proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding Fairbanks, Channels 224C2 and 232C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–30851 Filed 12–7–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 222 and 252

RIN 0750–AG70

Defense Federal Acquisition Regulation Supplement; Restrictions on the Use of Mandatory Arbitration Agreements (DFARS Case 2010–D004)

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

ACTION: Final rule.

SUMMARY: DoD is converting an interim rule to a final rule with changes. The interim rule implemented section 8116 of the DoD Appropriations Act for Fiscal Year 2010 to restrict the use of mandatory arbitration agreements when awarding contracts that exceed $1 million when using Fiscal Year 2010 funds appropriated or otherwise made available by the DoD Appropriations Act. It allows the Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security.

DATES: *Effective date:* December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

An interim rule was published in the **Federal Register** at 75 FR 27946 on May 19, 2010, to implement section 8116 of the DoD Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118). This section prohibits the use of funds appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or torts related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention (hereinafter the "covered areas").

This rule does not apply to the acquisition of commercial items, including commercially available off-the-shelf items. After June 17, 2010, section 8116(b) requires the contractor to certify compliance by subcontractors.

Additionally, enforcement of this rule does not affect the enforcement of other aspects of an agreement that is not related to the covered areas.

This rule allows the Secretary of Defense to waive applicability to a particular contract or subcontract, if determined necessary to avoid harm to national security.

The public comment period for the interim rule closed July 19, 2010. Four respondents submitted comments to the interim rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided below.

1. Definition of a "contractor." One respondent objected to the interim rule's application of the term "contractor" only to the entity that has the contract. In the **Federal Register** Notice, the term "contractor" was used in one of several examples provided to help determine rule applicability. In the particular example, the term "contractor" was described as being narrowly applied only to the entity that has the contract. Unless a parent or subsidiary corporation is a party to the contract, they are not affected. The respondent stated that there was no justification for using such a narrow definition of a "contractor" and there is good reason to use a broader definition. The respondent suggested that the narrow definition of "contractor" heightens the potential for contractors to establish shell companies to circumvent the law. The respondent stated that in past regulations, different contexts have led to different definitions of "contractor"—sometimes broader, sometimes narrower, and that the definition used in the **Federal Register** is not absolutely determined by fixed precedent or other controlling authority.

Response: Expanding the definition of "contractor" to include parents and subsidiaries would require a change to the language of section 8116, which by its terms, is limited to employees of the contractor who was awarded the contract. The text of the statute does not provide a basis for making a broader application. With respect to the concern regarding the potential for the establishment of shell companies as a means of circumventing the requirement, such practices would be noted in responsibility determinations. In addition, guidance will be included in Procedures Guidance and Information which cautions contracting officers that, if they believe that, in fact, there is evidence that a contractor has created a shell company for the purpose of obviating section 8116, the contracting officer shall not award the contract and shall report such a condition to the Director, Defense Procurement and Acquisition Policy.

2. Definition of a "covered contract." One respondent recommended that 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, be amended to include a definition of a "covered contract."

Response: DoD does not agree. DFARS 222.7401, Policy, and 222.7404, Contract Clause, provide sufficient detail on the use of 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, and make it clear what constitutes a "covered contract." There is no additional benefit to be derived from repeating the language set forth at either 222.7401 or 222.7404 in a separate definition of a "covered contract."

3. Definition of "subcontract." One respondent recommended that the final rule should delete the definition of "subcontract" at 222.7401, Policy. The respondent stated that since FAR 44.101 already defines the term "subcontract," an additional definition is unnecessary.

Response: DoD does not agree. It appears that the respondent incorrectly referenced 222.7401, Policy. The

interim rule at 222.7401 does not include a definition of a "subcontract." It may be that the respondent was referring to the definition of "subcontract" included in 252.222–7006(a), Restrictions on the Use of Mandatory Arbitration Agreements. DoD has determined that the definition included therein is appropriate because it makes clear that subcontracts are limited to those contracts placed by the contractor or higher-tier subcontractors that are specifically for the furnishing of supplies or services for the performance of the contract, not supplies or services a contractor or higher-tier subcontractor might purchase for other purposes.

4. Secretary of Defense waiver process. Two respondents recommended that the final rule explain how the Secretary of Defense's waiver authority is to be exercised.

Response: DoD agrees. The waiver process and the conditions under which it is to be exercised and reported to Congress as set forth in section 8116(d) are set out in the final rule at 222.7403. In the waiver process, a waiver determination must set forth the grounds for the waiver with specificity, state any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests. DFARS 222.7403, Waiver, was revised to incorporate text on the particular requirements for the waiver determination previously reserved for the DFARS companion resource, Procedures, Guidance, and Information. The text was reordered and clarified by adding paragraph numbers.

5. Applicability to task or delivery orders. One respondent recommended that the language at 222.7401(a), Policy, delete the reference to task or delivery orders and bilateral modifications adding new work.

Response: DoD does not agree. In accordance with FAR 2.101, a contract includes all types of commitments that obligate the Government to an expenditure of appropriated funds. Task orders and delivery orders obligate funding, and if they utilize funds appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 that are in excess of $1 million, the section 8116 restriction would apply.

6. Modification to the contract for latest version of clause. One respondent recommended that contractors may request, and the contracting officers provide, a modification to the contract that incorporates the latest version of the clause with no consideration to be given to the contractor.

