the procedures governing the validation of asserted restrictions on technical data.

DATES: Effective April 28, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 85 FR 53755 on August 31, 2020, to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), which repeals several years of congressional adjustments to the statutory presumption of development at private expense for commercial items in the validation procedures at paragraph (f) of 10 U.S.C. 2321. The DFARS implementation of this mandatory presumption has evolved accordingly to track the statutory changes, with the primary coverage found at paragraph (c) of section 227.7103–13, and paragraph (b) of the contract clause at 252.227–7037, Validation of Restrictive Markings on Technical Data. One respondent submitted written public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments submitted in writing and discussed by the attendees at the virtual public meeting on November 19, 2020, in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

Based on comments received, language was added to DFARS 227.7103–13(c) and DFARS 252.227–7037(e) to indicate the information that supports the challenge notice must be included in the challenge notice, subject to handling procedures for classified information or controlled unclassified information (CUI).

B. Analysis of Public Comments

1. DoD Must Provide Sufficient Information To Support the Challenge Notice

Comment: The respondent requested elimination of the phrase ''to the maximum extent practicable'' in the proposed revisions to DFARS 227.7103–13(c)(2) and DFARS 252.227–7037(e)(1)(i) and (f) because this phrase does not appear in the underlying statute. The respondent asserted that this language introduces uncertainty as to whether and when the contracting officer must provide sufficient information to overcome the presumption. The respondent asserted that the Government should furnish CUI in the manner in which the Government conventionally furnishes other CUI to contractors. If classified information cannot be provided with the challenge notice in an unclassified communication, then the classified information may be contemporaneously furnished via alternate means that complies with the applicable security requirements.

Response: DoD adopted the respondent's recommendation to remove the phase ''to the maximum extent practicable.'' In view of the respondent's comments, the rule has also been revised to indicate that the challenge notice will include sufficient information to reasonably demonstrate that a commercial item was not developed exclusively at private expense, subject to the handling procedures for classified information and controlled unclassified information. Such handling procedures may include, but are not limited to, contemporaneous communications (referenced in the challenge notice) that consist of classified information transmitted via secured channels.

2. DoD Should Restore 10 U.S.C. 2320 and 2321 to the DFARS List of Statutes Which Are Inapplicable to Subcontracts for Commercial Items and Eliminate Mandatory Flowdown Requirements

Comment: The respondent recommended that, because section 865 repealed several congressional amendments to the statutory presumption of development exclusively at private expense, 10 U.S.C. 2320 and 2321 should be included in the DFARS 212.504 exclusionary list of statutes that are inapplicable to contracts and subcontracts for the acquisition of commercial items. The respondent also recommended removing the mandatory flowdown requirements in the contract clauses at DFARS 252.227–7013, 252.227–7015, and 252.227–7037.

Response: This case implements specific amendments to 10 U.S.C. 2321(f), and the applicability of those implementing revisions to contracts for the acquisition of commercial items is addressed in Section III of this preamble. To the extent the respondent's recommendations are directed to the applicability of the entirety of 10 U.S.C. 2320 and 2321 to commercial items contracts and subcontracts and extend beyond the proposed implementation of 10 U.S.C. 2321(f), those recommendations are beyond the scope of this case. DoD acknowledges that the respondent's concerns and recommendations address broader scope issues also raised in the Section 813 Government-Industry Advisory Panel Report, and cognizant DoD policy stakeholders, including the Intellectual Property (IP) Cadre, are considering such issues as part of DoD's overarching efforts to review and improve its IP policies and implementing procedures.

3. Mandatory Flowdown Requirements for Supplier Agreements Are Inconsistent With the Federal Acquisition Streamlining Act

Comment: The respondent recommended elimination of mandatory flowdown language in the clauses at DFARS 252.227–7037(l), 252.227–7013(k)(2), and 252.227–7015(e), which require contractors to use the clauses in other contractual instruments for commercial items with suppliers at any tier if the other contractual instruments require the delivery of technical data. The respondent asserted that this mandatory flowdown is both inconsistent with the Federal Acquisition Streamlining Act of 1994 (FASA) and undermines DoD's efforts to acquire commercial items.

Response: This case implements specific amendments to 10 U.S.C. 2321(f), and the applicability of those implementing revisions to contracts for the acquisition of commercial items is addressed in Section III of this preamble. To the extent the respondent's recommendations are directed to the application of the mandatory flowdown requirements for the entirety of multiple clauses to suppliers at any tier and ''other contractual instruments'' for commercial items and extend beyond implementation of 10 U.S.C. 2321(f), those recommendations are beyond the scope of this case. DoD acknowledges that the respondent's concerns and recommendations address broader scope issues also raised in the Section 813 Government-Industry Advisory Panel Report, and cognizant DoD policy stakeholders, including the IP Cadre, are considering such issues as part of DoD's overarching efforts to review and improve its IP policies and implementing procedures.

