V. Executive Order 13771
This rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act
Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act
The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 216
Government procurement.
Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for part 216 continues to read as follows:


2. Amend section 216.504 by—

(a) Revising paragraphs (c) and (c)(1); and

(b) Adding paragraph (c)(1)(ii)(D).

The additions and revisions read as follows:

216.504 Indefinite-quantity contracts.

(c) Multiple award preference—(1) Planning the acquisition. (ii) A copy of each determination made in accordance with FAR 16.504(c)(1)(ii)(D) shall be submitted to the Director, Defense Procurement and Acquisition Policy, via the OUSD(AT&L)/DPAP/CPIC email address at omd.pentagon.ousd.atl.mbx.cplic@mail.mil.

(i) The authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1) shall not be delegated below the level of the senior procurement executive.

(ii) In accordance with section 816 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), when making the determination at FAR 16.504(c)(1)(ii)(D)(1)(i), the agency head shall determine that the task or delivery orders expected under the contract are so integrally related that only a single source can “efficiently perform the work,” instead of “reasonably perform the work” as required by the FAR.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2018–0004]

RIN 0750–AJ22

Defense Federal Acquisition Regulation Supplement: Restrictions on Acquisitions From Foreign Sources (DFARS Case 2017–D011)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 to apply domestic source requirements to acquisitions at or below the simplified acquisition threshold when acquiring athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces, and add Australia and the United Kingdom to the definition of the “National Technology and Industrial Base.”


FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 83 FR 42828 on August 24, 2018, to implement sections 817 and 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017.

Section 817 modifies the domestic source requirements of 10 U.S.C. 2533a (the Berry Amendment) below the simplified acquisition threshold, when acquiring athletic footwear to be furnished to the members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces.

Section 881(b) amends 10 U.S.C. 2500(1) by adding Australia and the United Kingdom of Great Britain and Northern Ireland to the United States and Canada as the countries within which the activities of the national technology and industrial base are conducted. 10 U.S.C. 2534,

Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, requires that DoD only procure certain items if the manufacturer of the items is part of the national technology and industrial base. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

The public comment received addressed concern with regard to importation of radioactively steel and use of radioactively contaminated scrap metal. This issue is outside the scope of this rule. There were no changes from the proposed rule as a result of this public comment.

However, the final rule is affected by a change in the baseline. On May 30, 2018, DoD published a final rule in the Federal Register (83 FR 24890) to amend the DFARS to implement section 813(a) of the NDAA for FY 2018 (Pub. L. 115–91), which amended 10 U.S.C. 2534(c) to establish a sunset date of October 1, 2018, for the limitation on procurement of chemical weapons antidote contained in automatic injectors (and components for such injectors). The final rule deleted DFARS 225.7005 in its entirety to remove the limitation as implemented in the DFARS. As a result, this final rule does not include the changes proposed to DFARS 225.7005–1.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the applicability of existing DFARS solicitation provisions and contract clauses as follows:

• To implement section 817 of the NDAA for FY 2017, this rule extends use of DFARS clause 252.225–7012, Preference for Certain Domestic Commodities, to acquisitions at or below the simplified acquisition threshold (SAT) when buying athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces. This clause is already prescribed for use in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.
This final rule is not subject to E.O. 13771, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared and is summarized as follows:

This rule implements sections 817 and 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). The objective of the rule is to:

- Remove the exception to domestic source restriction of the Berry Amendment (10 U.S.C. 2533a) for acquisitions at or below the simplified acquisition threshold when buying athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces, as required by section 817 of the NDAA for FY 2017; and
- Allow acquisition of certain items from Australia and the United Kingdom, for which purchase is currently restricted to items from the United States or Canada, in accordance with 10 U.S.C. 2534, in accordance with section 881(b) of the NDAA for FY 2017 and 10 U.S.C. 2534.

There were no significant issues raised by the public comment in response to the initial regulatory flexibility analysis.

