

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System**

48 CFR Parts 203, 204, 205, 207, 208, 211, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 232, 234, 237, 239, 242, 243, 244, 245, 246, 247, and 252

[Docket DARS–2022–0004]

RIN 0750–AK31

Defense Federal Acquisition Regulation Supplement: Definition of “Commercial Item” (DFARS Case 2018–D066)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the revised definition of “commercial item” in accordance with two sections of the John S. McCain National Defense Authorization Act for Fiscal Year 2019.

DATES: Effective January 31, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, telephone 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 87 FR 15820 on March 18, 2022, to implement sections 836, 837(b), and 837(c) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 836 modified 41 U.S.C. 103 by bifurcating the definition of “commercial item” into “commercial product” and “commercial service” at 41 U.S.C. 103 and 41 U.S.C. 103a, respectively, and made conforming changes to other sections in Title 41. In addition, section 836 made conforming changes to several sections in Title 10. Section 837(b) and (c) implement this revision at 10 U.S.C. 2533a and 2533b (redesignated as 10 U.S.C. 4862 and 4863, respectively). DoD published a correction to the proposed rule at 87 FR 19063 on April 1, 2022, to correct a hyperlink. One respondent 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; however, no changes were made to the rule as a result of the comments

received. A discussion of the comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

No significant changes are made from the proposed rule.

B. Analysis of Public Comments

1. Exceptions to Implementation

Comment: The respondent took exception to changing the title of DFARS clause 252.227–7015 from “Technical Data-Commercial Items” to “Technical Data-Commercial Products and Commercial Services”. The respondent also took exception to changing “commercial items” to “commercial products or commercial services” within the text of the clause. While the respondent acknowledged that the existing DFARS clause 252.227–7015 applies to “commercial items”, the respondent stated that the current clause does not specifically define “commercial item”, nor does it reference the commercial item definition at Federal Acquisition Regulation (FAR) 2.101. The respondent also acknowledged that the prior FAR commercial item definition included services, but indicated that DFARS clause 252.227–7015 has not historically been applied to commercial services. The respondent also asserted that the clause has been applied consistent with DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items, (*i.e.*, to technical data pertaining to items, components, or processes). The respondent asserted that this is an expansion of the coverage of DFARS 252.227–7015 to commercial services and is outside the scope of this rule. The respondent recommended that all references to commercial services in the title and text of the clause be removed.

Response: This rule implements sections 836 and 837(b) of the NDAA for FY 2019, which bifurcated the definition of “commercial item” into “commercial product” and “commercial service” at 41 U.S.C. 103 and 103a and at 10 U.S.C. 2533a and 2533b, respectively. The NDAA for FY 2019 does not change the meaning of the terms “items” or “services”. The title and text of DFARS clause 252.227–7015, Technical Data-Commercial Items, included the term “commercial items”, which means it included commercial products and commercial services in accordance with the prior definition of “commercial item” at FAR 2.101. In addition, paragraph (a)(1) of the clause clarified that the term “commercial item” as used in the clause, excluded commercial computer software;

however, it did not exclude commercial services. Furthermore, DFARS part 227 does not include a definition of “commercial item” because the definition at FAR 2.101 is utilized for this part in accordance with FAR part 2. Therefore, changing the term “commercial items” to “commercial products and commercial services” within the clause and title of DFARS clause 252.227–7015 does not change the application or coverage of the clause.

Comment: The respondent took exception to the replacement of the term “noncommercial items” with “other than commercial products or commercial services” in the DFARS sections pertaining to data rights because the new verbiage is awkward and wordy.

Response: DoD acknowledges the respondent’s concern that the new verbiage is awkward and wordy. This rule amends the DFARS to conform with the FAR final rule for FAR case 2018–018, published on November 4, 2021, at 86 FR 61017, which changed all instances of “noncommercial items” and “non-commercial items” to “other than commercial products and commercial services” or “other than commercial products or commercial services” as appropriate within the context of the FAR. This was an editorial change to utilize a single term consistently throughout the FAR to help the Government, contractors, and offerors understand the regulations. For the same reason, the terms used in the FAR are also used in agency supplements to the FAR, including the DFARS. Therefore, this rule makes the same conforming changes to the DFARS.

Comment: The respondent took exception to the replacement of the term “noncommercial items” with “other than commercial” in the DFARS sections pertaining to data rights indicating that this change will drive significant costs into DoD contracts, due to the required data rights markings and legends that will require deliverable technical data to be re-marked. The respondent also indicated that this rule may impact pre-existing technical data marked with prior legends that the contractor may deliver in the future. The respondent indicated that the change in terminology may require contractors to modify internal procedures and guidance for the marking of deliverable data, and that some contractors have invested private funds to automate the application of existing DFARS prescribed legends. In addition, the respondent indicated that DoD customers will reject Contract Data Requirements Lists that include the

language “noncommercial items” in document markings.

Response: In accordance with FAR 1.108(d), this rule will be applied prospectively; therefore, data markings and legends on data to be delivered under an existing contract will not require re-marking, and the data would not be rejected for this reason. Moreover, the DFARS allows contractors to mark data with the appropriate restrictive legend for which the data qualified under a previous contract (e.g., DFARS clause 252.227–7013, Rights in Technical Data—Noncommercial Items); therefore, this rule will not increase costs because it does not require re-marking of pre-existing data that includes authorized pre-existing markings. Lastly, these changes do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0369, titled: DFARS Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.

2. Outside the Scope of the Rule

Comment: The respondent recommended removing the coverage for “services” at DFARS part 227 due to the inapplicability of the “follow the funds” test to services. The respondent also indicated that the funding test in DFARS 252.227–7013, Rights in Technical Data–Noncommercial Items, applies to items, components, or processes to which the technical data pertains, not to services.

Response: This rule implements sections 836 and 837(b) of the NDAA for FY 2019, which bifurcated the definition of “commercial item” into “commercial product” and “commercial service” at 41 U.S.C. 103 and 103a and at 10 U.S.C. 2533a and 2533b, respectively. This rule does not change the meaning of the terms “items” or “services”, nor does it change the application of the funding test; therefore, this is outside the scope of this rule.

C. Other Changes

The definition of “Technical information” at DFARS 204.7301, 252.204–7009, and 252.204–7012 is amended to remove the phrase “regardless of whether or not the clause is incorporated in this solicitation or contract”. DFARS 211.274–2(b)(2) is amended to delete “or commercial service” that was erroneously included in the proposed rule as services cannot be marked with an item unique

identifier. DFARS 212.102(a)(i)(B) and (iii) are amended to replace “commercial item” with “commercial product or commercial service”. The word “or” is changed to “and” at DFARS 212.202 for consistency throughout the DFARS. DFARS 212.504(a) and (b) are amended to add “or commercial components” which was erroneously deleted in the proposed rule. DFARS 215.404–71–5(b)(7) is amended to add “commercial” prior to “processes” for consistency throughout the DFARS. DFARS 225.7503(a) and (b), 227.7102, 252.203–7001(g), and 252.227–7018(k) are amended to replace “including commercial components” with “commercial components” or with “or commercial components” for accuracy and consistency throughout the DFARS. DFARS 234.7002 is amended to remove “and commercial services” as a major weapon system in part 234 is a product. DFARS 234.7002(d)(5) is amended to change “item” to “commercial product” to align with the text of the paragraph. The title of DFARS subpart 244.4 is amended to restore “and commercial components” for accuracy and consistency throughout the DFARS. DFARS 225.215–7010(b)(ii) and (b)(ii)(A) are amended to add “or commercial service” throughout to align with the title of paragraph 225.215–7010(b)(ii). DFARS 252.215–7013 is amended to correct the reference for the definition of nontraditional defense contractor. DFARS 252.227–7015 is amended by modifying the definition at (a)(1), deleting (a)(4), and renumbering (a)(5) to (a)(4) to align with the revised clause title.

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

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions, contract clauses, or prescriptions for provisions or clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Expected Impact of the Rule

This final rule does not create new requirements or modify any existing requirements. This final rule merely replaces the term “commercial item” with “commercial product,” “commercial service,” “commercial product or commercial service,” or

“commercial product and commercial service”. In addition, this final rule replaces all instances of “noncommercial item” and “non-commercial item” with “other than commercial product and commercial service” or “other than commercial product or commercial service” as appropriate within the context of DFARS text, including existing solicitation provisions and contract clauses. These revisions do not modify commercial acquisition procedures, nor do they modify Government or industry operations. This final rule is expected to be beneficial to Government and industry, as it resolves an issue the Section 809 Panel cited, which is the inconsistent interpretation of policy and confusion over how to identify eligible commercial products and commercial services. Bifurcating the definition of “commercial item” into “commercial product” and “commercial service” is a way to provide clarity for the acquisition workforce, which may result in greater engagement with the commercial marketplace. Therefore, this final rule is expected to be beneficial to Government and industry.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

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

VII. Regulatory Flexibility Act

A final regulatory flexibility (FRFA) analysis 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 is necessary to implement sections 836, 837(b), and 837(c) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 836 replaces the definition of “commercial item” at 41 U.S.C. 103 with “commercial product” at 41 U.S.C. 103 and a definition of “commercial service” at 41 U.S.C. 103a. Section 837(b) and (c) implement this revision at 10 U.S.C. 2533a and 2533b. In addition, this rule replaces all instances of “noncommercial item” and “non-commercial item” with “other than commercial product and commercial service” or “other than commercial product or commercial service”, as appropriate within the context of the DFARS text. The objective of this proposed rule is to implement sections 836, 837(b), and 837(c) of the John S. McCain NDAA for FY 2019 to align the text of the DFARS with the new statutory definitions of commercial product and commercial service.

