

Populations (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

James Jones,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.553 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.553 Fenhexamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hull	2.0
Almond, nutmeat	0.02
* * * * *	*
Plum (fresh prune)	0.5
Prune, dried	1.0
* * * * *	*
Stone fruit, except plum (fresh prune)	6.0
* * * * *	*
* * * * *	*

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DEPARTMENT OF DEFENSE

48 CFR Parts 213, 225, 242, and 252

[DFARS Case 98-D028]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final

rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). These amendments conform the DFARS to the Federal Acquisition Regulation (FAR) Amendments pertaining to foreign acquisition that were published in the **Federal Register** on December 27, 1999.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; telefax (703) 602-0350. Please cite DFARS Case 98-D028.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 225, Foreign Acquisition, and updates related references, for conformance with the FAR Part 25 rewrite that was published at 64 FR 72416 on December 27, 1999 (Federal Acquisition Circular 97-15, Item II). The rule reorganizes the existing DFARS text to align it with the revised FAR text. The rule makes no substantive change to DFARS policy pertaining to foreign acquisition. The following list summarizes the reorganization of the DFARS text:

Text previously located at	Relocated to
225.000-70	225.003
225.000-71	225.001
225.102	225.103
225.105	225.502
Table 25-1	225.504
225.107	225.170
225.108	225.104
225.109(a)	225.1101(1)
225.109(b)	225.171(a)
225.109(d)	225.1101(2)
225.109-70(a)	225.1101(3)
225.109-70(b)	225.171(b)
225.303	225.304
225.305-70	225.1103(1)
225.401	225.003
225.402(c)	225.403
225.403	225.401
225.403-70	225.401-70
225.405	225.408
225.408	225.11
225.602	225.901
225.603	225.902
225.604	225.903
225.605	FAR 25.1101(e)(2)
225.605-70	225.11
225.702	225.701
225.970	225.1070
225.971	225.1103(2)
225.972	225.1103(3)

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98-D028.

C. 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 213, 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 213, 225, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 213, 225, 242, and 252 continues to read as follows:

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

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.302-2 is amended in paragraph (d) introductory text by revising the first sentence to read as follows:

213.302-5 Clauses.

* * * * *

(d) When using the clause at FAR 52.213-4, delete the reference to the clause at FAR 52.225-1, Buy American Act-Balance of Payments Program-Supplies. * * *

* * * * *

PART 225—FOREIGN ACQUISITION

225.000-70 and 225.000-71 [Removed]

3. Sections 225.000-70 and 225.00-71 are removed.

4. Sections 225.001 and 225.003 are added to read as follows:

225.001 General.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Defense authorization or appropriations acts (see subpart 225.70); or

(B) DoD policy (see subpart 225.71 and FAR 6.302-3).

(ii) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable the trade agreements.

(2) *Memoranda of understanding or other international agreements.*

(i) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872-1.

(ii) If the product is the product of a qualifying country, evaluate the offer under subpart 225.5 and 225.872-4.

(3) *Trade agreements.*

(i) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).

(ii) If the product is an eligible product under subpart 225.4, evaluate the offer under subpart 225.5.

(iii) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c)).

(4) *Contractors controlled by terrorist nations.*

(i) Determine whether the contractor is controlled by a terrorist nation.

(ii) If the contractor is controlled by a terrorist nation, comply with 209.104-1(g).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in subpart 225.5.

225.003 Definitions.

As used in this part—

(1) “Caribbean Basin country end product” includes petroleum or any product derived from petroleum.

(2) “Defense equipment” means any equipment, item of supply, component, or end product purchased by the DoD.

(3) “Domestic concern” means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.

(4) “Domestic end product” has the meaning given in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) “Eligible product” means, instead of the definition at FAR 25.003, a designated, NAFTA, or Caribbean Basin

country end product in the categories listed in 225.401-70.

(6) “Foreign concern” means any concern other than a domestic concern.

(7) “Nondesignated country end product” means any end product which is not a U.S. made end product or a designated country end product.

