

with Australia and Morocco, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Public Law 108-286) and the United States-Morocco Free Trade Agreement Implementation Act (Public Law 108-302). The Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the United States Trade Representative has informed DoD that the Morocco Free Trade Agreement has not yet entered into force. Therefore, implementation of the Morocco Free Trade Agreement is excluded from this final rule. In addition, for consistency with the Federal Acquisition Regulation and other changes made by the interim rule, this final rule amends the definition of "eligible product" at 225.003 to include foreign construction material.

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 certifies that this final rule will not 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.* DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401-70; and acquisitions that are set aside for small business concerns are exempt from application of the trade agreements.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under Office of Management and Budget Control Number 0704-0229. The impact, however, is negligible.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 70 FR 2361 on January 13, 2005, is adopted as a final rule with the following changes:

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

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

PART 225—FOREIGN ACQUISITION

2. Section 225.003 is amended as follows:

a. In paragraph (5)(i)(B), by removing "or";

b. By redesignating paragraph (5)(ii) as paragraph (5)(iii); and

c. By adding a new paragraph (5)(ii) to read as follows:

225.003 Definitions.

* * * * *

(5) * * *

(ii) A foreign construction material that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition; or

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

3. Section 252.212-7001 is amended as follows:

a. By revising the clause date to read "(DEC 2005)"; and

b. In paragraph (b), in entry "252.225-7021", by removing "(JUN 2005)" and adding in its place "(DEC 2005)".

252.225-7021 [Amended]

4. Section 252.225-7021 is amended as follows:

a. By revising the clause date to read "(DEC 2005)"; and

b. In paragraph (a)(3)(ii), by removing "Morocco,".

5. Section 252.225-7045 is amended as follows:

a. By revising the clause date to read "(DEC 2005)";

b. In paragraph (a), in the definition of "Designated country", in paragraph (2), by removing "Morocco,"; and

c. By revising Alternate I to read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

Alternate I (DEC 2005). As prescribed in 225.7503(b), delete the definitions of "designated country" and "designated country construction material" from the definitions in paragraph (a) of the basic clause, add the following definition of "Australian or Chilean construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Australian or Chilean construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia or Chile; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia or Chile into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for WTO GPA country, Australian or Chilean, least developed country, or Caribbean Basin country construction material.

(c) The Contractor shall use only domestic, WTO GPA country, Australian or Chilean, least developed country, or Caribbean Basin country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

[FR Doc. 05-23722 Filed 12-8-05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2003-D008]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of supplies and services from foreign sources. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* December 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System,

OUS(DAT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D008.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation Initiative. The DFARS changes include—

- Deletion of redundant or unnecessary text at 225.000, 225.171, 225.871-1(b), 225.7301(a)(1) through (3), and 225.7306.
- Deletion of text at 225.001, 225.504, 225.802, 225.870-1(d), 225.870-5, 225.870-7, 225.871-5(c), 225.872-4, 225.872-5, 225.872-6(c), 225.873-2, 225.902, 225.903, 225.7301, and 225.7302 containing internal DoD procedures, guidance, or information. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Clarification of DFARS text as follows:
 - 225.401-70—Addition of a statutory reference and amendment of the section heading.
 - 225.408—Clarification that the exception from FAR 25.408(a)(4) for overseas acquisitions applies only to the requirement for submission of offers in U.S. dollars.
 - 225.701—Expansion of the cross-reference to restrictions on contracting with firms owned or controlled by foreign governments that support terrorism (from 209.104-1(g)(i) to 209.104-1(g)).
 - 225.871-6—Clarification that property that is jointly acquired by the members of a NATO cooperative project may be disposed of in accordance with the terms of the cooperative project agreement, without regard to any laws

of the United States applicable to the disposal of property owned by the United States.

- 225.7003—Clarification that the waiver procedures in 225.7003 apply only if specifically authorized by reference elsewhere in Subpart 225.70.
- 225.7303-2(a)(3) and (redesignated) 225.7306—Addition of cross-references.
- 225.7501(a)(2)(iii)—Deletion of a reference to DoD Directive, 4120.3, Defense Standardization and Specification Program, which was cancelled in 1991.

DoD published a proposed rule at 70 FR 14625 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule, with an additional change at 225.7301 to reflect the text added to 225.7301 in the interim rule published at 70 FR 57191 on September 30, 2005. Also, the text proposed for addition to 225.802-70(c) has been excluded from this final rule, as this text was added to 225.7401(b) in the final rule published at 70 FR 23790 on May 5, 2005.

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 certifies that this final rule will not 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 the rule updates, streamlines, and clarifies DFARS text, but makes no significant change to DoD contracting policy.

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 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

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

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

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

PART 225—FOREIGN ACQUISITION

225.000 [Removed]

- 2. Section 225.000 is removed.
- 3. Section 225.001 is revised to read as follows:

225.001 General.

For guidance on evaluating offers of foreign end products, see PGI 225.001.

