

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective October 31, 2016.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, EPA Region III.

[FR Doc. 2016–20849 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2016–0029]

RIN 0750–AJ04

Defense Federal Acquisition Regulation Supplement: Request for Audit Services in France, Germany, the Netherlands, or the United Kingdom (DFARS Case 2016–D027)

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 specify the countries with which DoD has audit agreements.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending DFARS 225.872–6 to specify the qualifying countries that have audit agreements with the United

States (*i.e.*, France, Germany, the Netherlands, and the United Kingdom).

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

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled “Publication of Proposed Regulations.” Paragraph (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 a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only specifies the qualifying countries that have audit agreements with the United States, rather than requiring each contracting officer to contact the Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), to determine whether a qualifying country has such an audit agreement. These regulations affect only the internal operating procedures of the Government.

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

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. 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. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

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

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

■ 2. Revise section 225.872–6 to read as follows:

225.872–6 Request for audit services.

Handle requests for audit services in France, Germany, the Netherlands, or the United Kingdom in accordance with PGI 215.404–2(c), but follow the additional procedures at PGI 225.872–6.

[FR Doc. 2016–20476 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 231

[Docket DARS–2016–0002]

RIN 0750–AI86

Defense Federal Acquisition Regulation Supplement: Costs Related to Counterfeit Electronic Parts (DFARS Case 2016–D010)

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 2016 that amends the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 17055 on March 25, 2016, to implement section

885(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114-92). Section 818(c)(2)(B) of the NDAA for FY 2012, as amended by section 885(a), provides that the costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable unless—

- The covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that had been reviewed and approved by DoD;
- The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as

Government property in accordance with the Federal Acquisition Regulation (FAR) part 45, or were obtained by the contractor in accordance with the regulations described in paragraph (c)(3) of section 818 of the NDAA for FY 2012, as amended;

- The contractor discovers the counterfeit electronic parts or suspect counterfeit electronic parts and provides timely (*i.e.*, within 60 days after the contractor becomes aware) notice to the Government, pursuant to section 818(c)(4).

Section 885 is the third in a series of amendments to section 818(c) of the NDAA for FY 2012, summarized as follows:

| | FY 2012 Pub. L. 112-81 | FY 2013 | FY 2015 | FY 2016 |
|--|------------------------|------------------|------------------|------------------------|
| | Section 818 | Sec. 833 amended | Sec. 817 amended | Sec. 885 amended |
| (a) Assessment of DoD Policies and Systems. | | | | |
| (b) Actions Following Assessment. | | | | |
| (c) Regulations | | (c)(2)(B) | (c)(3) | (c)(2)(B) (c)(3)(D) |
| * * * * * | | | * | * |
| (e) Improvement of Contractor Systems for Detection and Avoidance of Counterfeit Electronic Parts. | | | | |
| (f) Definitions. | | | | |
| * * * * * | | | * | * |

Section 803 of the NDAA for FY 2014, entitled Identification and Replacement of Obsolete Electronic Parts, did not modify section 818 of the NDAA for FY

2012 and is not directly related to the detection and avoidance of counterfeit electronic parts.

DoD has processed several DFARS cases to implement section 818 and its subsequent amendments as follows:

| DFARS case | Title | Implements | Published |
|-----------------|---|--|-----------------------------------|
| 2012-D055 | Detection and Avoidance of Counterfeit Electronic Parts. | Sec. 818 (b)(1), (c)(partial), (e), and (f); as amended by sec. 833 of NDAA for FY 2013. | Final rule published 5/6/2014. |
| 2014-D005 | Detection and Avoidance of Counterfeit Electronic Parts—Further Implementation. | Sec. 818 (c)(3); as amended by sec. 817 of NDAA for FY 2015, except sec. 818 (c)(3)(C). | Final rule published 8/2/2016. |
| 2015-D020 | DoD Use of Trusted Suppliers for Electronic Parts. | Sec. 818(c)(3)(C) | Not yet published. |
| 2016-D010 | Costs Related to Counterfeit Electronic Parts. | Sec. 818(c)(2)(B), as amended by sec 885(a) of NDAA for FY 2016. | This final rule. |
| 2016-D013 | Amendments Related to Sources of Electronic Parts. | Sec. 818(c)(3)(D)(ii), as amended by sec. 885(b) of NDAA for FY 2016. | Proposed rule published 8/2/2016. |

In addition, there are two related FAR cases:

- FAR Case 2012-032, Higher-Level Contract Quality Requirements, does not specifically implement section 818 of the NDAA for FY 2012, but the performance of higher-level quality assurance for critical items does assist in the detection and avoidance of counterfeit electronic parts (final rule published November 25, 2014, effective December 26, 2014).