No significant issues were raised by the public comments received in response to the initial regulatory flexibility analysis; therefore, no changes were made to the proposed rule as a result of public comments.

This final rule will apply to all entities that do business with DoD, including the 355,208 small business entities in the System for Award Management. However, DoD does not expect this rule to have a significant economic impact because the rule does not contain any requirements with which small entities must comply. This rule provides clarity for the acquisition workforce by replacing all instances of “commercial item” with “commercial product” and/or “commercial service”, as appropriate within the context of the DFARS text.

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

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact on small entities, because there is no significant impact on small entities.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information

collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0369, entitled: DFARS Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.

List of Subjects in 48 CFR Parts 203, 204, 205, 207, 208, 211, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 232, 234, 237, 239, 242, 243, 244, 245, 246, 247, and 252

Government procurement.

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Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 204, 205, 207, 208, 211, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 232, 234, 237, 239, 242, 243, 244, 245, 246, 247, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203, 204, 205, 207, 208, 211, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 232, 234, 237, 239, 242, 243, 244, 245, 246, 247, and 252 continues to read as follows:

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

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.171–4 [Amended]

■ 2. Amend section 203.171–4—
 ■ a. In paragraph (a) by removing “commercial items” and adding “commercial products and commercial services” in its place; and
 ■ b. In paragraph (b) by removing “commercial items” and “task and delivery orders” and adding “commercial products and commercial services” and “task orders and delivery orders.” in their places, respectively.

■ 3. Revise section 203.570 to read as follows:

203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

203.570–3 [Amended]

■ 4. Amend section 203.570–3 by removing “commercial items” and adding “commercial products or commercial services” in its place.

203.970 [Amended]

■ 5. Amend section 203.970 by removing “commercial items” and adding “commercial products or commercial services” in its place.

203.1004 [Amended]

■ 6. Amend section 203.1004—

■ a. In paragraph (a) by removing “commercial items” and adding “commercial products and commercial services” in its place; and
 ■ b. In paragraph (b)(2)(ii) by removing “commercial item” and adding “commercial product or commercial service” in its place.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

204.804–70 [Amended]

■ 7. Amend section 204.804–70 by removing “commercial items” and adding “commercial products and commercial services” in its place.

204.1705 [Amended]

■ 8. Amend section 204.1705 in paragraph (a)(i) introductory text by removing “252.204–7023” and “commercial items” and adding “at 252.204–7023” and “commercial products and commercial services” in their places, respectively.

■ 9. Revise the heading for subpart 204.21 to read as follows:

Subpart 204.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

204.2105 [Amended]

■ 10. Amend section 204.2105—
 ■ a. In paragraph (a) by removing “commercial items and,” and “task and delivery orders” and adding “commercial products and commercial services, and” and “task orders and delivery orders” in their places, respectively; and
 ■ b. In paragraphs (b) and (c), by removing “commercial items” and “task and delivery orders” and adding “commercial products and commercial services” and “task orders and delivery orders” in their places, respectively.

204.7103–1 [Amended]

■ 11. Amend section 204.7103–1 in paragraph (g) by removing “commercial items” and adding “commercial products” in its place.

204.7203 [Amended]

■ 12. Amend section 204.7203 by removing “commercial items” and adding “commercial products and commercial services” in its place.

204.7301 [Amended]

■ 13. Amend section 204.7301 in the definition of “Technical information” by removing “Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation” and adding “Other Than Commercial

Products and Commercial Services, regardless of whether or not the clause is incorporated in the solicitation” in its place.

204.7304 [Amended]

■ 14. Amend section 204.7304 in paragraphs (a), (b), (c), (d), and (e) by removing “commercial items” and adding “commercial products and commercial services” in its place.

204.7403 [Amended]

■ 15. Amend section 204.7403 in paragraphs (a) and (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

■ 16. Amend section 204.7503—

■ a. By revising the introductory text; and

■ b. In paragraphs (a) and (b), by removing “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

204.7503 Contract clause.

Use the clause at 252.204–7021, Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirement, as follows:

* * * * *

PART 205—PUBLICIZING CONTRACT ACTIONS

205.470 [Amended]

■ 17. Amend section 205.470 by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 207—ACQUISITION PLANNING

207.102 [Amended]

■ 18. Amend section 207.102 in paragraph (a)(1) by removing “commercial item” and “Part 12” and adding “commercial product or commercial service” and “part 12” in their places, respectively.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7401 [Amended]

■ 19. Amend section 208.7401 in the definition of “Enterprise software agreement” by removing “related services” and adding “related commercial software services” in its place.

208.7402 [Amended]

■ 20. Amend section 208.7402—

■ a. By redesignating paragraphs (1) and (2) as paragraphs (a) and (b); and

■ b. In newly redesignated paragraph (a) by removing “related services” and “website at <http://www.don-imit.navy.mil/esi>” and adding “commercial software services” and “<https://www.esi.mil/>” in their places, respectively.

208.7403 [Amended]

■ 21. Amend section 208.7403 by removing “related services” and adding “commercial software services” in its place.

PART 211—DESCRIBING AGENCY NEEDS

211.104 [Amended]

■ 22. Amend section 211.104 in paragraph (2) by removing “commercial items” and adding “commercial products and commercial services” in its place.

211.170 [Amended]

■ 23. Amend section 211.170—

■ a. In paragraph (1) by removing “or,”

and adding “or” in its place; and

■ b. In paragraph (2) by removing “commercial items” and adding “commercial products or commercial services” in its place.

211.274–2 [Amended]

■ 24. Amend section 211.274–2 in paragraph (b)(2) introductory text by removing “commercial item” and “part 12 or part 8” and adding “commercial product” and “part 12 or 8” in their places, respectively.

211.274–6 [Amended]

■ 25. Amend section 211.274–6 in paragraphs (a)(1) and (c) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 26. Revise the heading for part 212 to read as set forth above.

■ 27. Revise the heading for subpart 212.1 to read as follows:

Subpart 212.1—Acquisition of Commercial Products and Commercial Services

■ 28. Amend section 212.102—

■ a. In paragraph (a)(i)(A), by removing “commercial item” and adding “commercial product or commercial service” in its place;

■ b. In paragraph (a)(i)(B) introductory text, by removing “commercial item” and adding “commercial product or commercial service” in its place;

■ c. In paragraph (a)(ii)(A), by removing “PGI 212.102(a)(iii)(B)(4)”, “using commercial item”, and “a commercial item” and adding “PGI 212.102(a)(iii)(A)(1)”, “using commercial product and commercial service”, and “a commercial product or commercial service” in their places, respectively;

■ d. In paragraph (a)(ii)(B)(2) introductory text, by removing “commercial item” and adding “commercial product or commercial service” in its place;

■ e. In the heading for paragraph (a)(iii) by removing “Commercial item” and adding “Commercial product or commercial service” in its place;

■ f. In paragraph (a)(iii) introductory text, by removing “commercial items” and adding “commercial products and commercial services” in its place;

■ g. By revising paragraph (a)(iii)(A);

■ h. In paragraphs (a)(iii)(C) and (D) by removing “commercial item” and adding “commercial product or commercial service” in its place;

■ i. By revising paragraph (a)(iv)(A);

■ j. In paragraph (a)(iv)(B) by removing “commercial items” and adding “commercial services” in its place; and

■ k. In paragraph (a)(iv)(C), by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

212.102 Applicability.

(a) * * *

(iii) * * *

(A) Determine in writing that the acquisition meets the “commercial product” or “commercial service” definition in FAR 2.101;

* * * * *

(iv) * * *

(A) Except as provided in paragraph (a)(iv)(B) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial products or commercial services. This permissive authority is intended to enhance defense innovation and investment, enable DoD to acquire items that otherwise might not have been available, and create incentives for nontraditional defense contractors to do business with DoD. It is not intended to recategorize current other than commercial products or commercial services; however, when appropriate, contracting officers may consider applying commercial product or commercial service procedures to the procurement of supplies and services from business segments that meet the definition of “nontraditional defense contractor” even though they have been established under traditional defense

contractors. The decision to apply commercial product and commercial service procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial product or commercial service determination and does not mean the item is commercial;

* * * * *

■ 29. Revise the heading for subpart 212.2 to read as follows:

Subpart 212.2—Special Requirements for the Acquisition of Commercial Products and Commercial Services

212.203 [Amended]

■ 30. Amend section 212.203—
 ■ a. In the heading by adding a period at the end of the heading; and
 ■ b. In paragraph (1) by removing “commercial items” and adding “commercial products and commercial services” in its place.

212.207 [Amended]

■ 31. Amend section 212.207—
 ■ a. In paragraph (b) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place;
 ■ b. In paragraph (b)(i) by removing “commercial item”, “paragraph (5)”, “commercial item”, and “(41 U.S.C. 103)” and adding “commercial product”, “paragraph (1)”, “commercial service”, and “(41 U.S.C. 103a)” in their places, respectively; and
 ■ c. In paragraph (b)(iii)(A) by removing “paragraph (6)”, “commercial item”, and “(41 U.S.C. 103)” and adding “paragraph (1)”, “commercial service”, and “(41 U.S.C. 103a)” in their places, respectively.

212.209 [Amended]

■ 32. Amend section 212.209—
 ■ a. In paragraph (a) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place;
 ■ b. In paragraph (a)(1) by removing “systems items” and “commercial items” and adding “systems products” and “commercial products” in their places, respectively; and
 ■ c. In paragraph (b) by removing “section,” and “commercial items” and adding “section” and “commercial products or commercial services” in their places, respectively.

212.211 [Amended]

■ 33. Amend 212.211 by removing “commercial items” and adding “commercial products or commercial services” in its place.
 ■ 34. Revise section 212.270 to read as follows:

212.270 Major weapon systems as commercial products.

The DoD policy for acquiring major weapon systems as commercial products is in subpart 234.70.