(8) “Nonqualifying country” means a country other than the United States or a qualifying country.

(9) “Nonqualifying country end product” means an end product which is neither a domestic nor qualifying country end product.

(10) “Nonqualifying country offer” means an offer of a nonqualifying country end products, including the price of transportation to destination.

(11) “Qualifying country” is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872-1.

(12) “Qualifying country component” and “qualifying country end product” are defined in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. “Qualifying country end product” is also defined in the clause at 252.225-7021, Trade Agreements.

(13) “Qualifying country offer” means an offer of a qualifying country end product, including the price of transportation to destination.

(14) “Source” when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

5. Subpart 225.1 is revised to read as follows:

Subpart 225.1—Buy American Act—Supplies

Sec.

225.103 Exceptions.

225.104 Nonavailable articles.

225.170 Acquisition from or through other Government agencies.

225.171 Solicitations.

225.103 Exceptions.

(a)(1)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it

is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair intergration of the military and commercial industrial base.

(B) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than \$100,000;

(2) By the head of the contracting activity for acquisitions valued at \$100,000 or more but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.103(b)(2)(i), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed \$25,000;

(B) By the chief of the contracting officer if the acquisition is estimated not to exceed \$250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed \$2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed \$2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.104(a)(iii) or FAR 25.104(a);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Supply Center, Philadelphia, when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

225.104 Nonavailable articles.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.104(a) and in paragraph (a)(iii) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR Subpart 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(iii)(A) Aluminum clad steel wire.

(B) Sperm oil.

225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

225.171 Solicitations.

(a) For oral solicitations, inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(1) The items are excepted either on a blanket or an individual basis; or

(2) The price of the nonqualifying country end product is the low offer

under the evaluation procedures in subpart 225.5.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

6. Section 225.202 is revised to read as follows:

225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a) or in 225.104(a)(iii). For other materials, a nonavailability determination must be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level.

7. Subpart 225.3 is revised to read as follows:

Subpart 225.3—Balance of Payments Program

Sec.

225.302 Policy.

225.304 Procedures.

225.302 Policy.

(1) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(2)(i) Before solicitation, the determinations required by FAR 25.303(b) may be made by the following individuals or their immediate deputies:

ARMY

Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Materiel Command

Commander in Chief, U.S. Army Europe and DCSLOG, U.S. Army, Europe
Commander Eighth U.S. Army and Chief of Staff, Eighth U.S. Army

Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command

Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe

Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines

Commander-in-Chief, U.S. Atlantic Fleet

Commander-in-Chief, U.S. Pacific Fleet

Commander, Military Sealift Command

Commandant, U.S. Marine Corps

Commander, Naval Facilities Engineering Command

Commanding General, III Marine Amphibious Force

AIR FORCE

Commander, U.S. Air Forces in Europe

Commander, Pacific Air Forces

Commander, Air Mobility Command

Commander, Air Force Materiel Command

Commander, Air Combat Command

Commander, Air Force Space Command

ADVANCED RESEARCH PROJECTS AGENCY

Director, Contracts Management Office

DEFENSE INFORMATION SYSTEMS AGENCY

Director

DEFENSE LOGISTICS AGENCY

Executive Director, Procurement

NATIONAL IMAGERY AND MAPPING AGENCY

Deputy Director for Acquisition, Installations, and Logistics

DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

Director

(ii) The authority to make the determinations referred to in paragraph (2)(i) of this section may be redelegated below the levels specified in that paragraph for acquisitions estimated at 500,000 or less in foreign cost.

(3)(i) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(ii) DoD has determined that requirements for the items on the lists at FAR 25.104(a) and at 225.104(a)(iii) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned:

(i) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program).

(ii) Industrial gases.

(iii) Brand drugs specified by the Defense Medical Materiel Board.

(iv) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick.

(v) Overhaul and repair of vessels, aircraft, and vehicles which—

(A) Are home-ported/stationed/deployed overseas; and

(B) Cannot practically return to the United States or to U.S. operated repair facilities.

