DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notification of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.215–7000, Pricing Adjustments, and determined that the DFARS coverage was redundant and recommended removal.

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

This rule does not add any new solicitation provisions or contract clauses. This rule only removes obsolete DFARS clause 252.215–7010, Pricing Adjustments. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.
PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.404 [Amended]

2. Amend section 208.404, in paragraph (a)(iv), by removing “215.408(3)” and “215.408(4)” and adding “215.371–6” and “215.408(3)” in their place, respectively.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

3. Amend section 212.301 by—
   b. In paragraph (f)(vi)(B), removing “215.408(3)(ii)” and adding “215.408(2)(ii)” in its place;
   c. In paragraph (f)(vi)(D), removing “215.408(4)” and adding “215.408(3)” in its place;
   e. In paragraph (f)(vi)(E)(1), removing “215.408(6)(ii)(A)” and adding “215.408(5)(ii)(A)” in its place; and

PART 214—SEALED BIDDING

214.201–6 [Amended]

4. Amend section 214.201–6 by removing “215.408(3) and (4)” and adding “215.371–6 and 215.408(3)” in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.408 [Amended]

5. Amend section 215.408 by—
   a. Removing paragraph (1);
   b. Redesignating paragraphs (2) through (7) as paragraphs (1) through (6);
   c. In newly redesignated paragraph (2)(i)(A)(2), removing “paragraph (3)(ii)(A)(1)” and adding “paragraph (2)(i)(A)(1)” of this section” in its place; and

PART 216—TYPES OF CONTRACTS

216.506 [Amended]

6. Amend section 216.506, in paragraph (S–70), by removing “215.408(3) and (4)” and adding “215.371–6 and 215.408(3)” in their place.

PART 218—FOREIGN ACQUISITION

225.870–4 [Amended]

7. Amend section 225.870–4, in paragraph (c)(3), by removing “215.408(3)(i) and (ii)” and adding “215.408(2)(i) and (ii)” in its place.

PART 212—PROCEDURES AND CONTRACT CLAUSES

252.215–7000 [Removed and Reserved]


252.215–7002 [Amended]


252.215–7003 [Amended]

10. Amend section 252.215–7003, in the introductory text, by removing “215.408(3) and (4)” and adding “215.408(2)” in its place.

252.215–7004 [Amended]


252.215–7008 [Amended]


252.215–7009 [Amended]


252.215–7010 [Amended]

   a. In the Basic clause introductory text, removing “215.408(6)(ii) and (6)(ii)(A)” and adding “215.408(5)(ii) and (5)(ii)(A)” in its place; and
   b. In the Alternate I clause introductory text, removing “215.408(6)(ii) and (6)(ii)(B)” and adding “215.408(5)(ii) and (5)(ii)(B)” in its place.

252.215–7011 [Amended]


252.215–7012 [Amended]


DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 215, 225, and 252

[Docket—DARS–2015–0027]

RIN 0750–AI59

Defense Federal Acquisition Regulation Supplement: Offset Costs (DFARS Case 2015–D028)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 related to costs associated with indirect offsets under foreign military sales (FMS) agreements and expand on the prior interim rule guidance related to FMS offset costs.

DATES: Effective June 29, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Comersall, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the Federal Register (80 FR 31309) on June 2, 2015, to amend the DFARS to state that all offset costs that involve benefits provided by the U.S. defense contractor to the FMS customer that are unrelated to the item being purchased under the Letter of Offer and Acceptance (LOA) (indirect offset costs) are deemed reasonable, with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset of a certain dollar value a condition of the FMS acquisition.

To expand on the interim rule guidance and incorporate the requirements of section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, DoD