

rule does not impose additional 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 authorizes and establishes conditions under which the Department of Defense may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, pursuant to section 828 of the National Defense Authorization Act for Fiscal Year 2008. It is necessary to publish this rule prior to obtaining public comments because the statute became effective upon enactment, and it is imperative that DoD contracting officers be aware of the conditions under which DoD may enter into such contracts to ensure that they are in compliance with the requirements of the Act. However, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 217 and 241

Government procurement.

Ynette R. Shelkin,

Editor, *Defense Acquisition Regulations System*.

■ Therefore, 48 CFR parts 217 and 241 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 241 continues to read as follows:

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

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.175 is added to read as follows:

217.175 **Multiyear contracts for electricity from renewable energy sources.**

(a) The head of the contracting activity may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)).

(b) *Limitations.* The head of the contracting activity may exercise the authority in paragraph (a) of this section to enter into a contract for a period in excess of five years only if the head of

the contracting activity determines, on the basis of a business case analysis (*see* PGI 217.1, Supplemental Information TAB, for a business case analysis template and guidance) prepared by the requiring activity, that—

(1) The proposed purchase of electricity under such contract is cost effective; and

(2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

(c) Nothing in this section shall be construed to preclude the DoD from using other multiyear contracting authority of DoD to purchase renewable energy.

PART 241—ACQUISITION OF UTILITY SERVICES

■ 3. Section 241.103 is amended by redesignating existing paragraph (2) as paragraph (3); and by adding new paragraph (2) to read as follows:

241.103 **Statutory and delegated authority.**

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(2) *See* 217.175 for authority to enter into multiyear contracts for electricity from renewable energy sources.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[DFARS Case 2008-D024]

RIN 0750-AG13

Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns Manufactured in a Qualifying Country

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, the interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement determinations made by the Under Secretary of Defense for Acquisition, Technology, and Logistics with regard to the acquisition of items containing para-aramid fibers and yarns manufactured in foreign countries that have entered into a reciprocal defense

procurement memorandum of understanding with the United States.

DATES: *Effective Date:* June 21, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703-602-0310.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule in the **Federal Register** on December 18, 2008 (73 FR 76970). The comment period closed on February 17, 2009.

10 U.S.C. 2533a restricts DoD procurement of foreign synthetic fabric or coated synthetic fabric, including textiles, fibers, and yarns for use in such fabrics. Section 807 of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) provides authority for DoD to waive the restriction at 10 U.S.C. 2533a with regard to para-aramid fibers and yarns. On February 12, 1999, the Under Secretary of Defense for Acquisition and Technology (USD(AT&L)) waived the restriction at 10 U.S.C. 2533a for para-aramid fibers and yarns manufactured in the Netherlands. On August 15, 2008, the USD(AT&L) expanded the existing waiver to permit the acquisition of para-aramid fibers and yarns manufactured in any qualifying country listed in DFARS 225.003(10).

The interim rule also clarified the definition of “qualifying countries” at DFARS 225.003 and 252.225-7012 by including a list of the qualifying countries within the definition instead of referring to the list at DFARS 225.872-1.

DoD received comments on the interim rule from nine respondents. Based on public comments, changes were made to the interim rule. The differences between the interim rule and this final rule include—

- Restricting the authority to acquire para-aramid fibers and yarns manufactured in a qualifying country to apply to para-aramid fibers (both staple and continuous) and continuous filament para-aramid yarns, based on a new USD(AT&L) determination and findings, dated November 9, 2009, which contains a five year review requirement.

- Amplifying the definition of “qualifying country” to make clear that these are countries with which DoD has negotiated reciprocal defense procurement memoranda of understanding.

B. Public Comments

The following is a discussion of the comments and the changes included in this final rule as a result of those comments:

1. Limit the Rule to Staple Para-Aramid Fibers and Continuous Filament Para-Aramid Yarns

Two respondents opposed the interim rule acceptance of para-aramid yarns other than continuous filament yarns from any qualifying country (not just the Netherlands) because they believe it will increase competition from yarn producers outside the United States. They do not want the interim rule to apply to “yarns spun from staple para-aramid fibers.” They believe the rule should only apply to staple para-aramid fibers and continuous filament para-aramid yarns.

Response: The respondents’ rationale is that section 807 says that DoD may only procure articles containing para-aramid fibers and yarns manufactured in a qualifying country if—

- Procuring articles containing para-aramid fibers and yarns manufactured from suppliers in the national technology industrial base (U.S. & Canada) would result in sole source contracts or subcontracts; and
- To do so would not be in the best interests of the Government.