■ 35. Revise the heading for section 212.272 to read as follows:

212.272 Preference for certain commercial products and commercial services.

* * * * *

■ 36. Revise the heading for subpart 212.3 to read as follows:

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

212.301 [Amended]

■ 37. Amend section 212.301—
 ■ a. In the section heading and paragraph (f) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place;
 ■ b. In paragraph (f)(xii)(A) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place;
 ■ c. In paragraph (f)(xii)(B) by removing “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and
 ■ d. In paragraph (f)(xviii) by removing “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

212.302 [Amended]

■ 38. Amend section 212.302 in the section heading by removing “commercial items” and adding “commercial products and commercial services” in its place.
 ■ 39. Revise the heading for subpart 212.5 to read as follows:

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Products, Commercial Services, and Commercially Available Off-the-Shelf Items

212.503 [Amended]

■ 40. Amend section 212.503—
 ■ a. In the section heading by removing “executive” and “commercial items” and adding “Executive” and “commercial products and commercial services” in their places, respectively;
 ■ b. In paragraphs (a) introductory text and (a)(vii) by removing “commercial items” and adding “commercial products or commercial services” in its place; and
 ■ c. In paragraph (c) introductory text, by removing “commercial items” and

adding “commercial products and commercial services” in its place.

212.504 [Amended]

■ 41. Amend section 212.504—
 ■ a. In the section heading by removing “commercial items” and adding “commercial products and commercial services” in its place;
 ■ b. In paragraph (a) introductory text by removing “commercial items or commercial components” and adding “commercial products, commercial services, or commercial components” in its place;
 ■ c. In paragraph (a)(xiv), by removing “commercial items” and adding “commercial products and commercial services” in its place; and
 ■ d. In paragraph (b) introductory text, by removing “commercial items or commercial components” and adding “commercial products, commercial services, or commercial components” in its place.
 ■ 42. Revise the heading for subpart 212.6 to read as follows:

Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.106–2–70 [Amended]

■ 43. Amend section 213.106–2–70 by removing “commercial items” and adding “commercial products and commercial services” in its place.

213.301 [Amended]

■ 44. Amend section 213.301 in paragraph (2)(i)(B) by removing “commercial item” and adding “commercial product or commercial service” in its place.

213.402 [Amended]

■ 45. Amend section 213.402 in paragraph (a)(i) by removing “Brand-name” and adding “Brand-name commercial product” in its place.
 ■ 46. Revise the heading for subpart 213.5 to read as follows:

Subpart 213.5—Simplified Procedures for Certain Commercial Products and Commercial Services

PART 215—CONTRACTING BY NEGOTIATION

215.371–6 [Amended]

■ 47. Amend section 215.371–6 by removing “commercial items” and adding “commercial products and commercial services” in its place.

215.402 [Amended]

■ 48. Amend section 215.402 in paragraph (a)(ii) by removing “commercial items” and adding “commercial products or commercial services” in its place.

215.403–1 [Amended]

■ 49. Amend section 215.403–1—

■ a. In the heading for paragraph (c)(3), by removing “*items*” and adding “*products or commercial services*” in its place;

■ b. In paragraph (c)(3)(A), by removing “commercial items” and adding “commercial products or commercial services” in its place; and

■ c. In paragraph (c)(3)(B), by removing “commercial item” and adding “commercial product or commercial service” in its place.

215.403–3 [Amended]

■ 50. Amend section 215.403–3 in paragraph (c)—

■ a. In the heading, by removing “*items*” and adding “*products or commercial services*” in its place; and

■ b. By removing “as commercial items” and adding “as commercial products” in its place.

215.404–1 [Amended]

■ 51. Amend section 215.404–1—

■ a. In the heading for paragraph (b), by removing “*for commercial and noncommercial items*”;

■ b. In paragraph (b)(ii), by removing “commercial items” and adding “commercial products or commercial services” in its place; and

■ c. In paragraph (b)(vii), by removing “commercial item” and adding “commercial product or commercial service determinations” in its place.

215.404–71–4 [Amended]

■ 52. Amend section 215.404–71–4 in paragraph (g)(3)(i)(A) by removing “commercial item lines” and adding “commercial product lines” in its place.

215.404–71–5 [Amended]

■ 53. Amend section 215.404–71–5 in paragraph (b)(7) by removing “commercial items and processes” and adding “commercial products or commercial services and commercial processes” in its place.

215.408 [Amended]

■ 54. Amend section 215.408—

■ a. In paragraphs (2)(i)(A)(1) introductory text and (2)(i)(A)(2), by removing “DFARS 252.215–7010” and “commercial items” and adding “252.215–7010” and “commercial products and commercial services” in their places, respectively;

■ b. In paragraph (2)(i)(B), by removing “DFARS”; and

■ c. In paragraphs (2)(ii)(A)(1) introductory text, (2)(ii)(A)(2), (2)(ii)(A)(3)(i), (3), and (5)(i) introductory text, by removing “commercial items” and adding “commercial products and commercial services” in its place.

215.570 [Amended]

■ 55. Amend section 215.570 by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 216—TYPES OF CONTRACTS**216.506–70 [Amended]**

■ 56. Amend section 216.506–70 in paragraph (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

216.601 [Amended]

■ 57. Amend section 216.601—

■ a. In paragraph (d)(i)(B)(3) by removing “noncommercial items” and adding “other than commercial products or commercial services” in its place; and

■ b. In paragraph (e) by removing “Non-Commercial Item” and “non-commercial items” and adding “Other Than Commercial” and “other than commercial products or commercial services” in their places, respectively.

PART 217—SPECIAL CONTRACTING METHODS**217.7302 [Amended]**

■ 58. Amend section 217.7302 in paragraph (b)(1) by removing “commercial items” and adding “commercial products” in its place.

PART 219—SMALL BUSINESS PROGRAMS**219.270–3 [Amended]**

■ 59. Amend section 219.270–3 by removing “commercial items” and adding “commercial services” in its place.

219.309 [Amended]

■ 60. Amend section 219.309 in paragraph (1) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

219.708 [Amended]

■ 61. Amend section 219.708 in paragraphs (b)(1)(A) introductory text and (b)(1)(B) by removing “commercial items” and adding “commercial

products and commercial services” in its place.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**222.7403 [Amended]**

■ 62. Amend section 222.7403 by removing “commercial items” and adding “commercial products or commercial services” in its place.

222.7405 [Amended]

■ 63. Amend section 222.7405 by removing “task or delivery orders” and “commercial items, including commercially available off-the-shelf items” and adding “task orders or delivery orders” and “commercial products, including commercially available off-the-shelf items, or commercial services” in their places, respectively.

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**223.570–2 [Amended]**

■ 64. Amend section 223.570–2 in paragraph (b)(1) by removing “commercial items” and adding “commercial products and commercial services” in its place.

223.7201 [Amended]

■ 65. Amend section 223.7201 in paragraph (b)(1) by removing “commercial item” and adding “commercial product” in its place.

223.7306 [Amended]

■ 66. Amend section 223.7306 by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 225—FOREIGN ACQUISITION**225.302–6 [Amended]**

■ 67. Amend section 225.302–6 in the introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.371–5 [Amended]

■ 68. Amend section 225.371–5 in paragraph (a) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.372–2 [Amended]

■ 69. Amend section 225.372–2 in the introductory text by removing

“commercial items” and adding “commercial products and commercial services” in its place.

225.771–5 [Amended]

■ 70. Amend section 225.771–5 by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.772–5 [Amended]

■ 71. Amend section 225.772–5 in paragraph (b) by removing “including solicitation” and “commercial items” and adding “including solicitations” and “commercial products and commercial services” in their places, respectively.

225.1101 [Amended]

■ 72. Amend section 225.1101—
 ■ a. In paragraphs (1) introductory text, (2)(i) introductory text, (5) introductory text, (6) introductory text, (9) introductory text, and (10)(i) introductory text, by removing “commercial items” and adding “commercial products and commercial services” in its place; and
 ■ b. In paragraph (10)(ii)(B), by removing “commercial item” and “Section” and adding “commercial product” and “section” in their places, respectively.

225.7002–3 [Amended]

■ 73. Amend section 225.7002–3 in paragraphs (a), (b), and (c) by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7003–3 [Amended]

■ 74. Amend section 225.7003–3—
 ■ a. In paragraph (b)(2)(i)(D)(2) by removing “commercial item” and “subsection” and adding “commercial product” and “section” in their places, respectively; and
 ■ b. In paragraph (b)(3) by removing “commercial items” and adding “commercial products” in its place.

225.7003–5 [Amended]

■ 75. Amend section 225.7003–5—
 ■ a. In paragraph (a) introductory text by removing “subsection” and adding “section” in its place;
 ■ b. In paragraphs (a)(1) introductory text and (a)(2) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place; and
 ■ c. In paragraph (b) introductory text by removing “commercial items,” and adding “commercial products and commercial services” in its place.

225.7006–4 [Amended]

■ 76. Amend section 225.7006–4 in paragraphs (a) introductory text and (b) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7009–3 [Amended]

■ 77. Amend section 225.7009–3 by removing “commercial items” and adding “commercial products” in its place.

225.7009–5 [Amended]

■ 78. Amend section 225.7009–5—
 ■ a. In the introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place; and
 ■ b. In paragraph (a) by removing “commercial items” and adding “commercial products” in its place.

