■ 2. Amend § 82.15 by adding paragraph (a)(3) to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

(a) * * *

(3) Effective October 1, 2022, no person may manufacture class II controlled substances defined in § 82.3 at a plant where HFC-23 byproduct is generated unless no more than 0.1 percent of HFC-23 generated is emitted as compared to the amount of class II controlled substances intentionally manufactured on the facility line. Any captured HFC-23 must be employed for commercial use consistent with the requirements outlined in 40 CFR part 84 or destroyed using a technology approved by EPA for that purpose in § 84.29. Where destruction occurs on-site at the plant where HFC-23 is generated, HFC-23 must be destroyed within 30 days of its generation. Captured HFC-23 destroyed at a different plant than where it is generated must be destroyed within 90 days after its generation. In such instances, emissions during the transportation to and destruction at the different plant are included in the calculations of whether the manufacturer meets the 0.1 percent standard.

(i) *Request for extension.* A person may submit to the relevant Agency official a request for a six-month extension, with the possibility of one additional six-month extension of the October 1, 2022, compliance date. No entity may have a compliance date later than October 1, 2023.

(ii) *Timing of request.* The extension request must be submitted to EPA no later than August 1, 2022, for a first-time extension, or February 1, 2023, for a second extension.

(iii) *Content of request.* The extension request must contain the following information:

(A) Name of the plant submitting the request; contact information for a person at the plant; and the address of the plant.

(B) A description of the specific actions taken at the plant to improve HFC-23 control, capture, and destruction; the plans to meet the 0.1 percent HFC-23 limit including the expected date by which the equipment will be installed and operating; and verification that the plant has met all applicable reporting requirements under 40 CFR parts 82, 84, and 98.

(iv*) Review of request.* Starting on the first working day following receipt by the relevant Agency official of a complete request for extension, the official will initiate review of the information submitted and take action within 30 working days.

* * * * *

■ 3. Amend § 82.24 by adding paragraph (g) to read as follows:

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

* * * * *

(g) *Manufacturers of class II controlled substances under § 82.15(a)(3).* Any person who manufactures class II controlled substances under § 82.15(a)(3) during a control period must comply with the following recordkeeping and reporting requirements:

(1) *Reporting.* Each manufacturer of a class II controlled substance under § 82.15(a)(3) must provide the Administrator with the following two reports as required in § 82.24(g)(1)(i) and (ii).

(i) Within 45 days of the effective date of the final rule, each manufacturer must provide the Administrator with a one-time report containing the information required in this paragraph (g)(1)(i). Any changes to information required in this paragraph (g)(1)(i) must be reflected in a revision to the report to be submitted to EPA within 60 days of the change(s).

(A) Information on the capacity to manufacture the intended chemical on the line(s) on which HFC-23 is generated.

(B) Description of actions taken at the plant to control the generation and emissions of HFC-23.

(C) Identification of approved destruction technology and its location intended for use for HFC-23 destruction.

(D) A copy of the destruction and removal efficiency report associated with the destruction technology.

(ii) For each quarter, each manufacturer must provide the Administrator with a report containing the information required in this paragraph (g)(1)(ii).

(A) Production line data for the quarter on HFC-23 (in kilograms) on: Emissions; generated; generated and captured; generated and captured for feedstock use in the United States; generated and captured for destruction; used for feedstock without prior capture; and destroyed without prior capture.

(iii) If captured HFC-23 is destroyed in a subsequent control period, within 45 days after destruction occurs, manufacturers must submit information to EPA indicating the HFC-23 has been destroyed.

(iv) If captured HFC-23 is destroyed at a different plant than where it is generated, within 45 days after destruction occurs, manufacturers must submit information to EPA indicating the HFC-23 has been destroyed. Such report must include the date on which the HFC-23 was generated and the date on which the HFC-23 was destroyed.

(v) In developing any required report, the owner/operator of a plant that manufacturers class II controlled substances that generates HFC-23 must abide by the following monitoring and quality assurance and control provisions:

(A) To calculate the quantities of HFC-23 generated and captured for any use, generated and captured for destruction, used for feedstock without prior capture, and destroyed without prior capture, plants shall comply with the monitoring methods and quality assurance and control requirements set forth at 40 CFR 98.414 of this title and the calculation methods set forth at § 98.413 of this title, except § 98.414(p) of this title shall not apply.

(B) To calculate the quantity of HFC-23 emitted, plants shall comply with the monitoring methods and quality assurance and control requirements set forth at § 98.124 of this title and the calculation methods set forth at § 98.123 of this title.

(2) *Recordkeeping.* Each manufacturer during a control period must maintain records of reports provided to the Administrator for five years.