225.171 [Removed]

- 4. Section 225.171 is removed.
- 5. Section 225.401-70 is amended by revising the section heading and the last sentence of the introductory text to read as follows:

225.401-70 End products subject to trade agreements.

* * * However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

* * * * *

- 6. Section 225.408 is revised to read as follows:

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4), on submission of offers in U.S. dollars, do not apply to overseas acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

- 7. Section 225.504 is revised to read as follows:

225.504 Evaluation examples.

For examples that illustrate the evaluation procedures in 225.502(c)(ii), see PGI 225.504.

- 8. Section 225.701 is revised to read as follows:

225.701 Restrictions.

See 209.104-1(g) for restrictions on contracting with firms owned or controlled by foreign governments.

- 9. Section 225.802 is revised to read as follows:

225.802 Procedures.

(b) Information on memoranda of understanding and other international agreements is available at PGI 225.802(b).

- 10. Section 225.870-1 is amended by revising paragraph (d) and removing paragraph (e). The revised text reads as follows:

225.870-1 General.

* * * * *

(d) For additional information on production rights, data, and information; services provided by

Canadian Commercial Corporation; audit; and inspection, see PGI 225.870-1(d).

■ 11. Section 225.870-5 is revised to read as follows:

225.870-5 Contract administration.

Follow the contract administration procedures at PGI 225.870-5.

■ 12. Section 225.870-7 is revised to read as follows:

225.870-7 Acceptance of Canadian supplies.

For information on the acceptance of Canadian supplies, see PGI 225.870-7.

■ 13. Section 225.871 is revised to read as follows:

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

■ 14. Section 225.871-1 is revised to read as follows:

225.871-1 Scope.

This section implements 22 U.S.C. 2767 and 10 U.S.C. 2350b.

■ 15. Section 225.871-5 is amended by revising paragraph (b) and removing paragraph (c). The revised text reads as follows:

225.871-5 Directed subcontracting.

* * * * *

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly state the general provisions for work sharing at the prime and subcontract level. For additional information on cooperative project agreements, see PGI 225.871-5.

■ 16. Section 225.871-6 is revised to read as follows:

225.871-6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement, without regard to any laws of the United States applicable to the disposal of property owned by the United States.

■ 17. Section 225.872-4 is revised to read as follows:

225.872-4 Individual determinations.

If the offer of an end product from a qualifying country source listed in 225.872-1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and the Balance of Payments Program as inconsistent with the public interest, unless another exception such

as the Trade Agreements Act applies. Follow the procedures at PGI 225.872-4.

■ 18. Section 225.872-5 is amended by revising paragraphs (b) and (c) and by removing paragraph (d). The revised text reads as follows:

225.872-5 Contract administration.

* * * * *

(b) Follow the contract administration procedures at PGI 225.872-5(b).

(c) Information on quality assurance delegations to foreign governments is in Subpart 246.4, Government Contract Quality Assurance.

■ 19. Section 225.872-6 is amended by revising paragraph (c) to read as follows:

225.872-6 Audit.

* * * * *

(c) Handle requests for audits in qualifying countries in accordance with 215.404-2(c), but follow the additional procedures at PGI 225.872-6(c).

■ 20. Section 225.873-2 is revised to read as follows:

225.873-2 Procedures.

When an offeror or a contractor identifies a levy included in an offered or contract price, follow the procedures at PGI 225.873-2.

■ 21. Sections 225.902 and 225.903 are revised to read as follows:

225.902 Procedures.

Follow the entry and release procedures at PGI 225.902.

225.903 Exempted supplies.

(b)(i) For an explanation of the term "supplies," see PGI 225.903(b)(i).

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency shall execute the certificate in the format provided at PGI 225.903(b)(ii).

■ 22. Section 225.7003 is amended in paragraph (a) by revising the introductory text to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) The waiver procedures of this section apply only if specifically authorized by reference elsewhere in this subpart. The restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

* * * * *

■ 23. Sections 225.7301 and 225.7302 are revised to read as follows:

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign

governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see DoD 5105.38-M, Security Assistance Management Manual).

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Follow the additional procedures at PGI 225.7301(c) for preparation of solicitations and contracts that include FMS requirements.

(d) See 229.170 for policy on contracts financed under U.S. assistance programs that involve payment of foreign country value added taxes or customs duties.

225.7302 Guidance.

For guidance on the role of the contracting officer in FMS programs that will require an acquisition, see PGI 225.7302.

■ 24. Section 225.7303-2 is amended in paragraph (a)(3) by revising the introductory text to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) Offset costs (also see 225.7306).

* * * * *

225.7303-4 [Amended]

■ 25. Section 225.7303-4 is amended in paragraph (b)(1) by revising the last parenthetical to read "(see 225.7307(a))".

225.7306 [Removed]

■ 26. Section 225.7306 is removed.

