

(h) \* \* \*

(3) Contractor personnel shall report to the Combatant Commander or a designee, or through other channels such as the military police, a judge advocate, or an inspector general, any suspected or alleged conduct for which there is credible information that such conduct—

(i) Constitutes violation of the law of war; or

(ii) Occurred during any other military operations and would constitute a violation of the law of war if it occurred during an armed conflict.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 237

RIN 0750-AF64

#### Defense Federal Acquisition Regulation Supplement; Security-Guard Functions (DFARS Case 2006-D050)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 343 of the National Defense Authorization Act for Fiscal Year 2008. Section 343 extended, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2006-D050.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 73 FR 53156 on September 15, 2008, to implement Section 343 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section

343 extended, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001, provided the total number of personnel employed to perform such functions does not exceed specified limits.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

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.* Although the rule may provide opportunities for small business concerns to receive contracts for the performance of security-guard functions at military installations or facilities, the economic impact is not expected to be substantial.

##### 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 Part 237

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

##### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 237, which was published at 73 FR 53156 on September 15, 2008, is adopted as a final rule without change.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AG18

#### Defense Federal Acquisition Regulation Supplement; Removal of North Korea From the List of Terrorist Countries (DFARS Case 2008-D036)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove North Korea from the list of terrorist countries subject to a prohibition on DoD contract awards. This change is a result of the State Department's removal of North Korea from the list of countries designated as state sponsors of terrorism.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2008-D036.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The provision at DFARS 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, implements 10 U.S.C. 2327, which prohibits DoD from entering into a contract with a firm that is owned or controlled by the government of a country that has been determined by the Secretary of State to repeatedly provide support for acts of international terrorism. This final rule removes North Korea from the terrorist countries listed in the provision at DFARS 252.209-7001, since the Secretary of State has removed North Korea from the list of designated state sponsors of terrorism.

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 rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore,

publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D036.

### 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 Part 252

Government procurement.

#### Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

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

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

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

#### 252.209–7001 [Amended]

■ 2. Section 252.209–7001 is amended as follows:

- a. By revising the clause date to read “(JAN 2009)”; and
- b. In paragraph (a)(2), in the second sentence, by removing “North Korea.”.

[FR Doc. E9–662 Filed 1–14–09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750–AG12

#### Defense Federal Acquisition Regulation Supplement; Statutory Waiver for Commercially Available Off-the-Shelf Items (DFARS Case 2008–D009)

**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 a determination

made by the Administrator for Federal Procurement Policy, that the Buy American Act “component test” is inapplicable to acquisitions of commercially available off-the-shelf items. The rule is consistent with changes made to the Federal Acquisition Regulation.

**DATES:** *Effective date:* January 15, 2009.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 16, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008–D009, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2008–D009 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 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 provisions and clauses addressing the Buy American Act/Balance of Payments Program to implement a determination made by the Administrator for Federal Procurement Policy, on February 14, 2008, regarding laws applicable to the acquisition of commercially available off-the-shelf (COTS) items. The determination included a partial waiver of the Buy American Act (41 U.S.C. 10a and 10b), limited to the Act’s domestic component test. The waiver allows a COTS item to be treated as a domestic end product if it is manufactured in the United States, without tracking the origin of the item’s components. Changes were made to the Federal Acquisition Regulation in Federal Acquisition Circular 2005–30 to implement the Administrator’s determination. This interim rule makes corresponding changes to the DFARS.

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 does not expect this 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.* Although the rule eliminates requirements for suppliers of U.S.-made items to track the origin of the item’s components, the economic impact is not expected to be substantial. DoD has already waived the component test for U.S.-made items in acquisitions that are subject to the World Trade Organization Government Procurement Agreement (DFARS 225.103(a)(i)(B)). Additionally, contractors generally pass on the costs of such administrative requirements to the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. 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 2008–D009.

##### C. Paperwork Reduction Act

This rule will result in a reduction of the information collection requirements previously approved under Office of Management and Budget Control Number 0704–0229, DFARS part 225 and associated clauses. DoD anticipates a 5 percent reduction in the burden hours associated with the provisions at DFARS 252.225–7000 and 252.225–7035, from 34,875 to 33,130 hours, because offerors of U.S.-made items with foreign components will no longer need to respond to these provisions.

##### 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 a determination made by the Administrator for Federal Procurement Policy on February 14, 2008, in accordance with 41 U.S.C. 431, that the Buy American Act domestic component test is inapplicable to acquisitions of COTS items. The rule will permit a COTS item to be treated as a domestic end product if it is manufactured in the United States, without the need to track the origin of the item’s components. The rule will reduce administrative burdens for suppliers of COTS items and is