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List of Subjects in 40 CFR Part 92

Environmental protection, Air pollution control, Railroads, Reporting and recordkeeping requirements.

Dated: March 3, 1997.

Mary D. Nichols,
Assistant Administrator for Air and Radiation.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225, 242, and 252

[DFARS Case 96-D020]

Defense Federal Acquisition Regulation Supplement; Duty-Free Entry

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify guidance regarding duty-free entry of supplies and implementation of the North American Free Trade Agreement (NAFTA).

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before May 12, 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-D020 in all correspondence related to this issue.

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

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule does not constitute a change in policy. It is intended to clarify and consistently apply the existing policy regarding duty-free entry of supplies under DoD contracts. DoD generally waives duty on defense supplies (end products or components) from qualifying countries; on eligible products subject to the Trade Agreements Act or the North American Free Trade Agreement; and on other foreign supplies if the cost of processing the duty-free entry certificates will not exceed the amount of duty that would be paid. This proposed rule more accurately focuses the prescriptions for use of duty-free entry clauses; limits the required listing of supplies under the clause at 252.225-7008, Supplies to be Accorded Duty-Free Entry, to foreign end products that are neither qualifying country supplies nor eligible end products; adds an Alternate I to the clause at 252.225-7035, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate, for contracts under \$50,000, and expands Alternate I of the clause at 252.225-7036, North American Free Trade Agreement Implementation Act, to clarify that, when under \$50,000, the offered price of Mexican end products must include any applicable duty; expands the clause at 252.225-7037, Duty-Free Entry-Eligible End Products, to cover all eligible end products, not only NAFTA country supplies; and clarifies that notification to the Commander, Defense Contract Management Command, is not required in those instances where shipments are consigned to a contractor's plant and no duty-free entry certificate is required.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it does not constitute a change in policy but is a clarification of implementing procedures pertaining to duty-free entry of supplies and the North American Free Trade Agreement. 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-D020 in correspondence.

C. Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements contained in the clause at DFARS 252.225-7003 are approved under OMB Clearance Number 0704-0187; the other information collection requirements contained in DFARS Part 225 and the associated clauses in Part 252 are approved under OMB Clearance Number 0704-0229. It is estimated that the clarifying amendments proposed in this rule will result in a reduction of 486,000 hours in the paperwork burden approved under OMB Clearance Number 0704-0187, and a reduction of 8,200 hours in the paperwork burden approved under OMB Clearance Number 0704-0229.

List of Subjects in 48 CFR Parts 225, 242, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 242, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 225, 242, and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.105 is amended by revising the introductory text; by removing paragraph (3); by redesignating paragraphs (1) AND (2) as paragraphs (2) and (3), respectively; by adding a new paragraph (1); by revising newly designated paragraphs (2) and (3) in the introductory text; by revising newly designated paragraph (3) (ii); and by revising Examples 2 and 3 of Table 25-1 to read as follows:

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105. For additional procedures relating to evaluation of offers, see 225.303(b) Balance of Payments Program), 225.603 (customs and duties), and 225.872-4 (qualifying country sources).

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers.

As used in this section, the term "nonqualifying country offer" also may

apply to an offer that is not an eligible offer under a trade agreement (see Example 4 of Table 25-1, Evaluation).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 of Table 25-1, Evaluation).

* * * * *

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see Example 3 of Table 25-1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25-1, Evaluation), evaluate nonqualifying country offers without the 50 percent factor.

* * * * *

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25-1, Evaluation.)

* * * * *

TABLE 25-1.—EVALUATION

EXAMPLE 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$100 duty)	\$6,000
Domestic Offer	8,500
Qualifying Country Offer	7,800

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty (\$6,000).

Alternate II: Duty Exempted:

Nonqualifying Country Offer	\$880,500
Domestic Offer	950,000
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at \$879,500.

EXAMPLE 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$150 duty)	\$9,600
Qualifying Country Offer	9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)	\$880,500
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at \$879,500.

225.109-70 [Amended]

3. Section 225.109-70 is amended by removing paragraph (b) and by

redesignating paragraph (c) as paragraph (b).

4. Section 225.408 is amended by redesignating paragraph (a)(3) as

paragraph (a)(3)(A), and by adding paragraph (a)(3)(B) to read as follows:

225.408 Solicitation provisions and contract clauses.

(a) * * *

(3) * * *

(B)(i) Use the basic provision when the basic clause at 252.225-7036 is used.

(ii) Use the provision with its Alternate I when the clause at 252.225-7036 is used with its Alternate I.