225.7017–4 [Amended]

■ 79. Amend section 225.7017–4 in paragraphs (a)(1) and (2) and (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7018–5 [Amended]

■ 80. Amend section 225.7018–5 by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7019–4 [Amended]

■ 81. Amend section 225.7019–4 in paragraphs (a) and (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7020–5 [Amended]

■ 82. Amend section 225.7020–5 in paragraphs (a) and (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7021–1 [Amended]

■ 83. Amend section 225.7021–1 in the definition of “Covered contract” by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7022–5 [Amended]

■ 84. Amend section 225.7022–5 in paragraphs (a) and (b) by removing “commercial items” and adding “commercial products, commercial services,” in its place.

225.7202 [Amended]

■ 85. Amend section 225.7202 by removing “commercial items,” and

adding “commercial products, commercial services,” in its place.

225.7307 [Amended]

■ 86. Amend section 225.7307 in paragraphs (a) and (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7501 [Amended]

■ 87. Amend section 225.7501 in paragraph (a)(2)(vi) by removing “commercial item” and “Section” and adding “commercial product” and “section” in their places, respectively.

225.7503 [Amended]

■ 88. Amend section 225.7503 in paragraphs (a) introductory text and (b) introductory text by removing “commercial items or components” and adding “commercial products or commercial components” in its place.

225.7605 [Amended]

■ 89. Amend section 225.7605 by removing “commercial items” and adding “commercial products and commercial services” in its place.

225.7703–4 [Amended]

■ 90. Amend section 225.7703–4 in paragraphs (a), (b), (c) introductory text, and (d) by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.104 [Amended]

■ 91. Amend section 226.104 by removing “commercial items” and adding “commercial products and commercial services” in its place.

226.7203 [Amended]

■ 92. Amend section 226.7203 by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7101 [Amended]

■ 93. Amend section 227.7101 in paragraph (b) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

■ 94. Revise section 227.7102 to read as follows:

227.7102 Commercial products, commercial components, commercial services, or commercial processes.**227.7102-1 [Amended]**

- 95. Amend section 227.7102-1—
- a. In paragraph (a) introductory text by removing “commercial item or process” and adding “commercial product, commercial service, or commercial process” in its place;
- b. In paragraph (a)(2) by removing “commercial items or processes” and “commercial item” and adding “commercial products or commercial processes” and “commercial product” in their places, respectively;
- c. In paragraph (a)(3) by removing “commercial item or process” and adding “commercial product, commercial service, or commercial process” in its place;
- d. In paragraph (b) introductory text by removing “subsection” and adding “section” in its place; and
- e. In paragraphs (b)(1) and (2) by removing “commercial items or processes” and adding “commercial products, commercial services, or commercial processes” in its place.

227.7102-2 [Amended]

- 96. Amend section 227.7102-2 in paragraph (a) by removing “Commercial Items”, “commercial items or processes”, and “commercial items” and adding “Commercial Products and Commercial Services”, “commercial products, commercial services, or commercial processes”, and “commercial products” in their places, respectively.

227.7102-3 [Amended]

- 97. Amend section 227.7102-3—
- a. In the section heading by removing “challenge” and adding “challenge,” in its place; and
- b. By removing “commercial items” and adding “commercial products or commercial services” in its place.
- 98. Amend section 227.7102-4—
- a. By revising paragraph (a)(1);
- b. In paragraph (a)(2) by removing “commercial items” and adding “commercial products and commercial services” in its place;
- c. In paragraph (b) by removing “Noncommercial Items” and “commercial item” and adding “Other Than Commercial Products and Commercial Services” and “commercial product or commercial service” in their places, respectively; and
- d. In paragraph (c) by removing “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

227.7102-4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this section, use the clause at 252.227-7015, Technical Data—Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the contractor will be required to deliver technical data pertaining to commercial products, commercial components, commercial services, or commercial processes.

* * * * *

- 99. Revise section 227.7103 to read as follows:

227.7103 Other than commercial products, commercial services, or commercial processes.**227.7103-3 [Amended]**

- 100. Amend section 227.7103-3—
- a. In the section heading by removing “reproduction” and adding “reproduction,” in its place; and
- b. In paragraph (b) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7103-5 [Amended]

- 101. Amend section 227.7103-5 in the introductory text by removing “Noncommercial Items” and “subsection” and adding “Other Than Commercial Products and Commercial Services” and “section” in their places, respectively.
- 102. Amend section 227.7103-6—
- a. By revising paragraph (a); and
- b. In paragraphs (b)(1) introductory text and (b)(2) by removing “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

227.7103-6 Contract clauses.

(a) Use the clause at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the successful offeror(s) will be required to deliver to the Government technical data pertaining to other than commercial products or commercial services, or pertaining to commercial products or commercial services for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227-7013 will govern the technical data

pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial products or commercial services developed exclusively at private expense (see 227.7102-4), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107-2, do not use the clause in architect-engineer and construction contracts.

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227.7103-9 [Amended]

- 103. Amend section 227.7103-9 in paragraph (a)(1) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7103-10 [Amended]

- 104. Amend section 227.7103-10 in paragraphs (a)(3) and (b) introductory text by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7103-11 [Amended]

- 105. Amend section 227.7103-11 in paragraph (a) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7103-12 [Amended]

- 106. Amend section 227.7103-12 in paragraph (a)(1) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.
- 107. Amend section 227.7103-13—
- a. By revising paragraph (c)(2); and
- b. In paragraph (d)(4) by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

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

* * * * *

(c) * * *

(2) *Commercial products and commercial services—presumption regarding development exclusively at*

private expense. 10 U.S.C. 3772(a)(1) and 3784 establish a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial products or commercial services on the basis of development exclusively at private expense. Contracting officers shall presume that a commercial product or commercial service was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. The contracting officer shall not challenge a contractor's assertion that a commercial product or commercial service was developed exclusively at private expense unless the Government can specifically state the reasonable grounds to question the validity of the assertion. The challenge notice shall include sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense. In order to sustain the challenge, the contracting officer shall provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. A contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

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227.7103–15 [Amended]

- 108. Amend 227.7103–15—
 - a. In paragraph (a) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place;
 - b. In paragraph (c) introductory text by removing “non-commercial items” and adding “other than commercial products or commercial services” in its place; and
 - c. In paragraphs (c)(1) and (d) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7103–16 [Amended]

- 109. Amend section 227.7103–16 in paragraph (b) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7103–17 [Amended]

- 110. Amend section 227.7103–17 in paragraph (a) by removing

“Noncommercial Items” and “release or” and adding “Other Than Commercial Products and Commercial Services” and “release, or” in their places, respectively.

227.7104 [Amended]

- 111. Amend section 227.7104 in paragraph (a) by removing “Noncommercial Technical” and adding “Other Than Commercial Technical” in its place.

227.7105–2 [Amended]

- 112. Amend section 227.7105–2 in paragraph (a) introductory text by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7106 [Amended]

- 113. Amend section 227.7106 in paragraph (a)(1) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7201 [Amended]

- 114. Amend section 227.7201 in paragraph (b) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.
- 115. Revise section 227.7203 to read as follows:

227.7203 Other than commercial computer software and other than commercial computer software documentation.

227.7203–2 [Amended]

- 116. Amend section 227.7203–2 in the section heading by removing “noncommercial” and adding “other than commercial” in its place.

227.7203–3 [Amended]

- 117. Amend section 227.7203–3—
 - a. In the section heading by removing “reproduction” and adding “reproduction,” in its place; and
 - b. In paragraph (a) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–4 [Amended]

- 118. Amend section 227.7203–4 in paragraph (b) by removing “Rights in Noncommercial Computer Software and

Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–5 [Amended]

- 119. Amend section 227.7203–5—
 - a. In the introductory text by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and “subsection” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” and “section” in their places, respectively; and
 - b. In paragraph (c)(1) by removing “noncommercial” and adding “other than commercial” in its place.

227.7203–6 [Amended]

- 120. Amend section 227.7203–6—
 - a. In paragraph (a)(1) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation”, “commercial items”, and “(see 227.7104),” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation”, “commercial products, commercial services”, and “(see 227.7104).” in their places, respectively; and
 - b. In paragraph (f) by removing “noncommercial” and adding “other than commercial” in its place.

227.7203–9 [Amended]

- 121. Amend section 227.7203–9—
 - a. In paragraph (a)(1) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place; and
 - b. In paragraph (a)(2) by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place.

227.7203–10 [Amended]

- 122. Amend section 227.7203–10 in paragraphs (a)(3) and (b) introductory text by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–11 [Amended]

■ 123. Amend section 227.7203–11 in paragraph (a) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–12 [Amended]

■ 124. Amend section 227.7203–12 in paragraph (a)(1) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–15 [Amended]

■ 125. Amend section 227.7203–15 in paragraphs (c)(1) and (d) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–16 [Amended]

■ 126. Amend section 227.7203–16 in paragraph (b) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7203–17 [Amended]

■ 127. Amend section 227.7203–17 in paragraph (a) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

227.7205 [Amended]

■ 128. Amend section 227.7205 in paragraph (a)(1) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place.

PART 232—CONTRACT FINANCING**232.009–2 [Amended]**

■ 129. Amend section 232.009–2 by removing “commercial items” and adding “commercial products and commercial services” in its place.

■ 130. Revise the heading for subpart 232.1 to read as follows:

Subpart 232.1—Financing for Other Than a Commercial Purchase

■ 131. Revise the heading for subpart 232.2 to read as follows:

Subpart 232.2—Commercial Product and Commercial Service Purchase Financing**232.206 [Amended]**

■ 132. Amend section 232.206—

■ a. In paragraph (f) introductory text by removing “commercial item” and adding “commercial product and commercial service” in its place; and

■ b. In the heading for paragraph (g) by removing “*commercial items*” and adding “*commercial products and commercial services*” in its place.

