Navy/Marine Corps—The Assistant General Counsel (Acquisition Integrity)
Air Force—Deputy General Counsel (Contractor Responsibility)
Defense Advanced Research Projects Agency—The Director
Defense Information Systems Agency—The General Counsel
Defense Intelligence Agency—The Senior Procurement Executive
Defense Logistics Agency—The Special Assistant for Contracting Integrity
National Geospatial—Intelligence Agency—The General Counsel
Defense Threat Reduction Agency—The Director
National Security Agency—The Senior Acquisition Executive
Missile Defense Agency—The General Counsel
United States Cyber Command—The Staff Judge Advocate
Defense Health Agency—The General Counsel
Overseas installations—as designated by the agency head

* * * * *

[FR Doc. 2019–08488 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2019–0016]

RIN 0750–AK15

Defense Federal Acquisition Regulation Supplement: Restriction on the Acquisition of Certain Magnets and Tungsten (DFARS Case 2018–D054)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that prohibits acquisition of certain magnets and tungsten from North Korea, China, Russia, and Iran.

DATES: Effective April 30, 2019. Comments on the interim rule should be submitted in writing to the address shown below on or before July 1, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D054, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Search for ''DFARS Case 2018–D054''. Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D054'' on any attached document.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D054 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is revising the DFARS to implement section 871 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). Section 871 adds section 10 U.S.C. 2533c, which prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy melted or produced in North Korea, China, Russia, and Iran, because these materials play an essential role in national defense.

Samarium-cobalt magnets and neodymium-iron-boron magnets are rare earth magnets with many military applications, particularly in aviation and navigation, such as sonar, radar, and guidance systems. Rare earth magnets have unique properties, such as very high magnetic force and the ability to withstand demagnetization at very high temperatures. The electrical systems in aircrafts use samarium-cobalt permanent magnets to generate power. These magnets are also essential to many military weapons systems. Aircrafts use small high-powered rare earth magnet actuators that control their various surfaces during operation. Rare earth magnets may also be used as fasteners. While substitutes can be used in some applications; they are usually not as effective.

While rare earth ore deposits are geographically diverse, current capabilities to process rare earth metals into finished materials are limited mostly to Chinese sources. DoD has been studying this issue and the General Accountability Office provided a briefing in response to the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) (*https://www.gao.gov/products/GAO-10-617R*). Section 871, which was effective in August 2018, puts significant new restrictions at 10 U.S.C. 2533c on the use of foreign magnets in the military supply chain.

The element of tungsten and various tungsten heavy alloys are widely used in military applications, because tungsten heavy alloys can endure high temperature without deformation and are free from air erosion at room temperature. In addition, tungsten products are non-toxic and environmentally friendly. Some military uses include: Tungsten alloy bullets, shrapnel head; balance pinball in missiles and aircrafts; measuring core of armor-piercer; kinetic armor-piercer; armor and artillery shell; grenades; bullet-proof vehicles, armored tanks, artillery parts, gun; rocket accessories, and so on. The most significant use of tungsten is for a variety of high-speed ammunition, especially armor-piercer. Tungsten is almost an indispensable part of armor-piercer. The kinetic armor-piercer made from tungsten alloy can compete directly with the depleted uranium bomb (depleted uranium has become an environmental problem). Tungsten can also be used for nuclear weapon material shell protection. As well as offensive use, tungsten is used for some missile defense systems. A hypervelocity projectile, can be launched at 5,600 miles per hour, to defend against incoming projectiles, such as miniaturized nuclear warheads fired by tanks.

The new restriction in 10 U.S.C. 2533c is similar to the domestic source restrictions in the Specialty Metals Amendment (10 U.S.C. 2533b), though it differs in a few important respects. The Specialty Metals Amendment maintains a healthy and competitive U.S. specialty metals industry, especially for aerospace materials such as titanium and super alloys. 10 U.S.C. 2533c is meant to do the same for both rare earth magnets and tungsten. However, rather than limiting to domestic sources, 10 U.S.C. 2533c prohibits ''covered material'' that was ''melted or produced'' in China, Russia, North Korea, or Iran. While samarium-cobalt magnets have long been covered under the Specialty Metals Amendment (because cobalt is a specialty metal), 10

U.S.C. 2533c affects neodymium-iron-boron magnets for the first time.

With the Specialty Metals Amendment, the prohibition is tied to the place of first melt or equivalent process. In the case of magnets, the prohibition is tied to where the alloy is melted and the subsequent sintering operation takes place. Based on the statute, neodymiuim-iron-boron and samarium-cobalt magnets produced in China cannot be used by the U.S. military.