* * * * *

5. Section 225.602 is amended by revising the introductory text of paragraph (3) to read as follows:

225.602 [Amended]

* * * * *

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DOD will issue duty-free entry certificates for—

* * * * *

6. Section 225.603 is amended by redesignating the text preceding paragraph (b) as paragraph (a), and by revising it to read as follows:

225.603 Procedures.

(a) *General.*

(i) *Preaward.*

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers nor offers of eligible products under a trade agreement, should contain applicable duty.

(C) Apply the evaluation procedures for the Buy American Act in accordance with 225.105.

(ii) *Award.* Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225-10, Duty-free Entry, and the clause at 252.225-7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the

contract clause at 252.225-7008, Supplies to be Accorded Duty Free-Entry.

(iii) *Postward.*

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.602(3)(i) and the clause at 252.225-7009, Duty-Free Entry-Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.602(3)(ii) and the clause at 252.225-7037, Duty-Free Entry-Eligible End Products; and for other foreign supplies in accordance with the policy at 225.602(3)(iii) on contracts containing the clause at FAR 52.225-10, Duty-Free Entry, or (following to the extent practicable the procedures required by the clause at FAR 52.225-10, Duty-Free Entry, and the clause 252.225-7010, Duty-Free Entry-Additional Provisions) on other contracts—

(1) That fall within one of the following categories:

(i) Direct purchases of foreign supplies under a DOD prime contract, whether title passes at point of origin or at destination in the United States; provided the contract states that the final price is exclusive of duty.

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(iii)(A)(1) (iii) of this section.

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract or fixed-price subcontract intervenes; provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(2) For which the supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government; and duty will be paid if such supplies or any portion thereof are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) For which such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

* * * * *

7. Section 225.605-70 is revised to read as follows:

225.605-70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225-7009, Duty-Free Entry-Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for services involving the furnishing of supplies, except for solicitations and contracts for supplies for exclusive use outside the United States.

(b) Use the clause at 252.225-7037, Duty-Free-Entry Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225-7007, Trade Agreements, or the clause at 252.225-7036, North American Free Trade Agreement Implementation Act, is used.

(c) Use the clause at 252.225-7010, Duty-Free Entry-Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225-10, Duty-Free Entry.

(d) Use the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225-10, Duty-Free Entry.

(e) Use the clause at 252.225-7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225-10, Duty-Free Entry.

PART 242—CONTRACT ADMINISTRATION

8. Section 242.302 is amended by revising paragraph (a)(19) to read as follows:

242.302 Contract administration functions.

(a) * * *

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225-10, Duty-Free Entry.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 252.212-7001 is amended in paragraph (b) of the clause by revising the entries "252.225-7001" and "252.225-7036" 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.

* * * * *

(b) * * *

_____ 252.225-7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a-10d, E.O. 10582).

* * * * *

_____ 252.225-7036 North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 note). (___ Alternate I)

* * * * *

10. Section 252.225-7001 is amended by revising in the clause the first sentence of paragraph (c), and by revising paragraph (d) to read as follows:

252.225-7001 Buy American Act and Balance of Payments Program.

* * * * *

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate, the Buy American Act—Trade Agreements—Balance of Payments Program Certificate, or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate. * * *

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for its purpose of evaluation by adding 50 percent of the offer, inclusive of duty. (End of clause)

11. Section 252.225-7003 is amended by revising the introductory text; by revising the clause in paragraph (a) and by removing paragraph (d). The revised text reads as follows:

252.225-7003 Information for duty-free entry evaluation.

As prescribed in 252.605-70(d), use the following provision:

* * * * *

(a) Is the offer based on furnishing any supplies (i.e., end items, components, or material) of foreign origin other than those for which duty-free entry is to be accorded

pursuant to the Duty-Free Entry-Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry-Eligible End Products clause of this solicitation?

Yes () No ()

* * * * *

12. Section 252.225-7007 is amended by revising paragraph (d) of the clause to read as follows:

252.225-7007 Trade Agreements.

* * * * *

(d) the offered price of qualifying country end products and the offered price of designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of end products listed under paragraph (c)(2)(vi) of the Buy American Act-Trade Agreements-Balance of Payments Program Certificate provision of the solicitation, or the offered price of U.S. made end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each offer of a U.S. made end product that does not meet the definition of "domestic end product" is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty. (End of clause)

13. Section 252.225-7008 is revised to read as follows:

252.225-7008 Supplies to be accorded duty-free entry.