(vi) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than \$100,000.

(5)(i) Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

225.304 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation of offers.*

(i) Use the evaluation procedures in subpart 225.5 instead of the evaluation procedures in FAR subpart 25.5. Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in Subpart 225.5 result in the award of nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interests. If no domestic end product offers are received, the determination in FAR 25.303(b)(1) is not required.

8. Subpart 225.4 is revised to read as follows:

Subpart 225.4—Trade Agreements

Sec.

225.401 Exceptions.

225.401–70 Products subject to trade agreement acts.

225.402 General.

225.403 Trade Agreements Act.

225.408 Procedures.

225.401 Exceptions.

(b)(i) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD (AT&L) DP).

(ii) The following national security/national defense exceptions do not require approval by USD (AT&L) DP:

(A) Where purchase from foreign sources is restricted by the DoD annual appropriations or authorization acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8.

(B) Where competition from foreign sources is restricted under the authority of FAR 6.302–3(a)(2)(i). Provide USD (AT&L) DP a copy of the justification for restricting competition (see FAR 6.303–1(d)).

(C) Where competition from foreign sources is restricted under subpart 225.71.

225.401–70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products that are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

FSG	Category/description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes

FSG	Category/description	FSG	Category/description
29	Engine accessories	87	Agricultural supplies
30	Mechanical power transmission equipment	88	Live animals
32	Woodworking machinery and equipment	91	Fuels, oils, and waxes
34	Metalworking machinery	93	Nonmetallic fabricated materials
35	Service and trade equipment	94	Nonmetallic crude materials
36	Special industry machinery (except 3690)	96	Ores, minerals, and their primary products
37	Agricultural machinery and equipment	99	Miscellaneous
38	Construction, mining, excavating, and highway maintenance equipment		
39	Materials handling equipment		
40	Rope, cable, chain and fittings		
41	Refrigeration and air conditioning equipment		
42	Fire fighting, rescue and safety equipment		
43	Pumps and compressors		
44	Furnace, steam plant and drying equipment (except 4470)		
45	Plumbing, heating, and sanitation equipment		
46	Water purification and sewage treatment equipment		
47	Piping, tubing, hose, and fitting		
48	Valves		
49	Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960)		
53	Hardware and abrasives		
54	Prefabricated structures and scaffolding		
55	Lumber, millwork, plywood, and veneer		
56	Construction and building materials		
61	Electric wire, and power and distribution equipment		
62	Lighting fixtures and lamps		
63	Alarm and signal systems		
65	Medical, dental, and veterinary equipment and supplies		
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries		
67	Photographic equipment		
68	Chemicals and chemical products		
69	Training aids and devices		
70	General purpose ADPE, software, supplies, and support equipment		
71	Furniture		
72	Household and commercial furnishings and appliances		
73	Food preparation and serving equipment		
74	Office machines, visible record equipment and ADP equipment		
75	Office supplies and devices		
76	Books, maps, and other publications		
77	Musical instruments, phonographs, and home type radios		
78	Recreational and athletic equipment		
79	Cleaning equipment and supplies		
80	Brushes, paints, sealers, and adhesives		
81	Containers, packaging and packing supplies (except 8140)		
84	Luggage (only 8460)—See FAR 25.003 for exclusion of luggage for Caribbean Basin countries		
85	Toiletries		

225.402 General.

(1) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401-70).

(2) See subpart 225.5 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

225.403 Trade Agreements Act.

(c)(i) Except as provided in paragraphs (c)(ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872-1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements.

In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii)(A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

§ 225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4) do not apply to offshore acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

9. Subpart 225.5 is added to read as follows:

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.

225.502 Application.

225.504 Evaluation examples.

§ 225.502 Application.

Use the following procedures instead of those in FAR 25.502. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(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” may also apply to an offer that is not an eligible offer under a trade agreement (see 225.504(4)).

