

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-209, adopted January 24, 1997, and released January 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857-3800.

## List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## 47 CFR PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Belview, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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**DEPARTMENT OF DEFENSE****48 CFR Parts 212, 225, 244, and 252**

[DFARS Case 96-D333]

**Defense Federal Acquisition Regulation Supplement; Application of Berry Amendment**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997. Section 8109 provides that, in applying the Berry Amendment (10 U.S.C. 2241 note), the term "synthetic fabric and coated synthetic fabric" shall be deemed to

include all textile fibers and yarns that are for use in such fabrics; and that the domestic source restrictions of the Berry Amendment shall apply to contracts and subcontracts for the procurement of commercial items.

**DATE:** *Effective date:* February 7, 1997.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before April 8, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D333 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This interim rule amends the DFARS to implement Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208). This rule extends the application of the Berry Amendment domestic source restrictions to textile fibers and yarns that are for use in synthetic fabric and coated synthetic fabric; requires flowdown of the Berry Amendment restrictions to subcontracts for the procurement of commercial items; and clarifies the application of Berry Amendment restrictions through the use of Federal supply classification codes.

## B. Regulatory Flexibility Act

This interim rule is expected to have a significant positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

This interim rule amends the DFARS to implement Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208). The aspect of the rule that is expected to benefit small entities is the requirement for flowdown of the Berry Amendment restrictions to subcontracts for the procurement of commercial items. In particular, this rule will lessen foreign competition in commercial subcontracts for the acquisition of items containing cotton and other natural fiber products or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); woven silk or woven silk blends; spun silk yarn for

cartridge cloth; canvas products; and certain specialty metals. Statistics are not readily available pertaining to the number of subcontracts for the acquisition of such items awarded to small entities under DoD prime contracts. This rule contains no new reporting, recordkeeping, or other compliance requirements for large or small entities; and does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a positive impact on domestic sources of certain commodities and, therefore, applies equally to both large and small entities. There are no practical alternatives that will meet the statutory requirements implemented in this rule.

A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the analysis from the address specified herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D333 in correspondence.

## C. Paperwork Reduction Act

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

## D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary because Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208) was effective upon enactment on September 30, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 212, 225, 244, and 252

Government procurement.  
Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 212, 225, 244, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, 244, and 252 continues to read as follows:

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

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

1a. The heading for part 212 is revised to read as set forth above.

**212.504 [Amended]**

2. Section 212.504 is amended by removing and reserving paragraph (a)(i).

**PART 225—FOREIGN ACQUISITION**

3. Section 225.70002-1 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(7) and (a)(9) to read as follows:

**225.7002-1 Restrictions.**

(a) In accordance with Section 9005 of Public Law 102-396, as amended (10 U.S.C. 2241 note, Limitations on Food, Clothing, and Specialty Metals Not Produced in the United States), and Section 8109 of Public Law 104-208, do not acquire supplies consisting in whole or in part of any of the following, that have not been grown or produced in the United States or its possessions—

\* \* \* \* \*

(7) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;

\* \* \* \* \*

(9) Any item of individual equipment (Federal Supply Classification 8465) manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.

\* \* \* \* \*

4. Section 225.7002-2 is amended by revising paragraphs (e) and (j) to read as follows:

**225.7002-2 Exceptions.**

\* \* \* \* \*

(e) Acquisitions not exceeding the simplified acquisition threshold.

\* \* \* \* \*

(j) Purchase of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric, if such fabric is to be used as a component of an end item not classified in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia.

**PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

5. Subpart 244.4 is added to read as follows:

**Subpart 244.4—Subcontracts for Commercial Items and Commercial Components**

Sec.  
244.403 Contract clause.

**Subpart 244.4—Subcontracts for Commercial Items and Commercial Components**

**244.403 Contract clause.**

Use the clause at 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts), in solicitations and contract for supplies or services other than commercial items, that contain the clause at 252.225-7014, Preference for Domestic Specialty Metals, Alternate I.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Section 252.212-7001 is amended by revising the clause date to read "(FEB 1997)"; and by adding paragraph (c) to the clause to read as follows:

**252.212-7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.**

\* \* \* \* \*

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(End of clause)

7. Section 252.225-7012 is amended by revising the clause date to read "(FEB 1997)"; and by revising paragraphs (a)(7), (a)(10), and (b)(4) of the clause to read as follows:

**252.225-7012 Preference for certain domestic commodities.**

\* \* \* \* \*

(a) \* \* \*

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;

\* \* \* \* \*

(10) Any item of individual equipment (Federal Supply Classification 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) \* \* \*

(4) To purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric, if such fabric is to be used as a component of an end item not classified in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal

Supply Group 84, Clothing, Individual Equipment and Insignia.  
(End of clause)

8. Section 252.225-7014 is amended by revising the clause date to read "(FEB 1997)"; and by revising paragraph (c)(4) of the clause and Alternate I to read as follows:

**252.225-7014 Preference for domestic specialty metals.**

\* \* \* \* \*

(c) \* \* \*

(4) The specialty metal is purchased by a subcontractor at any tier.  
(End of clause)

Alternate I (Feb 1997)

As prescribed in 225.7002-3(b), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The acquisition is for an end product of a country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement; or

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.

(d) The Contractor agrees to include the terms of this clause, including this paragraph (d), in every subcontract or purchase order awarded under this contract unless the item being purchased contains no specialty metals.

9. Section 252.244-7000 is added to read as follows:

**252.244-7000 Subcontracts for commercial items and commercial components (DoD contracts).**

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (Feb 1997)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(End of clause)

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