[FR Doc. 2021–20746 Filed 9–28–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 32, and 52

[FAR Case 2020–007; Docket No. FAR–2020–0007; Sequence No. 1]

RIN 9000–AO10

Federal Acquisition Regulation: Accelerated Payments Applicable to Contracts With Certain Small Business Concerns

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to

implement a section of the National Defense Authorization Act for Fiscal Year 2020 to provide for accelerated payments to small business contractors and subcontractors and a comparable statute applicable only to the Department of Defense.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before November 29, 2021 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020–007 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2020–007''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2020–007''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2020–007'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2020–007'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or by email at *zenaida.delgado@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2020–007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement a policy that provides for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. This change implements section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 873 amends 31 U.S.C. 3903(a). Specifically, section 873 requires agencies to establish an accelerated payment date for small business prime contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. Section 873 also requires that, to the fullest extent permitted by law, the head of an agency establish an accelerated payment date for prime contractors that subcontract with small businesses, with a goal of 15 days after receipt of a proper invoice, if—

(1) A specific payment date is not established by contract; and

(2) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor. The proposed rule implements both aspects of section 873.

The FAR currently addresses providing accelerated payments to small business subcontractors at FAR 32.009 and requires contracting officers to insert the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors, in solicitations and contracts. FAR 52.232–40 requires prime contractors to provide accelerated payments to their small business subcontractors when the Government provides accelerated payments to the prime contractors.

In addition, this rule implements 10 U.S.C. 2307, which includes the same provisions regarding accelerated payments, applicable only to the Department of Defense.

II. Discussion and Analysis

The following summarizes the proposed changes to the FAR:

The policy at FAR 32.009–1 has been expanded to address accelerated payments to small business contractors. A goal of payment within 15 days after receipt of a proper invoice is added, and prime contractors are prohibited from requesting any further consideration from the subcontractor in exchange for the accelerated payments. Section 873 does not specify the number of days for the prime to make accelerated payments to the subcontractor; however, DoD, GSA, and NASA propose, as a matter of policy, that the prime contractor make payments to the small business subcontractor within 15 days of receiving the accelerated payment from the Government, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

These requirements are also incorporated into the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors. For applicability to contracts for the acquisition of commercial items, because this clause is now based on a statutory requirement, it is incorporated into FAR clause 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items, rather than being separately prescribed at FAR 12.301(d).

There are other conforming changes at FAR 12.301, 32.903, 32.906, 52.213–4, and 52.244–6.

To further improve cash flow and access to the Federal marketplace, DoD, GSA, and NASA are considering additional regulatory actions to further broaden the reach of accelerated payments to small business subcontractors and welcome public comment on how this broadening might best be accomplished. This proposed rule flows down the requirement for accelerated payments from the prime contractor to small business subcontractors; the accelerated payment requirement does not flow down to other than small businesses, *i.e.,* large business subcontractors. As drafted, large business subcontractors in the supply chain are not required to receive accelerated payments, and therefore are not required to accelerate payments to their small business subcontractors. Should the rule be expanded to apply the accelerated payment requirement to large business subcontractors in order to reach lower tier small business subcontractors? In other words, should all businesses, large and small, be directed to accelerate payment to their subcontractors, all the way down the tiers? What are the benefits, burdens, and unintended consequences, if any, of this type of expansion?

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 rule does not add any new solicitation provisions or clauses. This rule proposes to amend the following FAR clauses: 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Items; 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items); 52.232–40, Providing Accelerated Payments to Small Business Subcontractors; and 52.244–6, Subcontracts for Commercial Items.

The FAR rule makes the 10 U.S.C. 2307 and 31 U.S.C. 3903 statutory changes to a requirement already applicable to contracts at or below the SAT and to contracts for the acquisition of commercial items, including COTS items. The Federal Acquisition Regulatory Council (FAR Council) is

proposing, in accordance with 41 U.S.C. 1905, 41 U.S.C. 1906, and 41 U.S.C. 1907, to apply the rule to contracts at or below the SAT and acquisitions of commercial items, including acquisitions for COTS items. The FAR Council will consider public feedback before making a final determination on the scope of the final rule.

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

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

The FAR Council intends to make a determination to apply this statute to acquisitions at or below the SAT. These accelerated payments provide benefits to contractors that are small businesses, to contractors that subcontract with small businesses, and to small business subcontractors by accelerating payments to their prime contractors, without adding any reporting or recordkeeping requirements. Approximately 96 percent of Federal contracts are in amounts at or below the SAT. An exception for contracts and subcontracts at or below the SAT would exclude contracts and subcontracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-The-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council 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.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council intends to make a determination to apply this statute to acquisitions for commercial items. The Administrator for Federal Procurement Policy intends to make a determination to apply this statute to acquisitions for COTS items. These accelerated payments provide benefits to contractors that are small businesses, to contractors that subcontract with small businesses, and to small business subcontractors by accelerating payments to their prime contractors, without adding any reporting or recordkeeping requirements. Over 50 percent of Federal contracts are awarded using commercial item procedures. An exception for commercial items, including COTS items, contracts and subcontracts would exclude contracts and subcontracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

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.