(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 225.504 (1)).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225-8, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 25.225-7003, Information for Duty-Free Entry Evaluation (see 225.504(1)(ii)).

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(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 225.504(3)) or when a qualifying country offer is lower than the domestic offer (see 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225-8, Duty-Free Entry, evaluate the

nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225-7003, Information for Duty-Free Entry Evaluation (see 225.504(2)(i) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (see 225.504(2)(i) and (3)(i)).

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of “domestic end production” is more restrictive than the definition for—

(A) “U.S. made end product” under trade agreements;

(B) “Domestically produced or manufactured products” under small business set-asides or small business reservations; and

(C) Products of small businesses under FAR Part 19.

(iii) If an offer is for a “U.S. made end product,” “domestically produced end product,” or the product of a small business, but is not a “domestic end product” as defined in the clause at 252.225-7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer (see 225.504(4)).

255.504 Evaluation examples.

(1) Example 1.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$100 duty)	\$6,000
Domestic Offer	8,900
Qualifying Country Offer	9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of \$9,000.

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty	\$600,000
Domestic Offer	910,000
Qualifying Country Offer	920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of \$900,000.

Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price, which is awarded at \$599,000.

(2) Example 2.

(i) 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).

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty	\$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.

(3) Example 3.

(i) 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.

(ii) 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.

(4) Example 4.

(i) Alternate I:

Offer of U.S. Made End Product which is not a Domestic Offer	\$800,000
Domestic Offer	820,000
Eligible Product	830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of \$1,200,000.

(ii) Alternate II:

Offer of U.S. Made End Product which is not a Domestic Offer	\$800,000
Eligible Product	820,000
Domestic Offer	830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

Subpart 225.6—[Removed]

10. Subpart 225.6 is removed.

11. The heading of Subpart 225.7 is revised to read as follows:

Subpart 225.7—Prohibited Sources

225.702 [Redesignated as 225.701]

12. Section 225.702 is redesignated as section 225.701.

13. The heading of Subpart 225.8 is revised to read as follows:

Subpart 225.8—Other International Agreements and Coordination

14. The heading of section 225.801 is revised to read as follows:

225.801 General.

15. Subpart 225.9 is revised to read as follows:

Subpart 225.9—Customs and Duties

Sec.	
225.901	Policy.
225.902	Procedures.
225.903	Exempted supplies

225.901 Policy.

(1) Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.903(b)).

(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—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreement Act or NAFTA; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

225.902 Procedures.

(1) *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) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted.

(D) Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.502.

(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 52.225-8, 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) *Postaward.*

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.901(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 225.901(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 225.901(3)(iii) on contracts containing the clause at FAR 52.225-8, Duty-Free Entry; or (following to the extent practicable the procedures required by the clause at FAR 52.225-8, Duty-Free Entry, and the clause at 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 for which duty will be paid if such supplies or any portion 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 or 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.

(2) *Formal entry and release.*

(i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of goods entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(1) Determine whether a reduction in the contract price is required under the clause at FAR 52.225-8, Duty-Free Entry;

(2) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(3) Determine the price of the foreign supplies exclusive of duty, and advise

the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMC New York, ATTN: Customs Team, DCMDE-GNIC, 207 New York Avenue, Staten Island, NY 10305-5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.
 Prime Contractor Name and Address:
 Prime Contractor CAGE Code:
 Prime Contract Number plus Delivery Order Number, if applicable:
 Total Dollar Value of the Prime Contract or Delivery Order:
 Expiration Date of the Prime Contract or Delivery Order:
 Foreign Supplier Name and Address:
 Number of Subcontract/Purchase Order for Foreign Supplies:
 Total Dollar Value of the Subcontract for Foreign Supplies:
 Expiration Date of the Subcontract for Foreign Supplies:
 CAO Activity Address Number:
 ACO Name and Telephone Number:
 ACO Code:
 Signature:
 Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMC New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Customs Team, DCMDE-GNIC, DCMC New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMC New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(3) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.903 Exempted supplies.