As prescribed in 252.605-70(e), use the following clause:

Supplies To Be Accorded Duty-Free Entry

In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty-free entry for all qualifying country supplies (end products and components) and all eligible end products subject to applicable trade agreements (if this contract contains the Trade Agreements clause or the North American Free Trade Agreement Implementation Act clause), the following foreign end products that are neither qualifying country end products nor eligible end products under a trade agreement, and the following nonqualifying country components, are accorded duty-free entry:

(End of clause)

14. Section 252.225-7009 is amended by revising the section title, introductory text, clause title, and paragraphs (b), (c)(f)(2)(iv), (f)(2)(vii), and (g)(1) to read as follows:

252.225-7009 Duty-free entry-qualifying country supplies (end products and components).

As prescribed in 225.605-70(a), use the following clause:

Duty-Free Entry—Qualifying Country Supplies (End Products and Components)

(a) * * *

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end item to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.

* * * * *

(f) * * *

(2) * * *

(iv)(A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) in cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent, or broker who will notify Commander, Defense Contract Management Command (DCMC), New York, for execution of the duty-free certificate.

* * * * *

(vii) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) * * *

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any

customs forms required for the entry of foreign supplies in connection with DOD contacts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Custom regulations.

* * * * *

252.225-7010 [Amended]

15. Section 252.225-7010 is amended in the introductory text by revising "225.605-70(d)" to read "225.605-70(c)"; in the first sentence of paragraph (e) introductory text of the clause by revising "Defense Contract Management Area Operations (DCMAO)" to read "Defense Contract Management Command (DCMC)"; in paragraph (e)(3) by revising "DCMAO" to read "DCMC" and by revising "DLA8DP" to read "S3605A"; and in the second sentence of paragraph (f) by revising "DCMAO" to read "DCMC".

16. Section 252.225-7035 is amended by revising in the clause paragraphs (a), (b), and (c)(2); and by adding Alternate I to read as follows:

252.225-7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

* * * * *

(a) *Definitions.* "Domestic end product," "foreign end product," "NAFTA country end product," and "qualifying country end product" have the meanings given in the North American Free Trade Agreement Implementation Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. For line items subject to NAFTA, offers of qualifying country end products or NAFTA country end products will be evaluated without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) * * *

(2) The offeror must identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canada) end products:

(insert line item number)
(insert country of origin)

(ii) The offeror certifies that the following supplies qualify as NAFTA country end products:

(insert line item number)
(insert country of origin)

(iii) The following supplies are other foreign end products:

(insert line item number)
(insert country of origin)

(End of provision)

Alternate I

As prescribed in 225.408(a)(3)(B)(ii), substitute the phrase "Canadian end product" for the phrase "NAFTA country end product" in paragraph (a); and substitute the phrase "Canadian end products" for the phrase "NAFTA country end products" in paragraphs (b) and (c)(2)(ii) of the basic clause.

17. Section 252.225-7036 is revised to read as follows:

252.225-7036 North American Free Trade Agreement Implementation Act.

North American Free Trade Agreement Implementation Act

(a) *Definitions.*

(1) "Components," "domestic end product," "end product," "nonqualifying country," "qualifying country," and "qualifying country end product" have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(2) "Foreign end product" means an end product other than a domestic end product.

(3) "North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

(4) "NAFTA country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) The Contracting Officer has determined that the North American Free Trade Agreement Implementation Act of 1993 applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees on duty. The offered price of

foreign end products listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I

As prescribed in 225.408(a)(4)(B)(ii), substitute the following paragraphs (a)(4), (c), and (d) for paragraphs (a)(4), (c), and (d) of the basic clause:

(a)(4) "Canadian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(b) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(c) The offered price of qualifying country end products, or Canadian end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product

listed under paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

18. Section 252.225-7037 is revised as follows:

252.225-7037 Duty-free entry-eligible end products.

As prescribed in 225.605-70(b), use the following clause:

Duty-Free Entry-Eligible End Products

(a) *Definitions.*

"Eligible end product," as used in this clause, means—

(1) "Designated country end products," "Caribbean Basin country end product," or "NAFTA country end product," as defined in the Trade Agreements clause of this contract;

(2) "NAFTA country end product," as defined in the North American Free Trade Agreement Implementation Act clause of this contract; or

(3) "Canadian end product," as defined in the North American Free Trade Agreement Implementation Act, Alternate I, clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that—

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number, and delivery order if applicable.

(ii) Number of the subcontract/purchase order for foreign supplies if applicable.

(iii) Identification of carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent, or broker who will notify Commander, DCMC, NY, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMC, NY, is required).

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) Preparation of customs forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DOD contracts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in

accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the eligible country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for eligible and products;

(7) Total dollar value of the subcontract for eligible end products;

(8) Expiration date of the subcontract for eligible and products;

(9) List of the items purchased;

(10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(End of clause)

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