- FAR Case 2013-002, Expanded Reporting of Nonconforming Items, expands beyond the requirements of section 818(c)(4), applying Governmentwide (not just DoD) to certain parts with a major or critical nonconformance (not just counterfeit electronic parts) (proposed rule published June 10, 2014).

Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments 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 Changes From the Proposed Rule in Response to Public Comments

The final rule includes the following changes from the proposed rule at DFARS 231.205–71(b):

1. (b)(1)—Replaced “counterfeit parts” with “counterfeit electronic parts” (see section II.B.5. of this preamble).

2. (b)(3)(i)—Replaced “Discovers” with “Becomes aware of” and added clarifying language (see section II.B.3.c. of this preamble).

3. (b)(3)(ii)—Added the requirement to provide notice of counterfeit parts to Government Industry Exchange Program (GIDEP), with some exceptions (see section II.B.3.d. of this preamble).

B. Analysis of Public Comments

1. Support for the Statute

Comment: One respondent stated that industry wholeheartedly supports the change to the statute to expand the conditional safe harbor from strict liability for costs to remedy damage resulting from the discovery of counterfeit electronic parts and suspect counterfeit electronic parts in end products delivered to DoD.

Response: Noted.

2. Number and Timing of Cases

Both respondents commented on the number and timing of cases in process to implement section 818 of the NDAA for FY 2012, as amended.

Comment: One respondent applauded the deliberate and thoughtful approach by DoD to proceed with great care over a period of years to ensure the requirements are implemented with minimal disruption to the DoD supply chain.

Response: Noted.

Comment: One respondent recommended comprehensive, rather than “piecemeal” regulations. The respondent was concerned that this case should be considered and resolved together with DFARS cases 2014–D005 and 2016–D013 in a proposed rule with opportunity for notice and comment on the entire rule. The other respondent requested that DoD align the open cases to create a safe harbor that is efficient and complementary to the goal of building a risk-based framework to reduce the risk of counterfeit electronic parts from entering the DoD supply chain.

Response: Sometimes the best way to achieve a goal is to divide the task into segments that can be accomplished sequentially. Furthermore, the legislation to be implemented was enacted in four separate statutes over a

period of 4 years, necessitating additional cases to implement the statutory amendments. DFARS Case 2014–D005 had already been published as a proposed rule on September 21, 2015, prior to enactment of the NDAA for FY 2016 on November 25, 2016. DoD carefully considered whether the new amendments should be incorporated into the existing rule, or whether DFARS Case 2014–D005 should be finalized and followed by the two cases to implement section 885(a) and (b) of the NDAA for FY 2016.

- Because both DFARS cases 2016–D010 and 2016–D013 required publication for public comment, they could not be incorporated in a final rule under 2014–D005.

- At the time of public comment on this rule, the respondents were able to view the proposed rule under DFARS Case 2014–D005. If the two new cases were published as proposed rules, separately or in combination with DFARS Case 2014–D005, the respondents would still not know what the final rule under 2014–D005 would be, at the time of commenting on the new aspects of the case. Furthermore, implementation of DFARS Case 2014–D005 would be delayed by at least a year if it were not finalized prior to implementation of the new requirements of section 885 of the NDAA for FY 2016.

- DoD considered it important to reduce supply chain risk as soon as possible by proceeding to finalize DFARS Case 2014–D005. DFARS Case 2014–D005 further implements section 818(c)(3)(A), (B), and (D) to provide detailed regulations to all DoD contractors and subcontractors that provide electronic parts to the Government, either as end items or components (not just cost accounting standards (CAS)-covered contractors and their subcontractors). If each phase of implementation of the rule were delayed until every new amendment was ready to be incorporated, DoD would still have nothing in place to protect against the hazards of counterfeit electronic parts in the DoD supply chain.

- DFARS Case 2016–D013 could not be published as a proposed rule until DFARS case 2014–D005 was finalized (81 FR 50635 on August 2, 2016), in order to provide the baseline for the required change.

- There was interest in expediting this DFARS Case 2016–D010, because it impacts cost allowability, and the text of this case is not overlapping with the text of DFARS Case 2014–D005. Therefore, this case was published as a proposed

rule prior to publication of the final rule under DFARS Case 2014–D005.

- Although the respondents did not have the opportunity to see the final rule under DFARS Case 2014–D005 prior to providing comments on this case, DoD considered all other related cases when finalizing DFARS Case 2014–D005, proposing DFARS Case 2016–D013, and now finalizing this case.