(b)(i) The term "supplies"—
 (A) Includes articles known as "stores," such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes.

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment."

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form:

(Date)

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)

(Title)

(Organization)

16. Subpart 225.10 is added to read as follows:

Subpart 225.10—Additional Foreign Acquisition Regulations

Sec.

225.1070 Clause deviations in overseas contracts.

225.1070 Clause deviations in overseas contracts.

See 201.403(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

17. Subpart 225.11 is added to read as follows:

Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.

225.1101 Acquisition of supplies.

225.1103 Other provisions and clauses.

225.1101 Acquisition of supplies.

(1) Use the provision at 252.225-7000, Buy American Act—Balance of

Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Act—Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American Act—Balance of Payments Program—Supplies, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under appropriations and authorization act restrictions (see subpart 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see subpart 225.71); and
 (C) End products restricted under the authority of FAR 6.302-3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restriction in paragraph (2)(ii)(A) or (B) of this section.

(3) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225-7001, Buy American Act and Balance of Payments Program.

(ii) 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(iii) 252.225-7021, Trade Agreements.

(iv) 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program.

(4) Use the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225-8, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225-7021, Trade Agreements, is used.

(5) Use the provision at 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the

provision at FAR 52.225-6, Trade Agreements Certificate, in all solicitations that include the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(6) Except as provided in paragraph (11) of this section, use the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-5, Trade Agreements. The clause need not be used where purchase from foreign sources is restricted (see 225.401(b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(7) 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 52.225-8, Duty-Free Entry.

(8) 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 supplies for exclusive use outside the United States.

(9) Use the clause at 252.225-7010, Duty-Free Entry—Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225-8, Duty-Free Entry.

(10) Use the provision at 252.225-7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225-7021, Trade Agreements.

(11) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, when acquiring information technology products in Federal Supply Group 70 or 74.

(12) Use the provision at 252.225-7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(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.

(13) Use the clause at 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation

Act—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.401(b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401-70, when the estimated value is \$53,150 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$53,150.

(ii) Application of the procedures in 225.402 and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.

(14) 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, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, is used.

225.1103 Other provisions and clauses.

(1) In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225-7005, Identification of Expenditures in the United States, in all negotiated contracts over \$25,000 where—

(i) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(A) The contractor is a foreign concern; or

(B) The contractor is a domestic concern and the Government will take title outside the United States.

(ii) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(A) The contractor is a domestic concern; or

(B) The contractor is a foreign concern and the contract requires acquisition of

materials, equipment, or services from U.S. sources.

(2) Use the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the clause at 252.225-7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

18. 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 (c) of the clause at FAR 52.225-8, Duty-Free Entry.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7000 [Amended]

19. Section 252.225-7000 is amended in the introductory text by removing “225.109(a)” and adding in its place “225.1101(1)”.

252.225-7001 [Amended]

20. Section 252.225-7001 is amended in the introductory text by removing “225.109(d)” and adding in its place “225.1101(2)”.

252.225-7002 [Amended]

21. Section 252.225-7002 is amended in the introductory text by removing “225.109-70(a)” and adding in its place “225.1101(3)”.

252.225-7003 [Amended]

22. Section 252.225-7003 is amended in the introductory text by removing “225.605-70(d)” and adding in its place “225.1101(4)”; and in Alternate I introductory text by removing “225.605-70(d)” and adding in its place “225.1101(4)”.

252.225-7005 [Amended]

23. Section 252.225-7005 is amended in the introductory text by removing “225.305-70” and adding in its place “225.1103(1)”.

252.225-7006 [Amended]

24. Section 252.225-7006 is amended in the introductory text by removing

“225.408(a)(i)” and adding in its place “225.1101(5)”.

252.225-7007 [Amended]

25. Section 252.225-7007 is amended in the introductory text by removing “225.408(a)(ii)” and adding in its place “225.1101(6)”.

252.225-7008 [Amended]

26. Section 252.225-7008 is amended in the introductory text by removing “225.605-70(e)” and adding in its place “225.1101(7)”.