■ 133. Revise the heading for subpart 232.4 to read as follows:

Subpart 232.4—Advance Payments for Other Than Commercial Acquisitions**232.908 [Amended]**

■ 134. Amend section 232.908 by removing “commercial items” and “Commercial Items” and adding “commercial products and commercial services” and “Commercial Products and Commercial Services” in their places, respectively.

232.1110 [Amended]

■ 135. Amend section 232.1110 in the introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

232.7004 [Amended]

■ 136. Amend section 232.7004—

■ a. In paragraph (a) by removing “contract or task or delivery order” and “commercial items” and adding “contract, task order, or delivery order” and “commercial products and commercial services” in their places, respectively; and

■ b. In paragraph (b), by removing “contracts or task or delivery orders” and “commercial items” and adding “contracts, task orders, or delivery orders” and “commercial products and commercial services” in their places, respectively.

232.7102 [Amended]

■ 137. Amend section 232.7102 by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 234—MAJOR SYSTEM ACQUISITION

■ 138. Revise the heading for subpart 234.70 to read as follows:

Subpart 234.70—Acquisition of Major Weapon Systems as Commercial Products**234.7000 [Amended]**

■ 139. Amend section 234.7000 in paragraph (b) by removing “commercial item” and adding “commercial product” in its place.

234.7002 [Amended]

■ 140. Amend section 234.7002—

■ a. In paragraph (a)(1) introductory text by removing “commercial item” and “commercial items” and adding “commercial product” and “commercial products” in their places, respectively;

■ b. In paragraph (a)(1)(i)(A) by removing “commercial item” and adding “commercial product” in its place;

■ c. In paragraph (b) introductory text by removing “commercial item” and “commercial items” and adding “commercial product” and “commercial products” in their places, respectively;

■ d. In paragraph (b)(1) by removing “commercial items” and adding “commercial products” in its place;

■ e. In paragraph (b)(2) by removing “commercial item” and adding “commercial product” in its place;

■ f. In paragraph (c)(1) introductory text by removing “commercial item” and adding “commercial product” in its place;

■ g. In paragraphs (c)(1)(i)(A) and (B) by removing “commercial items” and adding “commercial products” in its place;

■ h. In paragraph (c)(1)(ii) by removing “commercial item” and adding “commercial product” in its place;

■ i. In paragraph (d)(1) by removing “commercial items” and adding “commercial products” in its place; and

■ j. In paragraph (d)(5) by removing “commercial item” and “item” adding “commercial product” in their places, respectively.

PART 237—SERVICE CONTRACTING**237.171–4 [Amended]**

■ 141. Amend section 237.171–4 in the introductory text by removing “commercial items” and adding

“commercial products and commercial services” in its place.

237.173–5 [Amended]

■ 142. Amend section 237.173–5 by removing “commercial items” and adding “commercial products and commercial services” in its place.

237.270 [Amended]

■ 143. Amend section 237.270 in paragraphs (e)(3) and (4) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.101 [Amended]

■ 144. Amend section 239.101 in paragraph (1) by removing “commercial items” and adding “commercial products or commercial services” in its place.

239.7306 [Amended]

■ 145. Amend section 239.7306 in paragraphs (a) and (b) by removing “commercial items” and adding “commercial products and commercial services” in its place.

239.7604 [Amended]

■ 146. Amend section 239.7604 in paragraphs (a) and (b) by removing “commercial item” and adding “commercial products and commercial services” in its place.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.7200 [Amended]

■ 147. Amend section 242.7200 by removing from paragraph (b)(1) introductory text “commercial items” and adding “commercial products or commercial services” in its place.

242.7204 [Amended]

■ 148. Amend section 242.7204 in the introductory text by removing “commercial items” and adding “commercial products or commercial services” in its place.

PART 243—CONTRACT MODIFICATIONS

243.205–71 [Amended]

■ 149. Amend section 242.205–71 by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.303 [Amended]

■ 150. Amend section 244.303 in paragraph (a) by removing “commercial item” and “definition of “commercial item” in FAR 2.101” and adding “commercial product or commercial service” and “definition of “commercial product” or “commercial service” in FAR 2.101” in their places, respectively.

■ 151. Revise the heading for subpart 244.4 to read as follows:

Subpart 244.4—Subcontracts for Commercial Products, Commercial Services, and Commercial Components

244.402 [Amended]

■ 152. Amend section 244.402—
■ a. In paragraph (a) by removing “commercial item” and adding “commercial product or commercial service” in its place; and
■ b. In paragraph (S–70) by removing “commercial items” and “commercial item” and adding “commercial products” and “commercial product” in their places, respectively.

244.403 [Amended]

■ 153. Amend section 244.403 by removing “Commercial Items” and “commercial items” and adding “Commercial Products and Commercial Services” and “commercial products and commercial services” in their places, respectively.

PART 245—GOVERNMENT PROPERTY

■ 154. Amend section 245.102—
■ a. By revising the introductory text; and
■ b. In paragraph (4)(ii)(C) introductory text by removing “commercial item” and adding “commercial product” in its place.

The revision reads as follows:

245.102 Policy.

See the policy guidance at PGI 245.102–70.

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PART 246—QUALITY ASSURANCE

246.270–4 [Amended]

■ 155. Amend section 246.270–4 by removing “commercial items” and adding “commercial products and commercial services” in its place.

246.370 [Amended]

■ 156. Amend section 246.370 in paragraph (a) introductory text by removing “commercial items” and

adding “commercial products and commercial services” in its place.

246.704 [Amended]

■ 157. Amend section 246.704 in paragraph (1)(i) by removing “Commercial items” and adding “Commercial products or commercial services” in its place.

246.706 [Amended]

■ 158. Amend section 246.706 in paragraph (b)(5) by removing “non-commercial items” and adding “other than commercial products” in its place.

246.870–3 [Amended]

■ 159. Amend section 246.870–3 in paragraph (b) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 247—TRANSPORTATION

247.207 [Amended]

■ 160. Amend section 247.207 in paragraphs (1) and (2) by removing “commercial items” and adding “commercial products and commercial services” in its place.

247.574 [Amended]

■ 161. Amend section 247.574—
■ a. In paragraphs (a)(1) introductory text and (b) introductory text by removing “commercial items” and adding “commercial products and commercial services” in its place;
■ b. In paragraphs (b)(1) introductory text and (b)(2) and (3) by removing “commercial items” and adding “commercial products” in its place; and
■ c. In paragraphs (c), (d), and (e) by removing “commercial items” and adding “commercial products and commercial services” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 162. Amend section 252.203–7001—
■ a. By revising the clause date; and
■ b. In paragraph (g) by—
■ i. Adding a heading; and
■ ii. Removing “commercial items or components” and adding “commercial products, commercial services, or commercial components” in its place.

The revision and addition read as follows:

252.203–7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.

* * * * *

Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Jan 2023)

* * * * *
(g) *Subcontracts.* * * *
* * * * *

- 163. Amend section 252.203–7004—
■ a. By revising the clause date; and
■ b. In paragraph (d) by removing “commercial item” and adding “commercial product or commercial service” in its place.

The revision reads as follows:

252.203–7004 Display of Hotline Posters.
* * * * *

Display of Hotline Posters (Jan 2023)
* * * * *

- 164. Amend section 252.204–7004—
■ a. By revising the clause heading and the clause date; and
■ b. In paragraph (d) by removing “commercial items” and adding “commercial products and commercial services” in its place.

The revisions read as follows:

252.204–7004 Antiterrorism Awareness Training for Contractors.
* * * * *

Antiterrorism Awareness Training for Contractors (Jan 2023)
* * * * *

- 165. Amend section 252.204–7009—
■ a. By revising the section heading and clause date;
■ b. In paragraph (a), in the definition of “Technical information”, by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place; and
■ c. In paragraph (c) by removing “commercial items” and adding “commercial products and commercial services” in its place.

The revisions read as follows:

252.204–7009 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.
* * * * *

Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (Jan 2023)
* * * * *

- 166. Amend section 252.204–7012—
■ a. By revising the section heading;
■ b. In the introductory text by removing “204.7304c” and adding “204.7304(c)” in its place;
■ c. By revising the clause date;
■ d. In paragraph (a), in the definition of “Technical information”, by removing “Noncommercial Items” and adding “Other Than Commercial Products and Commercial Services” in its place; and

- e. In paragraph (m)(1) by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

252.204–7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.
* * * * *

Safeguarding Covered Defense Information and Cyber Incident Reporting (Jan 2023)
* * * * *

- 167. Amend section 252.204–7014—
■ a. By revising the clause date; and
■ b. In paragraph (f) by—
■ i. Revising the heading; and
■ ii. Removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

252.204–7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors.
* * * * *

Limitations on the Use or Disclosure of Information by Litigation Support Contractors (Jan 2023)
* * * * *

(f) *Subcontracts.* * * *

- 168. Amend section 252.204–7015—
■ a. By revising the clause date; and
■ b. In paragraph (c) by—
■ i. Revising the heading; and
■ ii. Removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

252.204–7015 Notice of Authorized Disclosure of Information for Litigation Support.
* * * * *

Notice of Authorized Disclosure of Information for Litigation Support (Jan 2023)
* * * * *

(c) *Subcontracts.* * * *

- 169. Amend section 252.204–7018—
■ a. By revising the clause date; and
■ b. In paragraph (e) by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

252.204–7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.
* * * * *

Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Jan 2023)
* * * * *

- 170. Amend section 252.204–7020—
■ a. By revising the clause date; and
■ b. In paragraph (g)(1) by removing “commercial items” and “COTS” and adding “commercial products or commercial services” and “commercially available off-the-shelf” in their places, respectively.