DoD’s 1999 Findings of Fact stated that DuPont is the sole manufacturer of para-aramid (continuous and staple) fiber in the United States and Canada. This is a correct statement. Therefore, the request by the respondents to limit this rule to staple para-aramid fiber is unfounded.

However, the Findings also stated that DuPont is the sole producer of para-aramid yarn. DuPont is the sole producer of continuous filament para-aramid yarn, but it does not produce within the U.S. yarns made from staple para-aramid fiber. DoD has now identified 72 yarn producers in the U.S. and Canada, and three of these advertise that they produce yarn products made from DuPont Kevlar. DuPont supplies its Kevlar staple fiber to four major and six minor yarn producers in the U.S. and Canada, and it believes that there are several dozen more companies in Europe who produce yarn of this type.

Therefore, the Under Secretary of Defense (AT&L) issued on November 9, 2009, a revised determination and findings that limits the findings to staple and continuous para-aramid fibers and continuous filament para-aramid yarn. The final rule has been revised accordingly.

2. Review in Five Years To Establish Continued National Defense Need

One respondent commented that this exception should be reviewed in five years and extended only if needed for national defense purposes. Another

respondent notes that DuPont is in the process of building a new plant in South Carolina and that this would boost the availability of these products in the U.S.

Response: DoD concurs. The request from industry that precipitated the USD (AT&L)’s determination to waive the restriction for all qualifying countries was based on DoD’s immediate and increasing need for ballistic strength fiber in support of MRAP, ballistic armor, and other defense requirements in support of the Global War on Terror. It is reasonable to assume that this need will continue for at least five years, but a review at that time is a good idea. This requirement has been included in the new determination and findings.

3. Detrimental to U.S. Manufacturing Base

Several respondents opposed this rule on the basis that it would be detrimental to the U.S. textile manufacturing base.

One respondent was concerned about negative impact on spinners, knitters, weavers, finishers, and garment makers in the supply chain. Another respondent expressed concern over more foreign imports, when the jobs are so desperately needed in our own country (see also discussion of Regulatory Flexibility at paragraph 6). A third respondent referred to detrimental impact on the textile manufacturing base. He cited the exodus of textile manufacturing from the United States for decades and stated that the textile manufacturing that remains has moved into high performance and niche specialty areas. This respondent stated that by allowing items containing these fibers and the importation of yarns to move forward will continue to erode the U.S. textile manufacturing base.

Response: There are only two companies in the United States or a qualifying country that make para-aramid fibers and continuous filament para-aramid yarns: DuPont™ which makes Kevlar®, and the Teijin Group which makes Twaron. DuPont™ is the sole producer of these items in the United States. Therefore, this rule, when amended to exclude yarn produced from staple para-aramid fibers, will not deprive any U.S. companies of business.

The concern for the well-being of the textile industry, including knitters, weavers, finishers, and garment makers, is misplaced. This rule does not allow acquisition of items containing para-aramid fibers and continuous filament yarns from qualifying countries, but only the fibers and yarns (see DFARS 225.7002–2(m)).

4. Domestic Para-Aramid Sewing Thread May Be of Lower Quality

One respondent fully supported the interim rule and recommended that it should be made permanent. The respondent cited an experience with the specification to use para-aramid thread that was heavier and weaker than the commercial thread that was used in the commercial marketplace, in order to comply with the domestic source restriction.

Response: The Berry Amendment does not require the use of domestic fibers at the expense of satisfactory quality. There is an exception that can be applied if domestic products of a satisfactory quality are not available.

5. Need To Expand the Nations From Which Fiber Can Be Procured

One respondent proposed we add other friendly nations of quality ballistic fiber, such as Japan and India, to the list of nations from which these fibers can be procured.

Response: The authority provided to DoD in section 807 of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) specifically applies only to foreign countries that are a party to a reciprocal defense procurement memorandum of understanding (MOU) entered into under section 2531 of title 10 of the United States Code and that permits United States firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country, as determined by the Secretary of Defense. Section 2531 begins as follows:

(a) *Considerations in Making and Implementing MOUs and Related Agreements.* In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) Consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) Regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or

related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

Under the authority of 10 U.S.C. 2531, DoD has negotiated reciprocal defense procurement (RDP) MOUs with “qualifying” countries. These RDP MOU partners have committed to remove barriers to purchases of supplies produced in the other country or services performed by sources in the other country. The qualifying countries listed at DFARS 225.003(10) are the countries with which DoD has reciprocal defense procurement MOUs. DoD has not negotiated reciprocal defense procurement MOUs with Japan or India.

6. Regulatory Flexibility Analysis

One respondent commented on the statement with regard to regulatory flexibility analysis that small entities normally are not involved in the production of para-aramid fibers and yarns. The respondent stated that there are many small entities involved in the weaving and production of para-aramid fabrics and that it would be devastating to the textile industry to expand the rule to cover the import of woven fabric or finished products.