4. DFARS 252.227–7013 Should Not Apply to Commercial Items With ''Of a Type'' or ''Minor'' Modifications

Comment: The respondent noted that the current DFARS policy permits use of both DFARS clauses at 252.227–7013 (for technical data related to noncommercial and commercial technology developed with Government funds) and 252.227–7015 (for technical data related to commercial technology developed at private expense). The respondent expressed concern that this paradigm creates a complicated mix of commercial and noncommercial terms along with potentially costly portion-marking. The respondent also asserted that these rules may discourage companies from selling modified commercial items to the Government. The respondent recommended that the noncommercial technical data rights clause at DFARS 252.227–7013 should not apply to commercial items with ''of a type'' or ''minor'' modifications. The respondent stated that DFARS 252.227–7037 and the associated prescriptive guidance should be revised to clarify that Government funds used to modify a commercial item shall not be used as the basis for rebutting the presumption of development exclusively at private expense so long as the modified item continues to meet the commercial item definition at Federal Acquisition Regulation (FAR) 2.101. The respondent also suggested revising DFARS 252.227–7013, 252.227–7015, and the associated guidance for contracting officers to clarify that 252.227–7013 shall not apply to commercial items modified at Government expense so long as the modified item continues to meet the commercial item definition at FAR 2.101.

Response: This case implements specific amendments to 10 U.S.C. 2321(f), and the applicability of those implementing revisions to contracts for the acquisition of commercial items is addressed in Section III of this preamble. To the extent that the respondent's recommendations are directed to the applicability of DFARS 252.227–7013 to commercial items with ''of a type'' or ''minor'' modifications and extend beyond implementation of 10 U.S.C. 2321(f), those recommendations are beyond the scope of this case. DoD acknowledges that the respondent's concerns and recommendations address broader scope issues also raised in the Section 813 Government-Industry Advisory Panel Report, and cognizant DoD policy stakeholders, including the IP Cadre, are considering such issues as part of DoD's overarching efforts to review and improve its IP policies and implementing procedures.

C. Other Changes

Minor editorial changes are made in DFARS clause 252.227–7037 to the expressed time periods to conform to standard rule drafting conventions.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products (Including Commercially Available Off-the-Shelf Items), and for Commercial Services

This rule amends the contract clause at 252.227–7037 and the prescription at DFARS 227.7103–13. However, this rule does not impose any new requirements on contracts at or below the simplified acquisition threshold (SAT), for commercial products (including commercially available off-the-shelf (COTS) items), or for commercial services. The prescription and clause will continue to apply to acquisitions at or below the SAT and to acquisitions of commercial products (including COTS items).

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD has made that determination. Therefore, this rule does apply to contracts at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Products (Including COTS Items) and Commercial Services

10 U.S.C. 2375 governs the applicability of laws to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products (including COTS items) and commercial services. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial product or commercial service contracts, the provision of law will apply to contracts for the acquisition of commercial products or commercial services.

Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination. DoD has made that determination to apply this rule to the acquisition of commercial products (including COTS items), if otherwise applicable.

C. Determination

This rule implements statutory requirements regarding the presumption of development at private expense for commercial products (including COTS items) in validations of asserted restrictions. Not applying the rule to contracts at or below the SAT would exclude contracts at low dollar values for commercial products intended to be covered by this rule. An exclusion for contracts at or below the SAT would therefore undermine the overarching purpose of the rule. Therefore, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts valued at or below the SAT.

Given that the requirements of section 865 of the NDAA for FY 2019 were enacted to return to a presumption of development exclusively at private expense for commercial products, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial products, including COTS items, as those terms are defined at FAR 2.101. An exception for contracts for the acquisition of commercial products, including COTS items, would exclude contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

The final rule applies the statutory requirements regarding the presumption of development at private expense for commercial items in validations of asserted restrictions. Specifically, the rule returns the coverage at DFARS 227.7103–13 and 252.227–7037 substantially back to the original Federal Acquisition Streamlining Act-implementing language with regard to the presumption of development exclusively at private expense for commercial items. This statutory change places the burden of proof on DoD, not on the contractor or subcontractor, for commercial items.