With regard to implementation of section 817, this rule may apply to only a few small entities, because there are few sources that meet the domestic source requirements of the Berry Amendment with regard to athletic footwear. The Defense Logistics Agency (DLA) estimates a potential annual demand for approximately 200,000 to 250,000 pairs of athletic shoes to be delivered at the rate of approximately 27,500 pairs per month. In response to a request for information issued by DLA in December 2016, there were 5 responses from athletic footwear manufacturers, one of which was a small business. Small entities who are athletic shoe manufacturers could likely support portions of the Department’s total requirements for athletic footwear. In addition, there are likely a number of domestic component suppliers who are small entities who would benefit from this new requirement as well. On the other hand, small entities that cannot provide athletic shoes that meet the domestic source requirements of the Berry Amendment, will no longer be able to compete for acquisition of athletic footwear at or below the simplified acquisition threshold that are for the purpose of providing athletic footwear at or below the simplified acquisition threshold.
footwear to enlisted members of the Armed Forces upon their initial entry into the Armed Forces.

With regard to implementation of section 881(b), this rule will not apply to any small entities at the prime contract level, as there are only a few prime contractors for the restricted items, which are all U.S. firms that are other than small businesses. For the definition of "small business," the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)).

The SBA regulations at 13 CFR 121.105(a)(1) discuss who is a small business, providing that except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. Therefore, if an item currently purchased from a U.S. entity that is other than a small business were to be purchased from an entity in the Australia or the United Kingdom, there could be an impact on a few small entities that are currently subcontractors to a U.S. prime contractor.

There are no reporting, recordkeeping, or other compliance requirements of the rule, other than to furnish athletic footwear compliant with the Berry Amendment and the other restricted items manufactured by a manufacturer that is part of the national technology and industrial base (which is now expanded to include the United Kingdom and Australia, as well as the United States and Canada).

By extending the restriction of the Berry Amendment to acquisitions that do not exceed simplified acquisition threshold, this rule may benefit small entities that can provide Berry Amendment-compliant athletic footwear, because they may be more able to compete for smaller acquisitions. DoD was unable to identify any alternatives that would meet the requirements of the statutes.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer Lee Hawes, Regulatory Control Officer, 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:


PART 225—FOREIGN ACQUISITION

■ 2. Amend section 225.7002–2 by revising paragraph (a) to read as follows:

   225.7002–2 Exceptions.

   * * * * *

   (a) Acquisitions at or below the simplified acquisition threshold, except for athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces (section 817 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–326)).

   * * * * *

   225.7002–3 [Amended]

■ 3. Amend section 225.7002–3, in paragraph (a) by removing "commercial items, that exceed the simplified acquisition threshold" and adding "commercial items" in its place.

225.7004–1 [Amended]

■ 4. Amend section 225.7004–1 by removing "United States or Canada." and adding "United States, Australia, Canada, or the United Kingdom." in its place.

225.7004–3 [Amended]

■ 5. Amend section 225.7004–3 by:

   a. In paragraph (a) by removing "manufactured in the United States or Canada." and adding "manufactured in the United States, Australia, Canada, or the United Kingdom." in two places.

   b. In paragraphs (a), (b), and (c) by removing "United States and Canada." and adding "United States, Australia, Canada, or the United Kingdom." in its place wherever it appears.

225.7006–1 [Amended]

■ 6. Amend section 225.7006–1 by removing "United States or Canada." and adding "United States, Australia, Canada, or the United Kingdom." in its place.

■ 7. Revise section 225.7006–3 to read as follows:

225.7006–3 Waiver.

The waiver criteria at 225.7008(a) apply to this restriction.

■ 8. Amend section 225.7006–4 by revising paragraphs (a)(2) and (b)(2) to read as follows:

225.7006–4 Solicitation provision and contract clause.

   (a) * * *

   (2) A waiver has been granted.

   (b) * * *

   (2) A waiver has been granted.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7037 [Amended]

■ 9. Amend section 252.225–7037 by:

   a. Removing the provision date of "(JUN 2012)" and adding "(DEC 2018)" in its place; and

   b. In paragraphs (a) and (b), removing "outlying areas, Canada," and adding "outlying areas, Australia, Canada," in its place in both places.

252.225–7038 [Amended]

■ 10. Amend section 252.225–7038 by:

   a. Removing the provision date of "(JUN 2005)" and adding "(DEC 2018)" on its place; and

   b. Removing "outlying areas, Canada," and adding "outlying areas, Australia, Canada," in its place.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2018–0018]

RIN 0750–AJ42

Defense Federal Acquisition Regulation Supplement: Submission of Summary Subcontract Reports (DFARS Case 2017–D005)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to change the entity to which contractors submit Summary Subcontract Reports in the Electronic Subcontracting Reporting System (eSRS) and to change the entity that acknowledges receipt of, or rejects, the reports in eSRS.

**[Federal Register Notice]**