

(2) Shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f)(1) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for—

- (i) Parts identified as critical safety items;
- (ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or
- (iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

- (i) The Contractor or higher-tier subcontractor; and
- (ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750-AF54

Defense Federal Acquisition Regulation Supplement; Berry Amendment Restrictions—Clothing Materials and Components Covered (DFARS Case 2006-D031)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006. Section 833(b) expands the foreign source restrictions applicable to the acquisition of clothing to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof.

DATES: *Effective date:* January 22, 2007.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 23, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D031, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2006-D031 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 225.7002-1 and the corresponding contract clause at 252.225-7012 to implement Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 833(b) amended 10 U.S.C. 2533a (the Berry Amendment) to expand the foreign source restrictions applicable to the acquisition of clothing to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. The rule also includes examples of items subject to the restrictions.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to provide for the acquisition of clothing, and clothing materials and components, from domestic sources in accordance with statutory requirements. The legal

basis for the rule is 10 U.S.C. 2533a (the Berry Amendment), as amended by Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). The rule will apply to entities interested in receiving DoD contracts or subcontracts for the acquisition of clothing. Based on data generated from the DD Form 350, Individual Contracting Action Report, DoD awarded 6,072 contract actions relating to the acquisition of clothing items during fiscal year 2005. These actions had a total dollar value of \$1.868 billion and involved 1,110 contractors. Of these actions, 4,087 totaling \$81 billion involved 906 contractors that were small business concerns. This rule may have a positive impact on small businesses that manufacture clothing materials and components, by reducing foreign competition. However, the rule could have a negative impact on small businesses that have been using foreign components in the manufacture of clothing products.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D031.

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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163). Section 833(b) expands the foreign source restrictions applicable to the acquisition of clothing, to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Section 833(b) became effective upon enactment on January 6, 2006. Comments received in response to this interim rule will be considered in the formation of the final rule.

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

- 2. Section 225.7002-1 is amended by revising paragraph (a)(2) to read as follows:

225.7002-1 Restrictions.

* * * * *

(a) * * *

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia. For additional guidance and examples, see PGI 225.7002-1(a)(2).

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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 “(JAN 2007)”; and
 - b. In paragraph (b)(5) by removing “JUN 2004” and adding in its place “JAN 2007”.

- 4. Section 252.225-7012 is amended by revising the clause date and paragraph (b)(2) to read as follows:

252.225-7012 Preference for Certain Domestic Commodities.

* * * * *

Preference for Certain Domestic Commodities (JAN 2007)

* * * * *

(b) * * *

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

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