Under the new rule, DoD is required to presume that the contractor or subcontractor has justified the asserted restriction on the basis that the item was developed exclusively at private expense for commercial items, regardless of whether the contractor or subcontractor submits a justification in response to the Government's challenge notice. In such a case, the challenge to the use or release restriction may be sustained only if information provided by DoD demonstrates that the item was not developed exclusively at private expense. Within the validation procedures, the presumption of development at private expense for commercial items is primarily designed to protect the contractors' interests.

The impact of these changes may be positive, for both the public and the Government, because the Government will not initiate challenges when it does not have sufficient information to support the initiation of a challenge. Contractors will not be required to respond to challenges or pre-challenge requests for information regarding commercial items. Therefore, if DoD does not have information demonstrating that a commercial item was not developed exclusively at private expense, a contracting officer may reasonably decide not to initiate a challenge. DoD does not have data on the number of challenges that may be avoided.

If DoD does not have sufficient information to successfully initiate a challenge to a contractor's restrictive markings on technical data for commercial items, DoD will have to comply with those restrictive markings. Such information may exist but be in the custody and control of the contractor. For contractors, the impact may be positive, as it would limit how DoD could use technical data related to a contractor's commercial item. For the Government, the markings may impact DoD's ability to use the technical data to obtain competitive procurement of an item and thus result in higher costs. DoD does not have data on the number of times this situation is likely to occur.

V. 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 not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is proposing to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), which revised 10 U.S.C. 2321. Section 865 of the NDAA for FY 2019 repeals amendments to 10 U.S.C. 2321(f) made by the NDAAs for FY 2007 through FY 2016. The impact is to return the DFARS coverage at section 227.7103–13 and the contract clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, substantially back to its original language implementing the Federal Acquisition Streamlining Act of 1994. Section 865 also codifies and revises DoD challenges to contractor-asserted restrictions on technical data pertaining to a commercial item, *i.e.,* DoD is required to presume that the contractor or subcontractor has justified the asserted restriction on the basis that the item was developed exclusively at private expense, regardless of whether the contractor or subcontractor submits a justification in response to the Government's challenge notice. In such a case, the challenge to the use or release restriction may be sustained only if information provided by DoD demonstrates that the item was not developed exclusively at private expense.

There were no public comments received in response to the initial regulatory flexibility analysis.

This final rule will apply to small entities that have contracts with DoD requiring delivery of technical data. Based on data from Electronic Data Access for FY 2018 through FY 2020, DoD estimates that an average of 814 contractors may be impacted by the changes in this final rule. Of those entities, approximately 507 (62 percent) are small entities.

This final rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known alternatives which would accomplish the stated objectives of the applicable statute.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0369, entitled ''DFARS Subparts 227.71, Rights in Technical Data; and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.''

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 227 and 252 are amended as follows:

■ 1. The authority citation for parts 227 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 2. Amend section 227.7103–13 by—
■ a. Revising paragraph (c);
■ b. In paragraph (d)(2)(i) removing ''subsection'' and adding ''section'' in its place; and
■ c. Revising paragraph (d)(4).

The revisions read as follows:

227.7103–13 Government right to review, verify, challenge, and validate asserted restrictions.

* * * * *

(c) *Challenge considerations and presumption*—(1) *Requirements to initiate a challenge.* Contracting officers shall have reasonable grounds to challenge the validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion.

(2) *Commercial items—presumption regarding development exclusively at private expense.* 10 U.S.C. 2320(b)(1) and 2321(f) establish a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial items on the basis of development exclusively at private expense. Contracting officers shall presume that a commercial item was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. The contracting officer shall not challenge a contractor's assertion that a commercial item was developed exclusively at private expense unless the Government can specifically state the reasonable grounds to question the validity of the assertion. The challenge notice shall include sufficient information to reasonably demonstrate that the commercial item was not developed exclusively at private expense. In order to sustain the challenge, the contracting officer shall provide information demonstrating that the commercial item was not developed exclusively at private expense. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. A contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