Response: Since the rule does not cover the import of woven fabric or finished products, but addresses only fibers and yarns, this statement does not affect the requirement for a regulatory flexibility analysis. The reinstated requirement for domestic manufacture of yarn from staple para-aramid fiber removes any possible impact on domestic small entities.

7. Clarify the Definition of “Qualifying Country”

One respondent stated that the interim rule insufficiently defined “qualifying country.” Alternate language was provided to expand this definition:

“Qualifying country” means a country with a memorandum of understanding or international agreement with the United States in which both agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457.

Response: DoD has adopted the expanded definition.

8. Outside Scope of Case

a. One respondent recommends that DoD should also exempt meta-aramid fibers from qualifying countries.

Response: This comment is outside the scope of this case. The law which DoD is implementing only authorizes the exceptions for para-aramid fibers.

b. One respondent has comments regarding other changes to the clause at DFARS 252.212–7001.

Response: These comments relate to DFARS Case 2008–D002 and have been considered under that case.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

DoD certifies that this 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 there are no small entities in the United States that can produce para-aramid fibers or continuous filament para-aramid yarns. The impact on spinners of para-aramid yarn other than continuous filament yarn has been removed by the change to the final rule.

D. 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

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 73 FR 76970 on December 18, 2008, 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 by revising the introductory text of paragraph (10) to read as follows:

225.003 Definitions.

* * * * *

(10) *Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

* * * * *

■ 3. Section 225.7002–2 is amended by revising paragraph (m)(2) to read as follows:

225.7002–2 Exceptions.

* * * * *

(m) * * *

(2) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.212–7001 is amended by revising the clause date and revising paragraph (b)(8) to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JUN 2010)

* * * * *

(b) * * *

(8) _____ 252.225–7012, Preference for Certain Domestic Commodities (JUN 2010) (10 U.S.C. 2533a).

* * * * *

■ 5. Section 252.225–7012 is amended by revising the clause date; revising the introductory text of paragraph (a)(3); and revising paragraph (c)(6)(ii) to read as follows:

252.225–7012 Preference for certain domestic commodities.

* * * * *

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (JUN 2010)

(a) * * *

(3) *Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

* * * * *

(c) * * *

(6) * * *

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 239

Defense Federal Acquisition Regulation Supplement; Technical Amendment

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

ACTION: Final rule.

SUMMARY: DoD is issuing a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to change a DoD Directive number for DoD Directive 8570.01 Information Assurance Training, Certification, and Workforce Management, certified current as of April 23, 2007.

DATES: *Effective Date:* June 21, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette R. Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-8384; facsimile 703-602-0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text at 239.7102-1(a)(7) by correcting the DoD Directive number from 8570.1 to 8570.01 in a list of current information assurance policies, procedures, and statutes pertaining to information technology.

List of Subjects in 48 CFR Part 239

Government procurement

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore DoD is amending 48 CFR part 239 as follows:

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR part 239 continues to read as follows:

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

■ 2. In 239.7102-1, revise paragraph (a)(7) to read as follows:

239.7102-1 General.

(a) * * *
(7) DoD Directive 8570.01, Information Assurance Training, Certification, and Workforce Management; and

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[FR Doc. 2010-14936 Filed 6-18-10; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA-2010-0070]

RIN 2127-AK68

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2011 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2011

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination that there are no new model year (MY) 2011 light duty truck lines subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard because they have been determined by the agency to be high-theft or because they have a majority of interchangeable parts with those of a passenger motor vehicle line. This final rule also identifies those vehicle lines that have been granted an exemption from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria.

DATES: *Effective Date:* The amendment made by this final rule is effective June 21, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue, SE., (NVS-131, Room W43-302) Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-0073.

SUPPLEMENTARY INFORMATION: The theft prevention standard applies to (1) all passenger car lines; (2) all multipurpose passenger vehicle (MPV) lines with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; (3) low-theft light-duty truck (LDT) lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines; and (4) high-theft light-duty truck lines with a GVWR of 6,000 pounds or less.

The purpose of the theft prevention standard (49 CFR Part 541) is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines subject to the requirements of the standard.

Section 33104(d) provides that once a line has become subject to the theft prevention standard, the line remains subject to the requirements of the standard unless it is exempted under § 33106. Section 33106 provides that a manufacturer may petition annually to have one vehicle line exempted from the requirements of § 33104, if the line is equipped with an antitheft device meeting certain conditions as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of those LDT lines that have been determined to be high theft pursuant to 49 CFR Part 541, those LDT lines that have been determined to have major