The revision reads as follows:

252.204–7020 NIST SP 800–171 DoD Assessment Requirements.
* * * * *

NIST SP 800–171 DOD Assessment Requirements (Jan 2023)
* * * * *

- 171. Amend section 252.204–7021—
■ a. By revising the clause date; and
■ b. In paragraph (c)(1), by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

252.204–7021 Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirement.
* * * * *

Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirement (Jan 2023)
* * * * *

- 172. Amend section 252.211–7003—
■ a. By revising the section heading and clause date; and
■ b. In paragraph (g) by removing “by contract any items” and “commercial items” and adding “by subcontract any item(s)” and “commercial products or commercial services” in their places, respectively.

The revisions read as follows:

252.211–7003 Item Unique Identification and Valuation.
* * * * *

Item Unique Identification and Valuation (Jan 2023)
* * * * *

- 173. Amend section 252.215–7009 by revising the section heading, the date of the provision, and item 18 of the table to read as follows:

252.215–7009 Proposal Adequacy Checklist.
* * * * *

Proposal Adequacy Checklist (Jan 2023)
* * * * *

PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
18. FAR 52.215–20 FAR 2.101, “commercial product” or “commercial service”.	<p>Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial products proposed either at the prime or subcontractor level, in accordance with provision 52.215–20?</p> <p>a. Has the offeror specifically identified the type of commercial product claim (FAR 2.101 “commercial product” definition, and the basis on which the commercial product meets the definition)?</p> <p>b. For modified commercial products (FAR 2.101 “commercial product” definition; did the offeror classify the modification(s) as either—</p> <p>i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or</p> <p>ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)?</p> <p>c. For proposed commercial products “of a type”, or “evolved” or modified (FAR 2.101 “commercial product” definition), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?</p>	*	*

- 174. Amend section 252.215–7010—
- a. By revising the provision date and paragraph (b)(1)(ii) introductory text;
- b. In paragraph (b)(1)(ii)(A) by removing “items” and adding “products or services” in its place; and
- c. In the Alternate I provision—
- i. By revising the provision date and paragraph (b)(1)(ii) introductory text; and
- ii. In paragraph (b)(1)(ii)(A) by removing “items” and adding “products or services” in its place.

The revisions read as follows:

252.215–7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Basic (Jan 2023)

(b) * * *

(1) * * *

(ii) *Commercial product or commercial service exception.* For a commercial product or commercial service exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same product or service or similar products or services have been sold in

the commercial market. Such information shall include—

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Alternate I (Jan 2023)

(b) * * *

(1) * * *

(ii) *Commercial product or commercial service exception.* For a commercial product or commercial service exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same product or service or similar products or services have been sold in the commercial market. Such information shall include—

- 175. Amend section 252.215–7013 by—
- a. Revising the provision date; and
- b. Removing “commercial items” and “commercial item” and adding “commercial products or commercial services” and “commercial product or commercial service” in their places, respectively.

The revision reads as follows:

252.215–7013 Supplies and Services Provided by Nontraditional Defense Contractors.

Supplies and Services Provided by Nontraditional Defense Contractors (Jan 2023)

- 176. Amend section 252.216–7000—
- a. By revising the section heading and clause date; and
- b. In paragraph (a), in the definition of “Established price”, by removing “commercial item” and adding “commercial product” in its place.

The revisions read as follows:

252.216–7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (Jan 2023)

- 177. Amend section 252.216–7001—
- a. By revising the section heading and clause date; and
- b. In paragraph (a), in the definition of “Established price”, paragraph (1) by removing “commercial item” and adding “commercial product” in its place.

The revisions read as follows:

252.216–7001 Economic Price Adjustment—Nonstandard Steel Items.

* * * * *

Economic Price Adjustment—Nonstandard Steel Items (Jan 2023)

* * * * *

■ 178. Amend section 252.216–7002 by revising the section heading, provision heading, and provision date to read as follows:

252.216–7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition with Adequate Price Competition.

* * * * *

Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition (Jan 2023)

* * * * *

■ 179. Amend section 252.217–7026—

- a. By revising the provision date;
- b. In paragraph (b)(2) by removing “list “none.”” and adding “list “none.”” in its place; and
- c. In paragraph (b)(3) by removing “commercial item” and adding “commercial product or commercial service” in its place.

The revision reads as follows:

252.217–7026 Identification of Sources of Supply.

* * * * *

Identification of Sources of Supply (Jan 2023)

* * * * *

■ 180. Amend section 252.222–7006—

- a. By revising the clause date; and
- b. In paragraph (a), in the definition of “Covered subcontractor”, by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

252.222–7006 Restrictions on the Use of Mandatory Arbitration Agreements.

* * * * *

Restrictions on the Use of Mandatory Arbitration Agreements (Jan 2023)

* * * * *

■ 181. Amend section 252.223–7008—

- a. By revising the clause date; and
- b. In paragraph (d) by removing “commercial items” and “supplies,” and adding “commercial products or commercial services” and “supplies,” in their places, respectively.

The revision reads as follows:

252.223–7008 Prohibition of Hexavalent Chromium.

* * * * *

Prohibition of Hexavalent Chromium (Jan 2023)

* * * * *

■ 182. Amend section 252.225–7001—

- a. By revising the clause date;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and ““commercial item”” and adding “commercial product” and ““commercial product”” in their places, respectively; and
- c. In the Alternate I clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and ““commercial item”” and adding “commercial product” and ““commercial product”” in their places, respectively.

The revisions read as follows:

252.225–7001 Buy American and Balance of Payments Program.

* * * * *

Buy American and Balance of Payments Program—Basic (Jan 2023)

* * * * *

Buy American and Balance of Payments Program—Alternate I (Jan 2023)

* * * * *

■ 183. Amend section 252.225–7009—

- a. By revising the clause date;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf item”, paragraph (i)(A), by removing “commercial item” and ““commercial item”” and adding “commercial product” and ““commercial product”” in their places, respectively;
- c. In paragraph (c)(2)(i)(D)(2) by removing “commercial item” and adding “commercial product” in its place;
- d. In paragraph (c)(3) by removing “commercial items” and adding “commercial products” in its place; and
- e. In paragraph (e)(2) introductory text by removing “commercial items” and adding “commercial products” in its place.

The revision reads as follows:

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

Restriction on Acquisition of Certain Articles Containing Specialty Metals (Jan 2023)

* * * * *

■ 184. Amend section 252.225–7016—

- a. By revising the section heading and clause date;
- b. In paragraph (c)(1) by removing “a noncommercial end product” and adding “an other than commercial end product” in its place;
- c. In paragraph (c)(2) by removing “noncommercial components” and “a noncommercial end product” and adding “other than commercial components” and “an other than commercial end product” in their places, respectively;
- d. In paragraph (f) introductory text by adding a heading; and
- e. In paragraph (f)(1) by removing “items” and adding “products” in its place.

The revisions and addition read as follows:

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

Restriction on Acquisition of Ball and Roller Bearings (Jan 2023)

* * * * *

(f) *Subcontracts.* * * *

* * * * *

■ 185. Amend section 252.225–7021—

- a. By revising the section heading and clause date;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and ““commercial item”” and adding “commercial product” and ““commercial product”” in their places, respectively; and
- c. In the Alternate II clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and ““commercial product”” in their places, respectively.

The revisions read as follows:

252.225–7021 Trade Agreements.

* * * * *

Trade Agreements—Basic (Jan 2023)

* * * * *

Trade Agreements—Alternate II (Jan 2023)

* * * * *

■ 186. Amend section 252.225–7036—

- a. By revising the clause date;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding

“commercial product” and “commercial product” in their places, respectively;

- c. In the Alternate I clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively;
- d. In the Alternate II clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively;
- e. In the Alternate III clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively;
- f. In the Alternate IV clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively; and
- g. In the Alternate V clause—
- i. By revising the clause date; and
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively.

The revisions read as follows:

252.225-7036 Buy American—Free Trade Agreements—Balance of Payments Program.

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Basic (Jan 2023)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I (Jan 2023)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (Jan 2023)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III (Jan 2023)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (Jan 2023)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (Jan 2023)

* * * * *

- 187. Amend section 252.225-7039—
- a. By revising the clause date; and
- b. In paragraph (f) introductory text by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

252.225-7039 Defense Contractors Performing Private Security Functions Outside the United States.

* * * * *

Defense Contractors Performing Private Security Functions Outside the United States (Jan 2023)

* * * * *

- 188. Amend section 252.225-7044—
- a. By revising the clause date;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively;
- c. In paragraph (b)(2) by removing “commercial item” and adding “commercial product” in its place; and
- d. In the Alternate I clause—
- i. By revising the clause date;
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively; and
- iii. In paragraph (b)(2) by removing “commercial item” and adding “commercial product” in its place.

The revisions read as follows:

252.225-7044 Balance of Payments Program—Construction Material.

* * * * *

Balance of Payments Program—Construction Material—Basic (Jan 2023)

* * * * *

Balance of Payments Program—Construction Material—Alternate I (Jan 2023)

* * * * *

- 189. Amend section 252.225-7045—
- a. By revising the clause date;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively;
- c. In paragraph (c)(2) by removing “commercial item” and adding “commercial product” in its place;
- d. In the Alternate I clause—
- i. By revising the clause date;
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively; and
- iii. In paragraph (c)(2) by removing “commercial item” and adding “commercial product” in its place;
- e. In the Alternate II clause—
- i. By revising the clause date;
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively; and
- iii. In paragraph (c)(2) by removing “commercial item” and adding “commercial product” in its place; and
- f. In the Alternate III clause—
- i. By revising the clause date;
- ii. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively; and
- iii. In paragraph (c)(2) by removing “commercial item” and adding “commercial product” in its place.