(d) * * *

(4) *Challenge notice.* The contracting officer shall not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. For commercial items, also see paragraph (c)(2) of this section. The contracting officer may challenge an assertion whether or not supporting documentation was requested under paragraph (d)(2) of this section. Challenge notices shall be in writing and issued to the contractor or, after consideration of the situations described in paragraph (d)(3) of this section, the person asserting the restriction. The challenge notice shall include the information in paragraph (e) of the clause at 252.227–7037.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.227–7037 by—
■ a. Revising the section heading;
■ b. In the introductory text, removing ''27.7104(e)(5)'' and adding ''227.7104(e)(5)'' in its place;
■ c. Revising the clause date;
■ d. Revising paragraph (b);
■ e. In paragraph (c) removing ''paragraph (b)(1)'' and adding ''paragraph (b)'' in its place;
■ f. In paragraph (d)(2) removing ''Contracting Officer shall'' and adding ''Contracting Officer will'' in its place;
■ g. Revising paragraphs (e)(1) introductory text and (e)(1)(i);
■ h. In paragraph (e)(1)(ii) removing ''sixty (60) days'' and adding ''60 days'' in its place;
■ i. In paragraph (e)(2) removing ''shall'' and adding ''will'' in its place;
■ j. In paragraph (e)(3) removing ''Contract Disputes'' and adding ''Contract Disputes,'' in its place;
■ k. In paragraph (e)(4) removing ''shall formulate'' and ''shall afford'' and adding ''will formulate'' and ''will afford'' in their places, respectively;
■ l. Revising paragraph (f);
■ m. In paragraph (g)(1) removing ''shall'' and ''sixty (60) days'' wherever they appear and adding ''will'' and ''60 days'' in their places, respectively;
■ n. Revising paragraph (g)(2)(i);
■ o. In paragraph (g)(2)(ii) removing ''ninety (90) days'' wherever it appears and ''ninety (90)-day period'' and adding ''90 days'' and ''90-day period'' in their places, respectively;
■ p. In paragraph (g)(2)(iii) removing ''ninety (90) days'' and ''one (1) year'' and adding ''90 days'' and ''1 year'' in their places, respectively;
■ q. In paragraphs (h)(2)(i) and (ii) removing ''Government shall'' and adding ''Government will'' in its place; and
■ r. In paragraph (i) introductory text—
■ i. Removing ''three (3) years'' wherever it appears and adding ''3 years'' in its place; and
■ ii. Removing ''disclosure or use'' and adding ''disclosure, or use'' in its place.

The revisions read as follows:

252.227–7037 Validation of Restrictive Markings on Technical Data.

* * * * *

Validation of Restrictive Markings on Technical Data (APR 2022)

* * * * *

(b) *Commercial items—presumption regarding development exclusively at private expense.* The Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item are justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial item was developed exclusively at private expense.

* * * * *

(e) * * *

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will—

(i) State the specific grounds for challenging the asserted restriction including, for commercial items, sufficient information to reasonably demonstrate that the commercial item was not developed exclusively at private expense;

* * * * *

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or

subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial items, the Contracting Officer will provide information demonstrating that the commercial item was not developed exclusively at private expense. This final decision will be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) * * *

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial items, the Contracting Officer will provide information demonstrating that the commercial item was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

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[FR Doc. 2022–08811 Filed 4–27–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

[Docket DARS–2022–0009]

RIN 0750–AL53

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision ''Payment in Local Currency (Afghanistan)'' (DFARS Case 2022–D001)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a solicitation provision that is no longer necessary.

DATES: Effective April 28, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Salcido, telephone 571–372–6102.

SUPPLEMENTARY INFORMATION:

I. Background

As required at DFARS subpart 232.72, Payment in Local Currency (Afghanistan), DFARS solicitation provision 252.232–7014, Payment in Local Currency (Afghanistan), is included in all solicitations, including solicitations using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial items, for performance in Afghanistan. The provision notifies host nation (Afghan) vendors that the contract resulting from the solicitation will be paid in local currency (Afghani) via electronic funds transfer to a local (Afghan) banking institution unless an exception applies. It also notifies host nation vendors that contracts would not be awarded if they did not bank locally. Host nation vendors were required to submit quotations and offers in U.S. dollars, but the contract would be converted to Afghani using the current U.S. budget rate (*i.e.,* U.S. Treasury rate of exchange) upon award.

Due to the drawdown of operations in Afghanistan, the text at DFARS 232.72 and solicitation provision 252.232–7014 are no longer required. The U.S. Department of the Treasury has placed the Taliban, the de facto government in Afghanistan, on the Office of Foreign Assets Control Sanction List. Therefore, payment cannot be made to an Afghan vendor in Afghani via electronic funds to an Afghan banking institution. Consequently, this rule is repealing DFARS subpart 232.72 and solicitation provision 252.232–7014, since these requirements are rendered inoperable with the drawdown of operations in Afghanistan.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule is merely removing an obsolete solicitation provision from the DFARS. The rule does not have a significant cost or administrative impact on contractors or offerors and does not have a significant effect beyond DoD's internal operating procedures.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products Including Commercially Available Off-the-Shelf Items, and for Commercial Services

This rule only removes obsolete DFARS subpart 232.72, Payment in Local Currency (Afghanistan), and DFARS solicitation provision 252.232–7014, Payment in Local Currency (Afghanistan). The rule does not impose any new requirements on contracts valued at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 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 not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has