3. Contractor Requirements Related to Allowability of Costs (Safe Harbor)

a. Have an Approved Operational System

Comment: One respondent stated that DFARS Case 2014–D005 addresses precisely what would be considered an operational system, who provides the needed approval, and how approval will be obtained.

Response: DFARS Case 2012–D055 (finalized May 6, 2014) added the regulations on—

- The contractors’ purchasing system reviews (DFARS 244.305), which also cover review of the adequacy of the contractor’s counterfeit electronic part detection and avoidance system; and
- The contractors’ counterfeit electronic part detection and avoidance system (DFARS 246.870 and the clause at 252.246–7007). DFARS Case 2014–D005 (finalized August 2, 2016) did not make any changes to the coverage at DFARS 244.305, so did not impact who approves the operational system and how the approval is obtained. DFARS Case 2014–D005 did implement section 818(c)(3)(D) at DFARS 246.870–2(a), authorizing contractors and subcontractors to identify and use additional trusted suppliers (contractor-approved suppliers) in some circumstances. Therefore, DFARS Case 2014–D005 amended one of the 12 system criteria at DFARS 246.870 (*i.e.*, the criterion relating to use of suppliers) by providing a cross reference to the more detailed coverage on sources of electronic parts now provided at DFARS 246.870–2(a). In addition, the clause at DFARS 252.246–7007 included some additional definitions of terms relating to sources of electronic parts, and cross-referenced to the new clause at DFARS 252.246–7008 for consistency in the requirements relating to traceability and sources of electronic parts between CAS-covered contractors with operational systems and all other DoD contractors and subcontractor supplying electronic parts or items containing electronic parts.

Comment: One respondent noted that, while the rules on the elements of the Detection and Avoidance System and

the Contractor Purchasing System have been finalized, both systems are dependent on the forthcoming rules on use of trusted suppliers (DFARS Case 2014–D005) and timely reporting (FAR Case 2013–002). The respondent was concerned that, when finalized, those rules may shape those policies and systems in ways not contemplated in this rulemaking. The respondent recommended that, where finalization of pending rules cause contractor or subcontractor systems to go out of alignment with any of the elements related to cost allowability herein, or their previously approved systems, DoD should adopt a “time-out” from compliance enforcement and allow contractors and subcontractors time to adjust those systems to any new or modified requirements impacting the safe harbor.

Response: DFARS Case 2014–D005, although not yet finalized at the time the comments were submitted, has now been in effect since August 2, 2016. The system criterion in paragraph (c)(6) of the clause at DFARS 252.246–7007 already requires reporting of counterfeit electronic parts and suspect counterfeit electronic parts to GIDEP. Paragraph (c)(11) also requires a process for screening GIDEP reports to avoid the purchase or use of counterfeit electronic parts. Although the FAR case may provide some additional details, the primary purpose of the FAR Case 2013–002 is to expand the requirement for GIDEP reporting to agencies other than DoD and to encompass parts other than electronic parts.

b. Obtain the Counterfeit Electronic Part in Accordance With Regulations

Comment: One respondent commented on the sourcing of electronic parts as a condition of cost allowability. Using the terminology of the proposed rule published under DFARS Case 2014–D005, the respondent noted three categories of suppliers each with its own unique set of qualities and conditions needed to meet the conditions for safe harbor.

The respondent was concerned about the meaning of the statement that the contractor is responsible for the authenticity of the parts, when buying from what is now termed a “contractor-approved” supplier. The respondent requested clarification and confirmation that the safe harbor condition based on acquiring parts in accordance with the DFARS 252.246–7008 clause will be broadly construed and available where contractors acquire from any of the categories of suppliers defined in the proposed version of the 252.246–7008 clause. The respondent was concerned

that use of the terms “trustworthy” or “non-trusted” may be perceived to imply a standard inferior to that of “trusted supplier” and imply that use of such sources could prevent contractors from availing themselves of the safe harbor.

Response: It is correct that the statute and the final rule under DFARS Case 2014–D005 provided for a tiered approach for sources of electronic parts, although the final rule no longer uses the terms “trusted supplier,” “trustworthy,” or “non-trusted supplier.”

- Category 1: Electronic parts that are in production or currently available in stock. The contractor shall obtain the parts from the original manufacturer, their authorized suppliers, or from suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.

- Category 2: Electronic parts that are not in production and not currently available in stock. The contractor shall obtain parts from suppliers identified by the contractor as contractor-approved suppliers, subject to certain conditions.

- Category 3: Electronic parts that are not in production and not available from any of the above sources; electronic parts from a subcontractor (other than the original manufacturer) that refuses to accept flowdown of 252.246–7008; or electronic parts that the contractor or subcontractor cannot confirm are new or that the electronic parts have not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts: The contractor may buy such electronic parts subject to certain conditions.