225.7307 and 225.7308 [Redesignated]

■ 27. Sections 225.7307 and 225.7308 are redesignated as sections 225.7306 and 225.7307, respectively.

■ 28. Newly designated section 225.7306 is revised to read as follows:

225.7306 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (Also see 225.7303-2(a)(3).)

■ 29. Section 225.7501 is amended by revising paragraph (a)(2)(iii) to read as follows:

225.7501 Policy.

* * * * *

(a) * * *

(2) * * *

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7027 and 252.225–7028 [Amended]

■ 30. Sections 252.225–7027 and 252.225–7028 are amended in the introductory text by removing “225.7308” and adding in its place “225.7307”.

[FR Doc. 05–23721 Filed 12–8–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 106, 107, 110, 171, 172, 173, 174, 175, 176, 177, 178 and 180

[Docket No. PHMSA–2005–22208 (HM–240)]

RIN 2137–AE12

Hazardous Materials: Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises terminology, definitions, and requirements for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005. These amendments include revising the definitions of “hazmat employee” and “hazmat employer;” revision of shipping paper retention requirements; providing a security plan exception for farmers; adding conditional applicability of postal laws and regulations; and replacement of “Exemption” with “Special permit.”

DATES: *Effective date:* January 9, 2006.

FOR FURTHER INFORMATION CONTACT:

Cameron Satterthwaite or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

List of Topics

- I. Background
- II. Summary of Issues
 - A. Definitions of “hazmat employee” and “hazmat employer”
 - B. Revision of shipping paper retention requirements
 - C. Security plan exception for farmers
 - D. Applicability of postal laws and regulations
 - E. Replacement of “Exemption” with “Special permit”
- III. Regulatory Analysis
 - A. Statutory/Legal Authority for This Rulemaking
 - B. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - C. Executive Order 13132
 - D. Executive Order 13175
 - E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
 - F. Unfunded Mandates Reform Act of 1995
 - G. Paperwork Reduction Act
 - H. Environmental Impact Analysis
 - I. Regulation Identifier Number (RIN)

I. Background

Section 5103 of the Federal Hazardous Materials Transportation Law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) authorizes the Pipeline and Hazardous Materials Safety Administration (PHMSA) to prescribe safety and security regulations for the transportation of hazardous materials in interstate, intrastate, and foreign commerce. The Hazardous Materials Safety and Security Reauthorization Act of 2005 (the Act; Title VII of Pub. L. 109–59, 119 Stat. 1144 (August 10, 2005)) amended Federal hazmat law by revising certain terminology, definitions, and requirements. This final rule revises the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) and the hazardous materials program and rulemaking procedures in 49 CFR parts 105, 106 and 107 to be consistent with changes mandated by the Act.

Because these amendments are mandated and self-executing, notice and public procedure are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of Title 49, Code of Federal Regulations.

The following is a summary of the changes made in this final rule.

II. Summary of Issues

The Act mandates revisions to the following provisions of the HMR and the hazardous materials program and rulemaking procedures:

- A. Definitions of “hazmat employee” and “hazmat employer”
- B. Revision of shipping paper retention requirements

- C. Security plan exception for farmers
- D. Applicability of postal laws and regulations
- E. Replacement of “Exemption” with “Special permit”

A. Definitions of “Hazmat Employee” and “Hazmat Employer”

We are revising the definitions of “hazmat employee” and “hazmat employer” in § 171.8 for consistency with editorial revisions adopted under the Act. We are revising the definitions of “hazmat employee” and “hazmat employer” to specify both of these definitions include self-employed individuals. Also, both definitions are revised to include persons that represent, mark, certify, or sell packaging components as qualified for use in transporting hazardous materials in commerce. In addition, the Act amends § 5107 of Federal hazmat law to mandate general awareness and safety training pursuant to § 172.704 of the HMR for railroad maintenance-of-way employees and railroad signalmen. Therefore, we are also revising the definition of “hazmat employee” to include railroad maintenance-of-way employees and railroad signalmen. To provide rail carriers with sufficient time to implement the new training requirements, we are requiring initial training for maintenance-of-way employees and railroad signalmen to be completed by October 1, 2006.

Section 172.704 requires each hazmat employee to receive general awareness/familiarization training, function-specific training, safety training, and security awareness training. Function-specific training is not necessary for railroad maintenance-of-way employees and railroad signalmen who do not perform functions specifically regulated under the HMR. Thus, we are revising § 172.704(e) to provide an exception from function-specific training for such railroad maintenance-of-way employees and railroad signalmen. We are also excepting railroad maintenance-of-way employees and railroad signalmen from the requirement in § 172.704(a)(4) for security awareness training because such training is not mandated under the Act. However, we may consider requiring such training for railroad maintenance-of-way employees and railroad signalmen in a future rulemaking.

B. Revision of Shipping Paper Retention Requirements

Under the HMR, each person who provides a shipping paper must retain a copy of the shipping paper for 375 days after the hazardous material is accepted by the initial carrier. Each carrier must