This does not apply when covered materials from non-covered countries cannot be acquired at a reasonable price within the required timeframe. DoD expects there will be some adjustment period as U.S. and other non-prohibited sources come online. There are also important exceptions for some commercially available off-the-shelf magnets incorporated into end items and for electronic devices. All of these exceptions exist in similar forms within the Specialty Metals Amendment. Finally, there is an exception for recycled neodymium magnets, where the ''first melt'' may have taken place in a covered country but where subsequent milling and recycling to create a ''new'' magnet takes place within the United States.

10 U.S.C. 2533c does not incorporate the ''qualifying country'' exception found within the Specialty Metals Amendment, when specialty metals are incorporated into an end product produced in a qualifying country. As a result, the distributor/fabricator model that involves taking magnets produced in China and conducting subsequent processes on them in a ''qualifying country'' will not suffice under 10 U.S.C. 2533c to render a magnet compliant for U.S. military needs. This will primarily be important for samarium-cobalt magnet sellers who will now have to comply with both laws.

II. Discussion and Analysis

This rule adds a new section at DFARS 225.7018 and a clause at 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, to implement the new restriction at 10 U.S.C. 2533c on acquisition of certain magnets and tungsten.

A. Restriction

With some exceptions, 10 U.S.C. 2533c prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy from North Korea, China, Russia, or Iran.

This rule clarifies that, with regard to samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy, and all subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

However, the restriction on melting of the samarium-cobalt alloy is in addition to any applicable restriction on melting of certain cobalt alloys at DFARS 225.7003 and the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in accordance with 10 U.S.C. 2533b.

B. Exceptions

In accordance with 10 U.S.C. 2533c, the rule does not apply to an acquisition—

- Equal to or less than the simplified acquisition threshold (SAT) (see section III.A. of this preamble);
- Outside the United States, of an item for use outside the United States;
- Of an end item that is—
  - A commercially available off-the-shelf (COTS) item, other than a COTS item that is 50 percent or more tungsten by weight, or a tungsten or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;
  - An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187, determines that the domestic availability of a particular electronic device is critical to national security; or
  - A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States; or
- If the authorized agency official concerned, without power of redelegation, determines that covered materials of satisfactory quality and quantity, in the required form, cannot be purchased as and when needed. Note that, unlike the domestic source restrictions of the Berry Amendment (10 U.S.C. 2533a) and specialty metals (10 U.S.C. 2533b), this is not a domestic nonavailability determination, but a determination that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from any country other than a covered country.

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

This rule adds a new clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, which will not apply to acquisitions below the SAT, in accordance with 41 U.S.C. 1905, but applies to contracts for the acquisition of commercial items, except as provided in the statute at 10 U.S.C. 2533c(c)(3).

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 SAT. 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 FAR 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 does not intend to make that determination. Therefore, this rule will not apply below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items. 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 item contracts, the provision of law will apply to contracts for the acquisition of commercial items. 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 items, including COTS items, if otherwise applicable.

10 U.S.C. 2533c specifically exempts the acquisition of an end item that is a COTS item, other than a COTS item that is 50 percent or more tungsten by weight, or a mill product that has not been incorporated into an end item, subsystem, assembly, or component. Although 10 U.S.C. 2533c does not refer to 10 U.S.C. 2375 and provide that, notwithstanding those statutes it shall be applicable to contracts for the procurement of commercial items, it is the clear intent of the statute to cover commercial items, other than those specifically exempted. Therefore, DoD has signed a determination of applicability to acquisitions of commercial items, except as exempted in the statute.

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 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.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because this rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

DoD does not expect this interim rule 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule is required to implement section 871 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2019, which adds 10 U.S.C. 2533c.

The objective of the rule is to prohibit acquisition of sensitive materials (*i.e.* samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished components containing tungsten heavy alloy) from North Korea, China, Russia, or Iran.

Based on Federal Procurement Data System data for FY 2017, DoD awarded in the United States 13,400 contracts that exceeded $250,000 and were for the acquisition of manufactured end products, excluding those categories that could not include samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten (such as clothing and fabrics, books, or lumber products). These contracts were awarded to 5,073 unique entities, of which 3,074 were small entities. It is not known what percentage of these awards involved samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten, or what lesser percentage might involve such materials from China, North Korea, Russia, or Iran.

There are no projected reporting or recordkeeping requirements, as a result of this rule. However, there may be compliance costs to track the origin of covered materials.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD is exempting acquisitions equal to or less than the simplified acquisition threshold in accordance with 41 U.S.C. 1905. DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D054), in correspondence.

VII. 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). Although this rule does not impose any reporting requirements, DoD notes that tungsten (as a derivative of wolframite) is considered a conflict mineral under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) and is thus subject to associated reporting requirements reflected therein.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment.