The revisions read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

**Balance of Payments Program—
Construction Material Under Trade
Agreements—Basic (Jan 2023)**

* * * * *

**Balance of Payments Program—
Construction Material Under Trade
Agreements—Alternate I (Jan 2023)**

* * * * *

**Balance of Payments Program—
Construction Material Under Trade
Agreements—Alternate II (Jan 2023)**

* * * * *

**Balance of Payments Program—
Construction Material Under Trade
Agreements—Alternate III (Jan 2023)**

* * * * *

- 190. Amend section 252.225–7052—
- a. By revising the clause date;
 - b. In paragraph (a), in the definition of “Commercially available off-the-shelf item”, paragraph (1)(i) by removing “commercial item” and “commercial item” and adding “commercial product” and “commercial product” in their places, respectively; and
 - c. In paragraph (d), by removing “commercial items” and adding “commercial products” in its place.
- The revision reads as follows:

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

* * * * *

**Restriction on the Acquisition of
Certain Magnets, Tantalum, and
Tungsten (Jan 2023)**

* * * * *

- 191. Amend section 252.225–7054—
- a. By revising the clause date; and
 - b. In paragraph (c) by removing “commercial items” and adding “commercial products” in its place.
- The revision reads as follows:

**252.225–7054 Prohibition on Use of
Certain Energy Sourced from Inside the
Russian Federation.**

* * * * *

**Prohibition on Use of Certain Energy
Sourced From Inside the Russian
Federation (Jan 2023)**

* * * * *

- 192. Amend section 252.225–7056—
- a. By revising the clause date; and
 - b. In paragraph (d) by removing “commercial items” and adding “commercial products” in its place.
- The revision reads as follows:

**252.225–7056 Prohibition Regarding
Business Operations with the Maduro
Regime.**

* * * * *

**Prohibition Regarding Business
Operations With the Maduro Regime
(Jan 2023)**

* * * * *

- 193. Amend section 252.225–7058—
- a. By revising the clause date; and
 - b. In paragraph (a), in the definition of “Covered contract”, by removing “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

**252.225–7058 Postaward Disclosure of
Employment of Individuals Who Work in the
People’s Republic of China.**

* * * * *

**Postaward Disclosure of Employment of
Individuals Who Work In the People’s
Republic of China (Jan 2023)**

- 194. Amend section 252.225–7060—
- a. By revising the clause date; and
 - b. In paragraph (c) by removing “commercial items and commercially available off-the-shelf items” and adding “commercial products, commercially available off-the-shelf items, and commercial services” in its place.

The revision reads as follows:

**252.225–7060 Prohibition on Certain
Procurements from the Xinjiang Uyghur
Autonomous Region.**

* * * * *

**Prohibition on Certain Procurements
From the Xinjiang Uyghur Autonomous
Region (Jan 2023)**

- 195. Amend section 252.226–7001—
- a. By revising the section heading and clause date; and
 - b. In paragraph (f)(3) by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

**252.226–7001 Utilization of Indian
Organizations, Indian-Owned Economic
Enterprises, and Native Hawaiian Small
Business Concerns.**

* * * * *

**Utilization of Indian Organizations,
Indian-Owned Economic Enterprises,
and Native Hawaiian Small Business
Concerns (Jan 2023)**

* * * * *

- 196. Amend section 252.227–7013—
- a. By revising the section heading, clause heading, and the clause date;
 - b. In paragraph (b) introductory text by removing “world-wide” and “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “worldwide” and “Rights in Other

Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in their places, respectively;

- c. In paragraph (f)(2) by removing “to the Government purpose rights” and “Rights in Technical Data—Noncommercial Items” and adding “to the Government with government purpose rights” and “Rights in Technical Data—Other Than Commercial Products or Commercial Services” in their places, respectively;
- d. In paragraph (f)(3) by removing “Rights in Technical Data—Noncommercial Items” and adding “Rights in Technical Data—Other Than Commercial Products or Commercial Services” in its place; and
- e. In paragraph (k)(2) by removing “noncommercial items”, “commercial items”, and “commercial item” and adding “other than commercial products or commercial services”, “commercial products or commercial services”, and “commercial product or commercial service” in their places, respectively.

The revisions read as follows:

**252.227–7013 Rights in Technical Data—
Other Than Commercial Products and
Commercial Services.**

* * * * *

**Rights in Technical Data—Other Than
Commercial Products or Commercial
Services (Jan 2023)**

* * * * *

- 197. Amend section 252.227–7014—
- a. By revising the section heading, introductory text, clause heading and date, and paragraphs (a)(14) and (a)(15) introductory text;
 - b. In paragraph (b) introductory text by removing “world-wide” and “noncommercial computer software” and adding “worldwide” and “other than commercial computer software” in their places, respectively;
 - c. In paragraphs (b)(3)(i) and (ii) by removing “noncommercial computer software” and adding “other than commercial computer software” in its place;
 - d. By revising paragraph (b)(4)(i);
 - e. In paragraph (f)(2) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place;
 - f. In paragraph (f)(3) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial

Computer Software and Other Than Commercial Computer Software Documentation” in its place; and ■ g. In paragraph (k)(1) by removing “noncommercial computer software” and adding “other than commercial computer software” in its place.

The revisions read as follows:

252.227-7014 Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.

As prescribed in 227.7203-6(a)(1), use the following clause:

Rights In Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation (Jan 2023)

(a) * * *

(14) *Other than commercial computer software* means software that does not qualify as commercial computer software under the definition of “commercial computer software” of this clause.

(15) *Restricted rights* apply only to other than commercial computer software and mean the Government’s rights to—

* * * * *

(b) * * *

(4) * * *

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in the definition of “restricted rights” of this clause or lesser rights in computer software documentation than are enumerated in the definition of “limited rights” of the Rights in Technical Data—Other Than Commercial Products and Commercial Services clause of this contract.

* * * * *

■ 198. Amend section 252.227-7015—

- a. By revising the section heading, clause heading, and clause date and paragraph (a)(1);
- b. By removing paragraph (a)(4);
- c. By redesignating paragraph (a)(5) as paragraph (a)(4);
- d. In paragraphs (b)(2)(i) and (ii) by removing “commercial items” and adding “commercial products” in its place; and
- e. In paragraph (e)(2) by removing “commercial items” and “commercial item” and adding “commercial products or commercial services” and

“commercial product or commercial service” in their places, respectively.

The revisions read as follows:

252.227-7015 Technical Data—Commercial Products and Commercial Services.

* * * * *

Technical Data—Commercial Products and Commercial Services (Jan 2023)

* * * * *

(a) * * *

(1) *Commercial product and commercial service* includes commercial components and commercial processes but does not include commercial computer software.

* * * * *

■ 199. Amend section 252.227-7016 by revising the section heading, clause date, and paragraphs (a) and (c)(2) to read as follows:

252.227-7016 Rights in Bid or Proposal Information.

* * * * *

Rights In Bid or Proposal Information (Jan 2023)

(a) *Definitions.*

(1) For contracts that require the delivery of technical data, the terms “technical data” and “computer software” are defined in the Rights in Technical Data—Other Than Commercial Products and Commercial Services clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

* * * * *

(c) * * *

(2) The Government’s right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Other Than Commercial Products and Commercial

Services, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, or Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause(s) of this contract.

* * * * *

■ 200. Amend section 252.227-7017 by revising the section heading, provision date, and paragraph (a) to read as follows:

252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions.

* * * * *

Identification and Assertion of Use, Release, or Disclosure Restrictions (Jan 2023)

(a) The terms used in this provision are defined in the following clause or clauses contained in this solicitation:

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data—Other Than Commercial Products and Commercial Services clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause.

* * * * *

■ 201. Amend section 252.227-7018—

- a. By revising the section heading, clause heading, clause date, and paragraphs (a)(17) and (a)(18) introductory text;
- b. In paragraph (b) introductory text by removing “world-wide” and “noncommercial computer software” and adding “worldwide” and “other than commercial computer software” in their places, respectively;
- c. In paragraph (b)(3) by removing “noncommercial computer software” and adding “other than commercial computer software” in its place;
- d. In paragraph (f)(2) by removing “Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR)

Program” and adding “Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” in its place;

■ e. In paragraph (f)(3) by removing “Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” and adding “Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” in its place;

■ f. In paragraph (f)(4) by—

■ i. Revising the heading; and

■ ii. Removing “Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” and adding “Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” in its place; and

■ g. By revising paragraph (k)(2).

The revisions read as follows:

252.227–7018 Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

* * * * *

Rights In Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program (Jan 2023)

(a) * * *

(17) *Other than commercial computer software* means software that does not qualify as commercial computer software under the definition of “commercial computer software” of this clause.

(18) *Restricted rights* apply only to other than commercial computer software and mean the Government’s rights to—

* * * * *

(f) * * *

(4) *SBIR data rights markings.* * * *

* * * * *

(k) * * *

(2) Whenever any other than commercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Products and Commercial Services clause of this contract to obtain technical data pertaining to commercial products,

commercial components, commercial services, or commercial processes. No other clause shall be used to enlarge or diminish the Government’s, the Contractor’s, or a higher tier subcontractor’s or supplier’s rights in a subcontractor’s or supplier’s technical data or computer software.

* * * * *

■ 202. Amend section 252.227–7019 by revising the section heading, clause date, and paragraph (a)(2) to read as follows:

252.227–7019 Validation of Asserted Restrictions—Computer Software.

* * * * *

Validation of Asserted Restrictions—Computer Software (Jan 2023)

(a) * * *

(2) Other terms used in this clause are defined in the Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation clause of this contract.

