

This final rule removes Section 806 of Public Law 102-190, Payment Protections for Subcontractors and Suppliers, from the lists at DFARS 212.503 and 212.504, since this law was added to the lists at FAR 12.503 and 12.504 in the final rule published at 73 FR 54007 on September 17, 2008. This rule also amends DFARS 212.504 to remove the paragraphs that were designated as "Reserved."

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-D021.

### 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 212

Government procurement.

#### Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 212 is amended as follows:

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR Part 212 continues to read as follows:

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

#### 212.503 [Amended]

■ 2. Section 212.503 is amended by removing paragraph (a)(i) and redesignating paragraphs (a)(ii) through (xi) as paragraphs (a)(i) through (x) respectively.

#### 212.504 [Amended]

■ 3. Section 212.504 is amended as follows:

- a. By removing paragraphs (a)(i) and (ii) and (a)(xix) through (xxi);
- b. By redesignating paragraphs (a)(iii) through (xviii) as paragraphs (a)(i) through (xvi) respectively; and

- c. By redesignating paragraphs (a)(xxii) and (xxiii) as paragraphs (a)(xvii) and (xviii) respectively.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225 and 252

RIN 0750-AG13

#### Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns Manufactured in a Qualifying Country (DFARS Case 2008-D024)

**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 Under Secretary of Defense for Acquisition, Technology, and Logistics with regard to the acquisition of items containing para-aramid fibers and yarns manufactured in a foreign country. The determination authorizes DoD to acquire articles containing para-aramid fibers and yarns manufactured in foreign countries that have entered into a defense memorandum of understanding with the United States.

**DATES:** *Effective date:* December 18, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before February 17, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008-D024, 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-D024 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

10 U.S.C. 2533a restricts DoD procurement of foreign synthetic fabric or coated synthetic fabric, including textile 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 waived the restriction at 10 U.S.C. 2533a for para-aramid fibers and yarns manufactured in the Netherlands. On August 15, 2008, the Under Secretary of Defense for Acquisition, Technology, and Logistics expanded the existing waiver to permit the acquisition of para-aramid fibers and yarns manufactured in any qualifying country listed in DFARS 225.872-1.

This interim rule amends DFARS text addressing the acquisition of para-aramid fibers and yarns to implement the Under Secretary's August 15, 2008 determination. In addition, the rule clarifies the definition of "qualifying country" 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.

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.*, because small entities normally are not involved in the production of para-aramid fibers and yarns. 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-D024.

**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 the determination made by the Under Secretary of Defense for Acquisition, Technology, and Logistics on August 15, 2008, that procuring articles that contain only domestic para-aramid fibers and yarns would result in sole-source contracts or subcontracts for such fibers and yarns; such sole-source contracts or subcontracts would not be in the best interest of the Government, except as specifically justified and approved consistent with 10 U.S.C. 2304; and all qualifying countries listed at DFARS 225.872-1 permit the 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. 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 225.003 is amended by revising paragraph (9) to read as follows:

**225.003 Definitions.**

\* \* \* \* \*

(9) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. The following are qualifying countries:

- Australia
- Austria
- Belgium
- Canada

- Denmark
- Egypt
- Finland
- France
- Germany
- Greece
- Israel
- Italy
- Luxembourg
- Netherlands
- Norway
- Portugal
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom of Great Britain and Northern Ireland.

\* \* \* \* \*

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

**225.7002-2 Exceptions.**

\* \* \* \* \*

(o) \* \* \*

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

\* \* \* \* \*

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

**252.212-7001 [Amended]**

■ 4. Section 252.212-7001 is amended as follows:

■ a. By revising the clause date to read “(DEC 2008)”; and

■ b. In paragraph (b)(5) by removing “(MAR 2008)” and adding in its place “(DEC 2008)”.

■ 5. Section 252.225-7012 is amended as follows:

■ a. By revising the clause date;

■ b. By redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5) respectively;

■ c. By adding a new paragraph (a)(3); and

■ d. By revising paragraphs (c)(5) and (c)(6)(ii) to read as follows:

**252.225-7012 Preference for certain domestic commodities.**

\* \* \* \* \*

Preference for Certain Domestic Commodities (DEC 2008)

(a) \* \* \*

(3) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. The following are qualifying countries:

- Australia
- Austria
- Belgium

- Canada
- Denmark
- Egypt
- Finland
- France
- Germany
- Greece
- Israel
- Italy
- Luxembourg
- Netherlands
- Norway
- Portugal
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom of Great Britain and Northern Ireland.

\* \* \* \* \*

(c) \* \* \*

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) \* \* \*

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

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**Defense Federal Acquisition Regulation Supplement; Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update contact information in a contract clause and to make minor editorial corrections.

**DATES:** *Effective Date:* December 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0311; facsimile 703-602-7887.

**SUPPLEMENTARY INFORMATION:** This final rule amends DFARS text as follows:

- 252.203-7001. Updates a phone number and adds a Web link.