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, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this 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. 601–612, because the rule is not implementing any requirements with which small entities must comply. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to provide for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. Specifically, section 873 of the NDAA for FY 2020 requires agencies, to the fullest extent permitted by law, to establish an accelerated payment date for small business contractors, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. For contractors that subcontract with small businesses, section 873 requires the FAR, to the fullest extent permitted by law, to establish an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if—

(a) A specific payment date is not established by contract; and

(b) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

The objective is to implement section 873 of the NDAA for FY 2020 (Pub. L. 116–92), which amends 31 U.S.C. 3903(a). The rule also implements 10 U.S.C. 2307, which applies the same requirements to the Department of Defense. The legal basis for this rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

This rule applies to small businesses that are prime contractors and to small businesses that are subcontractors on Federal prime contracts. Based on data obtained from the Federal Procurement Data System, 129,450 unique entities (including 84,468 small businesses) were awarded contracts for FY 2019. DoD, GSA, and NASA do not have data as to how many subcontracts are awarded to small businesses. Regarding the impact of the prohibition on fees or other consideration in return for accelerated payments, it is not possible to estimate how many of these small business subcontractors may have been required to provide consideration or pay fees to the prime contractor in order to receive accelerated payments.

The proposed rule does not include additional reporting or record keeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no available alternatives to the proposed rule to accomplish the desired objective of the statute.

Although this proposed rule may have a positive impact on small businesses, the rule is not expected to have a significant economic impact on a substantial number of small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the

Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–007), in correspondence.

VII. Paperwork Reduction Act

This 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. 3501–3521).

List of Subjects in 48 CFR Parts 12, 32, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 12, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

■ 2. Amend section 12.301 by removing paragraph (d)(15).

PART 32—CONTRACT FINANCING

■ 3. Revise sections 32.009 and 32.009–1 to read as follows:

32.009 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

32.009–1 General.

(a) Pursuant to 31 U.S.C. 3903(a) and 10 U.S.C. 2307(a), agencies shall provide accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation, if a specific payment date is not established by contract, to—

(1) Small business contractors; and

(2) Prime contractors that subcontract with a small business concern, if the prime contractor agrees to make payments to the small business subcontractor within 15 days of receiving the accelerated payment from the Government, after receipt of a proper invoice and all other required documentation from the small business subcontractor, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(b) This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

(c) Agencies may use the Governmentwide commercial purchase card as a method of payment (see 32.1108) to facilitate accelerated payment, to earn refunds, and to reduce invoice processing costs.

32.903 [Amended]

■ 4. Amend section 32.903 by removing from paragraph (a)(5) ''5 CFR 1315.5'' and adding ''5 CFR 1315.5, but see 32.009–1(a)'' in its place.

32.906 [Amended]

■ 5. Amend section 32.906 by removing from paragraph (a)(2) ''are necessary (see 32.903(a)(5))'' and adding ''is necessary. See 32.903(a)(5), but see 32.009–1(a)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7); and adding a new paragraph (a)(5);

■ c. Redesignating paragraph (e)(1)(xxii) as paragraph (e)(1)(xxiii); and adding a new paragraph (e)(1)(xxii); and

■ d. In Alternate II—

■ i. Revising the date of the Alternate;

■ ii. Redesignating paragraph (e)(1)(ii)((U) as paragraph (e)(1)(ii)(V); and adding a new paragraph (e)(1)(ii)((U);

The revision and addition read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DATE)

(a) * * *

(5) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (DATE) (31 U.S.C. 3903 and 10 U.S.C. 2307).

* * * * *

(e)(1) * * *

(xxii) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (DATE) (31 U.S.C. 3903 and 10 U.S.C. 2307). Flow down required in accordance with paragraph (c) of 52.232–40.

* * * * *

Alternate II (DATE). * * *

(e)(1) * * *

(ii) * * *

(U) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (DATE) (31 U.S.C. 3903 and 10 U.S.C. 2307). Flow down required in accordance with paragraph (c) of 52.232–40.

* * * * *

■ 7. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(1)(viii) and (ix) as paragraphs (a)(1)(ix) and (x); and adding a new paragraph (a)(1)(viii);

■ c. Removing paragraph (a)(2)(vi);

■ d. Redesignating paragraphs (a)(2)(vii) through (ix) as paragraphs (a)(2)(vi) through (viii); and

■ e. Removing from the newly redesignated paragraph (a)(2)(vii) ''(JUL 2021)'' and adding ''(DATE)'' in its place.

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DATE)

(a) * * *

(1) * * *

(viii) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (DATE) (31 U.S.C. 3903 and 10 U.S.C. 2307).