Response: DoD does not agree. The contracting officer can agree to a bilateral modification of the contract in accordance with FAR 1.108(d), which requires consideration. However, the contracting officer has flexibility in determining what would represent adequate consideration.

7. First-tier certification. One respondent recommended that the final rule should provide that prime contractors are required to certify only their first-tier subcontractors' compliance with the rule.

Response: DoD does not agree. DoD did not find language in the DoD Appropriations Act for Fiscal Year 2010 that restricts coverage to subcontracts at the first-tier. The prohibition extends to "covered subcontracts" at all tiers.

8. Clause prescription. Two respondents recommended the addition of language to the prescription at 222.7404 (now 222.7405) that would specify the applicability dates for the use of the clause.

Response: DoD does not agree, since these dates are already set forth at 222.7402(b).

9. Certification. One respondent recommended that 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, be revised at paragraph (b)(2) by replacing the existing language "by signature of the contract, for contracts awarded after June 17, 2010" with the text "by signature of any covered contract awarded after June 17, 2010."

Response: DoD does not agree. The contracting officer will only include the clause in a covered contract, in accordance with the clause prescription at 222.7404. It is the signature of the particular contract in which the clause is included that binds the contractor.

10. Scope of section 8116. Two respondents submitted comments requesting that the final rule clearly define the scope of section 8116's applicability to how narrowly (or broadly) the anti-arbitration prohibition is intended to apply to employees and independent contractors of covered contractors and subcontractors.

Response: DoD does not agree. The **Federal Register** Notice published at 75 FR 27946 on May 19, 2010, made it clear that an entity or firm that does not have a contract in excess of $1 million appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 is not affected by the clause. The term "contractor" is narrowly applied only to the entity that has the contract. Unless a parent or subsidiary corporation is a party to the contract, the entity is not affected. Therefore, the anti-arbitration bar applies to any contractor employee of the entity, with respect to any covered claim.

II. Executive Order 12866

This is a significant regulatory action, and therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to implement section 8116 of the DoD Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118). The clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, prohibits the use of funds appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or torts related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention. This rule does not apply to a contract for the acquisition of commercial items, including commercially available off-the-shelf items. It was published as an interim rule in the **Federal Register** at 75 FR 27946 on May 19, 2010. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

Most contractors should not be impacted unless they have a covered claim. A significant number of small businesses provide only commercial items to the Government, and this rule does not apply to that portion of the business community. We anticipate that there will be limited, if any, additional costs imposed on small businesses unless there is a covered claim filed against a particular contractor.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 222 and 252, which was published in the **Federal Register** at 75 FR 27946 on May 19, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 222, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

[Sections 222.7401 through 222.7404 redesignated as sections 222.7402 through 222.7405]

■ 2. Redesignate sections 222.7401 through 222.7404 as section 222.7402 through 222.7405 respectively.

■ 3. Add a new section 222.7401 to read as follows:

222.7401 Definition.

Covered subcontractor, as used in this subpart, is defined in the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements.

■ 4. Revise newly designated sections 222.7403 through 222.7405 to read as follows:

222.7403 Applicability.

This requirement does not apply to the acquisition of commercial items (including commercially available off-the-shelf items).

222.7404 Waiver.

(a) The Secretary of Defense may waive, in accordance with paragraphs (b) through (d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.

(b) The waiver determination shall set forth the grounds for the waiver with specificity, stating any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the **Federal Register**, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

222.7405 Contract clause.

Use the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of $1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118), except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.222–7006 by:

■ a. Revising the introductory text;

■ b. Revising the clause date; and

■ c. Revising paragraphs (b)(2) and (d) to read as follows:

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

As prescribed in 222.7405, use the following clause:

RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010)

* * * * *

(b) * * *

(2) Certifies, by signature of the contract, that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any existing agreements, as described in paragraph (b)(1) of this clause, with respect to any employee or independent contractor performing work related to such subcontract.

* * * * *

(d) The Secretary of Defense may waive the applicability of the restrictions of paragraph (b) of this clause in accordance with Defense Federal Acquisition Regulation Supplement 222.7404.

(End of clause)

[FR Doc. 2010–30669 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AG57

Defense Federal Acquisition Regulation Supplement; Restriction on Ball and Roller Bearings (DFARS Case 2006–D029)

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 revise the domestic source restriction on acquisition of ball and roller bearings. This final rule, which implements the DoD annual appropriations act domestic source restrictions, requires that each ball or roller bearing be manufactured in the United States, its outlying areas, or Canada, and that the cost of the bearing components manufactured in the United States, its outlying areas, or Canada, shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

DATES: *Effective Date:* December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

The current DFARS restriction on ball and roller bearings (225.7009) implemented two statutory restrictions: 10 U.S.C. 2534(a)(5) and annual appropriations act restrictions. 10 U.S.C. 2534(a)(5) required that all ball and roller bearings and bearing components, either as end items or components of end items, be wholly manufactured in the United States or Canada. The annual defense appropriations act restrictions require that all ball and roller bearings be produced by a domestic source and be of domestic origin. This restriction does not apply to the acquisition of commercial items, either as components or end products, unless the commercial bearings themselves are purchased as the end products.

II. Discussion and Analysis

A. Analysis of Public Comments

DoD published a proposed rule in the **Federal Register** on May 7, 2010 (75 FR 25167). The comment period closed on July 6, 2010. Three respondents submitted comments.