The law was effective upon enactment in August 2018 as a way to decrease DoD dependence—and thus improve national security—on these materials that originate in certain countries. As discussed in Section I, Background, due to the use of these materials in the supply chain for DoD military systems, nonmilitary systems of importance to DoD, and national defense applications, immediate application of this provision is necessary. The intent of 10 U.S.C. 2533c is to promote growth in domestic capability for these materials and reduce dependence on foreign sources as a shortage would impact many DOD applications as well as a negatively impact on the broader industrial base.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer L. Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraph (f)(ix)(FF) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ix) * * *

(FF) Use the clause at 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, as prescribed in 225.7018–5.

* * * * *

PART 225—FOREIGN ACQUISITION

■ 3. Add sections 225.7018, 225.7018–1, 225.7018–2, 225.7018–3, 225.7018–4,

and 225.7018–5 to subpart 225.70 to read as follows:

* * * * *

Sec.

225.7018 Restriction on acquisition of certain magnets and tungsten.

225.7018–1 Definitions.

As used in this section—

Covered material means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tungsten metal powder; and

(4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

Covered country means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

225.7018–2 Restriction.

(a) Except as provided in 225.7018–3 and 225.7018–4, do not acquire any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(b) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(1) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(2) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(c) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals at 225.7003 and the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

225.7018–3 Exceptions.

The restriction in section 225.7018–2 does not apply to an acquisition—

(a) At or below the simplified acquisition threshold;

(b) Outside the United States of an item for use outside the United States; or

(c) Of an end item that is—

(1) A commercially available off-the-shelf item, other than—

(i) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187 determines that the domestic availability of a particular electronic device is critical to national security; or

(3) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) If the authorized agency official concerned, without power of redelegation, determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country (see 225.7018–4).

225.7018–4 Nonavailability determination.

(a) *Individual nonavailability determinations.* (1) The following officials are authorized, without power of redelegation, to make a nonavailability determination described in 225.7018–3(d) on an individual basis (*i.e.,* applies to only one contract):

(i) The Under Secretary of Defense (Acquisition and Sustainment).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination shall include—

(i) An analysis of alternatives that would not require a nonavailability determination; and

(ii) A written certification by the requiring activity that describes, with specificity, why such alternatives are unacceptable.

(3) Defense agencies other than the Defense Logistics Agency shall follow the procedures at PGI 225.7018–4(a)(3) when submitting a request for a nonavailability determination.

(4) Provide to USD(A&S) DASD (Industrial Policy), in accordance with the procedures at PGI 225.7018–4(a)(4)—

(i) A copy of individual nonavailability determinations with supporting documentation; and

(ii) Notification when individual waivers are requested, but denied.

(b) *Class nonavailability determinations.* A class nonavailability determination (*i.e.,* a nonavailability determinations that applies to more than one contract) requires the approval of the USD(A&S). Follow the procedures at PGI 225.7018–4(b) when submitting a request for a class nonavailability determination.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(i) Publish a notice on the Federal Business Opportunities website (*www.FedBizOpps.gov*) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)—

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

225.7018–5 Contract clause.

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018–4, use the clause at 252.225–7052, Restriction on Acquisition of Certain Magnets and Tungsten, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the simplified acquisition threshold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.225–7052 to read as follows:

252.225–7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

As prescribed in 225.7018–5, use the following clause:

Restriction on the Acquisition of Certain Magnets and Tungsten (APR 2019)

(a) *Definitions.* As used in this clause—

Covered material means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tungsten metal powder; and

(4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

Covered country means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

(b) *Restriction.* (1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(c) *Exceptions.* This clause does not apply—

(1) To an end item that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(ii) An electronic device, unless otherwise specified in the contract; or

(iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018–4 of the Defense Federal Acquisition Regulation Supplement, that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

(End of clause)

[FR Doc. 2019–08485 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS–2018–0056]

RIN 0750–AK18

Defense Federal Acquisition Regulation Supplement: Small Business Set-Asides for Architect-Engineer and Construction Design Contracts (DFARS Case 2018–D057)

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 regarding set-asides for architect-engineer and construction design contracts.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 62554 on December 4, 2018, to implement section 2804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 2804 increases to $1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below $1 million, and may be set aside for small business, if valued at $1 million or more.

There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule, except to add a reference to 10 U.S.C. 2855.

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

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

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 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.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

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

DoD is issuing a final rule to amend the DFARS to implement section 2804 of the NDAA for FY 2019. Section 2804 increases to $1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below $1 million, and may be set aside for small business, if valued at $1 million or more.

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

The rule applies to contract awards for architect-engineer services,