252.225-7009 [Amended]

27. Section 252.225-7009 is amended in the introductory text by removing “225.605-70(a)” and adding in its place “225.1101(8)”.

252.225-7010 [Amended]

28. Section 252.225-7010 is amended in the introductory text by removing “225.605-70(c)” and adding in its place “225.1101(9)”.

252.225-7020 [Amended]

29. Section 252.225-7020 is amended in the introductory text by removing “225.408(a)(iii)” and adding in its place “225.1101(10)”.

252.225-7021 [Amended]

30. Section 252.225-7021 is amended in the introductory text by removing “225.408(a)(iv)” and adding in its place “225.1101(11)”.

252.225-7035 [Amended]

31. Section 252.225-7035 is amended in the introductory text by removing “225.408(a)(v)” and adding in its place “225.1101(12)”; and in Alternate I by removing “225.408(a)(v)(B)(2)” and adding in its place “225.1101(12)(ii)”.

252.225-7036 [Amended]

32. Section 252.225-7036 is amended in the introductory text by removing “225.408(a)(vi)” and adding in its place “225.1101(13)”; and in Alternate I introductory text by removing “225.408(a)(vi)(B)(2)” and adding in its place “225.1101(13)(i)(B)”.

252.225-7037 [Amended]

33. Section 252.225-7037 is amended in the introductory text by removing “225.605-70(b)” and adding in its place “225.1101(14)”.

252.225-7041 [Amended]

34. Section 252.225-7041 is amended in the introductory text by removing “225.971” and adding in its place “225.1103(2)”.

252.225-7042 [Amended]

35. Section 252.225-7042 is amended in the introductory text by removing “225.97” and adding in its place “225.1103(3)”.

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DEPARTMENT OF DEFENSE

48 CFR Part 226

[DFARS Case 99-D300]

Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCY: Department of Defense (DoD).

ACTION: Final rule

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise procedures pertaining to the Indian Incentive Program. The Program provides for incentive payments to Government contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors. This rule reflects new statutory provisions that permit small business concerns to participate in the Indian Incentive Program.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0262; telefax (703) 602-0350. Please cite DFARS Case 99-D300.

SUPPLEMENTARY INFORMATION:

A. Background

The rule revises DFARS Subpart 226.1 to update procedures pertaining to the Indian Incentive Program. Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program, which provides for payment of incentives to Government contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors. Prior to fiscal year 1999, annual appropriations acts restricted DoD payments under the Program to those contractors that submitted small business subcontracting plans pursuant to 15 U.S.C. 637(d) or Section 854 of Public Law 101-89 (15 U.S.C. 637 note). Since small business concerns are not required to submit subcontracting plans, small businesses were excluded from

participation in the Indian Incentive Program under DoD contracts. Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105-262) and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106-79) eliminated the requirements for a DoD contractor to submit a subcontracting plan before it may participate in the Indian Incentive Program.

DoD implements the Indian Incentive Program through use of the clause at Federal Acquisition Regulation (FAR) 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. The FAR and DFARS previously prescribed use of the clause in only those DoD contracts that contain subcontracting plan requirements. On October 26, 1999, a proposed FAR rule was published at 64 FR 57964 to remove the FAR requirements for DoD use of the clause; these DFARS amendments replace the FAR requirements.

DoD published a proposed rule at 64 FR 63003 on November 18, 1999. Thirty-six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. The final rule differs from the proposed rule in that it lowers the dollar threshold for use of the clause at FAR 52.226-1, to provide increased opportunity or small business concerns to participate in the Indian Incentive Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD expects this final rule 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.* A final regulatory flexibility analysis has been prepared and its summarized as follows:

The legal basis for the rule is Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544); Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105-262); and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106-79). This rule will apply to all DoD contractors that have the clause at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, incorporated into their contracts. The proposed rule required use of the clause at FAR 52.226-1 in construction contracts valued at \$1,000,000 or more, and in other than construction contracts valued