Section 818(c)(3)(C) imposes, as one of the conditions for contractor identification and use of contractor-approved suppliers (category 2), the requirement that the contractor or subcontractor “assume responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2)” (*i.e.*, section 818(c)(2), entitled “Contractor Responsibilities,” which states that covered contractors that supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts). The contractor assumes responsibility for the inspection, testing, and authentication in accordance with existing applicable standards, consistent with the requirements at DFARS

252.246–7008(c)(2) if the contractor cannot establish traceability from the original manufacturer for a specific electronic part.

The safe harbor provision of the statute at section 818(c)(2)(B), as amended, does not exclude applicability to electronic parts acquired from any of the categories of sources, as long as the contractor complies with all of the conditions associated with that category. The allowability of the costs of any counterfeit electronic parts and any rework or corrective action that may be required to remedy the use or inclusion of such parts must be based upon an analysis of the facts of the case, in accordance with section 818(c)(2)(B), as amended, DFARS 231.205–71, 246.870–2, and the associated clauses at DFARS 252.246–7007 and 252.246–7008.

Comment: One respondent recommended that “pending approval” be added to the definition of “trusted suppliers” and that contractor-designated trusted suppliers be assumed to be approved by the DoD officials until DoD notifies the designating contractor that the supplier is not approved. According to the respondent, this change to the regulations is necessary in order to prevent contractors and their suppliers from having costs relating to detection and remediation deemed unallowable because DoD officials have not conducted and completed the approval process for a contractor-approved supplier.

Response: DoD approval of contractor-approved suppliers is the subject of DFARS Case 2016–D013, Amendments Related to Sources of Electronic Part, which was published in the **Federal Register** as a proposed rule on August 2, 2016. Although that rule is not yet finalized, the proposed rule stated explicitly that the contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless notified otherwise by DoD.

c. Discover the Counterfeit Electronic Part

Comment: One respondent recommended that broadening the concept of “discovers” would be consistent with the underlying policy concerns. The respondent recommended that the word “discover” should also include the situation where a contractor reviews a GIDEP alert about a suspect counterfeit electronic part and determines that it has incorporated the part in its DoD products and makes a report.

The respondent recommended replacing the word “discover” with “learns of and acts upon.” According to

the respondent, a narrow definition of “discovers” could result in a “first to discover” race that would thwart the timely sharing of information. The respondent feared that entities might not take sufficient care to gather and analyze all of the necessary information in their haste to be the first to report.

Response: Although the definition of “discover” frequently has the meaning of finding out something previously unknown, it also has the meaning of learning or becoming aware of something that the person making the “discovery” did not know about before. So, if a contractor became aware of a counterfeit electronic part on GIDEP and then took action with regard to its use of that part, this would fall within the meaning of “discover.” It would be outside the scope of the meaning of “discover” if the Government discovered that the contractor was using counterfeit electronic parts, and notified the contractor of that fact. To make the meaning clearer, DoD has substituted the words “becomes aware” for the word “discovers,” because this is the term used in section 818(c)(4), the paragraph to which section 818(c)(2)(B)(iii) refers, and is already used in DFARS 231.205–71(b)(3) and 252.246–7007(c)(6). The final rule adds clarifying language that the contractor may learn of the counterfeit electronic parts or suspect counterfeit electronic parts through inspection, testing, and authentication efforts of the contractor or its subcontractors; through a GIDEP alert; or by other means.

d. Provide Timely Notice

Comment: One respondent recommended it would be beneficial to use a central point of contact contracting officer for reporting. The respondent also recommended clarification as to which level of contractor in the supply chain must provide notice to the Government.

Response: It is not feasible for the contractor to notify just one contracting officer, and expect that contracting officer to coordinate with all other contracting officers dealing with that contractor. It is the responsibility of the contractor to notify each contracting officer for each contract affected. However, the clause at DFARS 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in compliance with section 818 paragraphs (c)(4) and (e), already requires that a counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address reporting of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is

required to the contracting officer and to GIDEP when the contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by DoD, or purchased by a contractor for delivery to, or on behalf of, DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. The notice required under this cost principle should be consistent with the statutory and regulatory required criterion for an approved system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. Therefore, the final rule requires notice to the cognizant contracting officer(s) and GIDEP (with limited exceptions).

4. Process To Adjudicate Allowability

Comment: One respondent stated the need to establish an effective process for contracting officers to be able to fairly and promptly adjudicate claims related to the safe harbor conditions.