* * * * *

■ 203. Amend section 252.227–7025—

■ a. By revising the clause date;

■ b. In paragraph (a)(1) by removing “Rights in Technical Data—Noncommercial Items” and adding “Rights in Technical Data—Other Than Commercial Products and Commercial Services” in its place;

■ c. In paragraph (a)(2) by removing “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” and adding “Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation” in its place;

■ d. In paragraph (a)(3) by removing “Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” and adding “Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program” in its place; and

■ e. In paragraph (b)(4)(i) by removing “commercial item” and “commercial items” and adding “commercial product or commercial service” and “commercial products” in their places, respectively.

The revision reads as follows:

252.227–7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* * * * *

Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (Jan 2023)

* * * * *

■ 204. Amend section 252.227–7037—

■ a. By revising the clause date;

■ b. In paragraph (a) by removing “Rights in Technical Data—Noncommercial Items” and adding “Rights in Technical Data—Other Than Commercial Products and Commercial Services” in its place;

■ c. By revising the heading for paragraph (b);

■ d. In paragraph (b) by removing “commercial item” and adding “commercial product or commercial service” in its place;

■ e. In paragraph (e)(1)(i) by removing “commercial items” and “commercial item” and adding “commercial products or commercial services” and “commercial product or commercial service” in their places, respectively;

■ f. In paragraph (f) by removing “commercial items” and “commercial item” and adding “commercial products or commercial services” and

“commercial product or commercial service” in their places, respectively;

■ g. In paragraph (g)(2)(i) by removing “commercial items” and “commercial item” and adding “commercial products or commercial services” and

“commercial product or service” in their places, respectively; and

■ h. In paragraph (l), by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

252.227–7037 Validation of Restrictive Markings on Technical Data.

* * * * *

Validation of Restrictive Markings on Technical Data (Jan 2023)

* * * * *

(b) *Commercial products or commercial services—presumption regarding development exclusively at private expense.* * * *

* * * * *

■ 205. Amend section 252.232–7006—

■ a. By revising the clause date; and

■ b. In paragraph (f)(1)(v), by removing “item”.

The revision reads as follows:

252.232–7006 Wide Area WorkFlow Payment Instructions.

* * * * *

Wide Area Workflow Payment Instructions (Jan 2023)

* * * * *

■ 206. Amend section 252.232–7017—
■ a. By revising the clause date; and
■ b. In paragraph (c) by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

252.232–7017 Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration.

Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration (Jan 2023)

■ 207. Amend section 252.236–7013—
■ a. By revising the section heading and clause date; and
■ b. In paragraph (c) by removing “commercial items” and adding “commercial products” in its place.

The revisions read as follows:

252.236–7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.

Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Jan 2023)

■ 208. Amend section 252.237–7010—
■ a. By revising the section heading and clause date; and
■ b. In paragraph (c) by removing “commercial items” and adding “commercial services” in its place.

The revisions read as follows:

252.237–7010 Prohibition on Interrogation of Detainees by Contractor Personnel.

Prohibition on Interrogation of Detainees by Contractor Personnel (Jan 2023)

■ 209. Amend section 252.237–7019—
■ a. By revising the clause date; and
■ b. In paragraph (c) by removing “commercial items” and adding “commercial services” in its place.

The revision reads as follows:

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

Training for Contractor Personnel Interacting With Detainees (Jan 2023)

■ 210. Amend section 252.239–7010—
■ a. By revising the clause date; and
■ b. In paragraph (l) by removing “commercial items” and adding “commercial services” in its place.

The revision reads as follows:

252.239–7010 Cloud Computing Services.

Cloud Computing Services (Jan 2023)

■ 211. Amend section 252.244–7000—
■ a. By revising the section heading, clause heading, and clause date; and
■ b. In paragraphs (a) and (b) by removing “commercial items” and adding “commercial products or commercial services” in its place;
■ c. In paragraphs (c)(1) and (2) by removing “commercial items” and adding “commercial products” in its place;
■ d. In paragraph (d) by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

252.244–7000 Subcontracts for Commercial Products or Commercial Services.

Subcontracts for Commercial Products or Commercial Services (Jan 2023)

■ 212. Amend section 252.246–7003—
■ a. By revising the clause date; and
■ b. In paragraph (f) introductory text, by adding a heading; and
■ c. In paragraph (f)(2) introductory text by removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision and addition read as follows:

252.246–7003 Notification of Potential Safety Issues.

Notification of Potential Safety Issues (Jan 2023)

(f) Subcontracts.

■ 213. Amend section 252.246–7007—
■ a. By revising the clause date; and
■ b. In paragraph (e) by—
■ i. Adding a heading; and
■ ii. Removing “commercial items” and adding “commercial products” in its place.

The revision and addition read as follows:

252.246–7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.

Contractor Counterfeit Electronic Part Detection and Avoidance System (Jan 2023)

(e) Subcontracts. * * *

■ 214. Amend section 252.246–7008—
■ a. By revising the clause date; and
■ b. In paragraph (e) by removing “commercial items” and adding “commercial products” in its place.
The revision reads as follows:

252.246–7008 Sources of Electronic Parts.

Sources of Electronic Parts (Jan 2023)

■ 215. Amend section 252.247–7003—
■ a. By revising the clause date; and
■ b. In paragraph (c) by—
■ i. Adding a heading; and
■ ii. Removing “commercial items” and adding “commercial products or commercial services” in its place.

The revision and addition read as follows:

252.247–7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (Jan 2023)

(c) Subcontracts. * * *

■ 216. Amend section 252.247–7023—
■ a. By revising the section heading and clause date; and
■ b. In paragraph (b)(2)(ii)(A) by removing “Noncommercial items” and adding “Other than commercial products” in its place;
■ c. In paragraph (b)(2)(ii)(B) introductory text by removing “Commercial items” and adding “Commercial products” in its place;
■ d. In paragraph (i) introductory text by—
■ i. Adding a heading; and
■ ii. Removing “commercial items” and adding “commercial products” in its place;
■ e. In the Alternate I clause—
■ i. By revising the clause date;
■ ii. In paragraph (b)(2)(i) by removing “Noncommercial items” and adding “Other than commercial products” in its place;
■ iii. In paragraph (b)(2)(ii) introductory text by removing “Commercial items” and adding “Commercial products” in its place;
■ iv. In paragraph (b)(2)(ii)(B) by removing “commercial items” and adding “commercial products” in its place; and
■ v. In paragraph (i) introductory text by—

- A. Adding a heading; and
- B. Removing “commercial items” and adding “commercial products” in its place; and
- f. In the Alternate II clause—
- i. By revising the clause date;
- ii. In paragraph (b)(2)(i) by removing “Noncommercial items” and adding “Other than commercial products” in its place;
- iii. In paragraph (b)(2)(ii) introductory text by removing “Commercial items” and adding “Commercial products” in its place; and
- iv. In paragraph (i) introductory text by—
- A. Adding a heading; and
- B. Removing “commercial items” and adding “commercial products” in its place.

The revisions and additions read as follows:

252.247–7023 Transportation of Supplies by Sea.

* * * * *

Transportation of Supplies by Sea—Basic (Jan 2023)

* * * * *

(i) *Subcontracts.* * * *

* * * * *

Transportation of Supplies by Sea—Alternate I (Jan 2023)

* * * * *

(i) *Subcontracts.* * * *

* * * * *

Transportation of Supplies By Sea—Alternate II (Jan 2023)

* * * * *

(i) *Subcontracts.* * * *

* * * * *

[FR Doc. 2023–01294 Filed 1–30–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225, 231, and 242

[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: 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 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 associated with awarded DoD contracts for the prior Government fiscal year.

DATES: Effective January 31, 2023.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 86 FR 53927 on September 29, 2021, to implement section 824 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). Section 824 amends 10 U.S.C. 2372 (redesignated as 10 U.S.C. 3762) 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 the Department of Defense 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 (redesignated as 10 U.S.C. 3763). This change ensures that regulations pertaining to B&P costs are separated from regulations pertaining to IR&D costs. Five 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 Significant Changes From the Proposed Rule

DoD removed the requirement to submit CEO determinations from the final rule, because the statute does not require this submission. DoD removed the proposed clause 252.242–70XX and its prescription from the final rule because they are unnecessary.

B. Analysis of Public Comments

1. Support for the rule.

Comment: One respondent expressed support for the rule.

Response: DoD acknowledges the respondent’s support for the rule.

2. Requirement to make and submit CEO determinations.

Comment: Several respondents commented on the requirement in the proposed rule for certain contractors to submit a statement that the contractor’s CEO determined that the company’s IR&D expenditures will advance the needs of DoD for future technology and advanced capability. In particular, one respondent commented that the statute does not actually require CEOs to make IR&D determinations as stated in the proposed rule. Two respondents commented that the submission requirement would likely overburden small businesses or nontraditional defense contractors. One respondent commented that the proposed rule lacks submission guidance for contractors that are not major contractors. One respondent expressed concern that IR&D cost allowability under the proposed rule might arbitrarily hinge on the form and manner of submission of the CEO determination rather than its substance.

Response: DoD removed the requirement to submit a statement regarding CEO determinations from the final rule. DoD reviewed the statute and agreed that this requirement should be removed. Further, by removing the requirement to submit a statement regarding CEO determinations, the final rule does not tie cost allowability to submission of an affirmative statement regarding the CEO determination.

3. Criterion for IR&D cost allowability.

Comment: One respondent commented that the phrase “advance the needs of DoD for future technology and advanced capability” is undefined in the proposed rule despite being the criterion for IR&D cost allowability when reflected in a CEO determination. Several respondents commented variously that this criterion for cost allowability is impractical, ambiguous, subjective, or potentially restrictive.

Response: The statute explicitly relates the CEO determination to DoD’s communication of areas of need. Therefore, the language is retained in the final rule.

4. Limiting applicability of the CEO determination within the rule to major contractors.

Comment: A few respondents commented that any requirement under the rule for a CEO determination should be limited to major contractors as defined at DFARS 231.205–18(a).