* * * * *

■ 8. Amend section 52.232–40 by revising the date of the clause and paragraphs (a) and (c) to read as follows:

52.232–40 Providing Accelerated Payments to Small Business Subcontractors.

* * * * *

Providing Accelerated Payments to Small Business Subcontractors (DATE)

(a)(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307, within 15 days after receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor, if a specific payment date is not established by contract.

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.

* * * * *

(c) *Subcontracts.* Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

* * * * *

■ 9. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(xix) ''(DEC 2013)'' and adding ''(DATE)'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (DATE)

* * * * *

[FR Doc. 2021–20852 Filed 9–28–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225, 231, 242, and 252

[Docket DARS–2019–0039]

RIN 0750–AJ27

Defense Federal Acquisition Regulation Supplement: Treatment of Incurred Independent Research and Development Costs (DFARS Case 2017–D018)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that makes amendments regarding the treatment of independent research and development expenditures and requires the Defense Contract Audit Agency to provide an annual report to Congress on independent research and development and bid and proposal expenditures.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 29, 2021, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2017–D018, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2017–D018.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2017–D018'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2017–D018 in the subject line of the message.

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

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 571–372–6115.

SUPPLEMENTARY INFORMATION:

I. Background

Section 824 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) amends 10 U.S.C. 2372 to require that regulations may not infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development (IR&D) program if the chief executive officer (CEO) of the contractor determines that IR&D expenditures will advance the needs of DoD for future technology and advanced capability.

Section 824 amends 10 U.S.C. 2372 to remove the list that limits the allowability of IR&D costs to seven activities of potential interest to DoD. In lieu of the list of activities of potential interest to DoD, section 824 requires a CEO determination that IR&D expenses will advance the needs of DoD for future technology and advanced capability.

Section 824 also decouples IR&D and bid and proposal (B&P) costs by moving the language pertaining to B&P costs out of 10 U.S.C. 2372 and placing it in the new 10 U.S.C. 2372a. This change ensures that regulations pertaining to B&P costs are separated from regulations pertaining to IR&D costs.

Section 824 also amends 10 U.S.C. 2313a by adding a requirement for the Defense Contract Audit Agency to submit an annual report to Congress of all incurred IR&D and B&P costs of contractors in the prior Government fiscal year.

II. Discussion and Analysis

In accordance with 10 U.S.C. 2372(d), the rule adds language at DFARS 231.205–18(c)(iii)(A)(*1*) to require contractor CEOs to determine that IR&D expenditures will advance the needs of DoD for future technology and advanced capability. In addition, the rule adds a requirement at DFARS 231.205–18(iii)(c)(A)(*2*) for major contractors to include a statement in the submission to the Defense Technical Information Center (DTIC) that the CEO of the contractor has made the determination required by 10 U.S.C. 2372. This statement serves as evidence for DoD, when determining whether IR&D costs are allowable. Major contractors are already required to upload IR&D activities in DTIC in order to provide DoD with information on the progress of these activities; this rule simply adds a requirement for those major contractors to include a statement in the DTIC input that the determination required by 10 U.S.C. 2372 has been made as a means for DoD to know that those costs are allowable.

Since the list of seven activities of potential interest to DoD was deleted from 10 U.S.C. 2372, the requirement for the Defense Contract Management Agency (DCMA) administrative contracting officer (ACO) or corporate ACO (CACO) to compare the IR&D activities uploaded in DTIC to the list of seven IR&D activities of potential interest to DoD no longer exists. Therefore, DFARS 242.771–3(a) is modified to remove the ACO and CACO responsibilities for determining if an activity is of potential interest to DoD.

The rule also adds language to clarify that IR&D and B&P costs will be reported independently from other incurred indirect costs in a new paragraph at DFARS 231.205–18(c)(iv). This change corresponds to 10 U.S.C. 2372(a) and 10 U.S.C. 2372a(a), which require allowable IR&D and B&P costs to be reported independently.

The proposed rule decouples IR&D and B&P by stating ''IR&D and B&P'' instead of ''IR&D/B&P'' throughout the text based on the amendment to 10 U.S.C. 2372, which segregates IR&D and B&P costs. However, for the purposes of calculating the threshold that requires major contractors to submit IR&D activities and statements regarding the CEO determinations in DTIC, the rule does not change the calculation, which combines IR&D and B&P, to ensure the definition of ''major contractor'' remains the same.

DFARS 242.771–3(c)(1) is modified in the proposed rule to change the content of the communication from DoD to contractors from the ''planned or expected DoD future needs'' to the ''planned or expected needs of DoD for future technology and advanced capability.'' In addition, the responsibilities of the Office of the Under Secretary of Defense for Research and Engineering are expanded to include providing on the DTIC website