Response: The process for adjudicating the allowability of costs related to counterfeit electronic parts and suspect counterfeit electronic parts is no different than the process for adjudicating other potentially unallowable costs. If a contractor incurs costs related to counterfeit electronic parts or suspect counterfeit electronic parts, the contracting officer will check with the Defense Contract Management Agency to determine whether the contractor meets the criteria at DFARS 231.205–71(b). If the contracting officer determines that the costs are unallowable, the Defense Contract Audit Agency determines the amount of the unallowable costs.

5. Editorial Correction

Comment: One respondent noted that in proposed DFARS 231.205–71(b)(1) the word “electronic” was omitted in one place in the sentence “The contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts”

Response: The omission of the word “electronic” in this context was baseline DFARS, consistent with the original section 818 language. The statutory language was subsequently amended by section 885 of the NDAA for FY 2016 and has been corrected in the final rule.

C. Other Changes

The final rule—

- Specifies at DFARS 231.205–71(b)(2) the cites of the DFARS regulations with which the contractor must comply, as published in the

Federal Register on August 2, 2016, under DFARS Case 2014–D005; and

- Replaces “notice” with “written notice” at DFARS 231.205–71(b)(3)(ii), for consistency with the statute.

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

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. 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. This rule is not a major rule under 5 U.S.C. 804.

V. 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:

This final rule implements section 885(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). The objective of this rule is to amend the allowability of costs for counterfeit parts or suspect counterfeit parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts. Such costs may be allowable if the parts were obtained by the contractor/subcontractor in accordance with DFARS clause 252.246–7008, Sources of Electronic Parts, and timely notice is provided to the Government.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

DoD is unable to estimate the number of small entities that will be impacted by this rule. This rule will apply to all DoD prime and subcontractors with cost contracts. This rule will only impact cost allowability if the contractor or subcontractor has complied with

DFARS 246.870, but nevertheless acquired, used, or included counterfeit electronic parts or suspect counterfeit electronic parts in performance of a DoD contract or subcontract, and has learned of such parts and provided timely notification to the cognizant contracting officer(s) and the Government Industry Data Exchange Program (unless an exception applies).

There is no change to the projected reporting, recordkeeping, or other compliance requirements associated with the rule.

DoD has not identified any alternatives that are consistent with the stated objectives of the applicable statute. However, DoD notes that the impacts of this rule are expected to be beneficial, because it expands the allowability of costs for counterfeit parts or suspect counterfeit parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 231

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 231 is amended as follows:

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 231 continues to read as follows:

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

■ 2. Revise section 231.205–71 to read as follows:

231.205–71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) *Scope.* This section implements the requirements of section 818(c)(2), National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as modified by section 833, National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

(b) The costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or

corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303(b);

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101 or were obtained by the contractor in accordance with the clause at 252.246–7008, Sources of Electronic Parts; and

(3) The contractor—

(i) Becomes aware of the counterfeit electronic parts or suspect counterfeit electronic parts through inspection, testing, and authentication efforts of the contractor or its subcontractors; through a Government Industry Data Exchange Program (GIDEP) alert; or by other means; and

(ii) Provides timely (*i.e.*, within 60 days after the contractor becomes aware) written notice to—

(A) The cognizant contracting officer(s); and

(B) GIDEP (unless the contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States; or the counterfeit electronic part or suspect counterfeit electronic part is the subject of an ongoing criminal investigation).

[FR Doc. 2016–20475 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2016–0001]

RIN 0750–AI83

Defense Federal Acquisition Regulation Supplement: Instructions for the Wide Area WorkFlow Repairable Receiving Report (DFARS Case 2016–D004)

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

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add instructions for utilizing the Wide Area WorkFlow Repairable Receiving Report.

DATES: Effective September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ruckdaschel, telephone 571–372–6088.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 17051 on March 25, 2016, to revise appendix F of the DFARS to add instructions for the use, preparation, and distribution of the Wide Area WorkFlow (WAWF) Repairable Receiving Report (RRR). One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment received follows:

A. Summary of Significant Changes From the Proposed Rule

There were no significant changes made from the proposed rule.

B. Analysis of Public Comment

Comment: Consider removing or revising the requirement for dollars to be included on every receiving report (RR) in the WAWF iRAPT (Invoice, Receipt, Acceptance, and Property Transfer) application. Many scenarios occur in which it is not a viable option to list a dollar value on a RR such as nonseparately priced items or partial shipments where a value may not be assessed.

Response: This comment is outside the scope of this rule. The requirement to record a unit price on the WAWF RRR is in accord with preexisting DFARS language.

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

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. 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