(4) ____ 252.219–7003, Small Business Subcontracting Plan (DoD Contracts) (OCT 2010) (15 U.S.C. 637).

(5) ____ 252.219–7004, Small Business Subcontracting Plan (Test Program) (JAN 2011) (15 U.S.C. 637 note).

(6)(i) ____ 252.225–7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. chapter 83, E.O. 10582).

(ii) ____ Alternate I (DEC 2010) of 252.225–7001.

(7) ____ 252.225–7008, Restriction on Acquisition of Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

(8) ____ 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).

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

(10) ____ 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).

(11) ____ 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings (DEC 2010) (Section 8065 of Pub. L. 107–117 and the same restriction in subsequent DoD appropriations acts).

(12)(i) ____ 252.225–7021, Trade Agreements (NOV 2009) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

(ii) ____ Alternate I (SEP 2008) of 252.225–7021.

(iii) ____ Alternate II (DEC 2010) of 252.225–7021.

(13) ____ 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

(14) ____ 252.225–7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(15)(i) ____ 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (DEC 2010) (41 U.S.C. chapter 83, and 19 U.S.C. 3301 note).

(ii) ____ Alternate I (JUL 2009) of 252.225–7036.

(iii) ____ Alternate II (DEC 2010) of 252.225–7036.

(iv) ____ Alternate III (DEC 2010) of 252.225–7036.

(16) ____ 252.225–7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(17) ____ 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107–248 and similar sections in subsequent DoD appropriations acts).

(18) ____ 252.227–7015, Technical Data—Commercial Items (MAR 2011) (10 U.S.C. 2320).

(19) ____ 252.227–7037, Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

(20) ____ 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(21) ____ 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

(22) ____ 252.237–7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108–375).

(23) ____ 252.243–7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

(24) ____ 252.246–7004, Safety of Facilities, Infrastructure, and Equipment For Military Operations (OCT 2010) (Section 807 of Pub. L. 111–84).

(25)____ 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110–417).

(26)(i) ____ 252.247–7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(ii) ____ Alternate I (MAR 2000) of 252.247–7023.

(iii) ____ Alternate II (MAR 2000) of 252.247–7023.

(iv) ____ Alternate III (MAY 2002) of 252.247–7023.

(27) ____ 252.247–7024, Notification of Transportation of Supplies by Sea (MAR (2000) (10 U.S.C. 2631).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AH16

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition Amendments (DFARS Case 2011–D017)

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

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to correct several anomalies resulting from recent changes relating to source of ball and roller bearing components, eligibility of Peruvian end products under trade agreements, and participation of foreign contractors in acquisitions in support of operations in Afghanistan.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to correct several anomalies resulting from recent changes relating to source of ball and roller bearing components, participation of foreign contractors in acquisitions in support of operations in Afghanistan, and eligibility of Peruvian end products under trade agreements.

A. Restriction on Ball and Roller Bearings

DoD published a proposed rule, Restrictions on Ball and Roller Bearings (DFARS Case 2006–D029), in the **Federal Register** (75 FR 25167) on May 7, 2010 with request for comments. DoD received comments from three respondents and addressed the comments in the publication of the final rule (75 FR 76297) on December 8, 2010. DFARS Case 2006–D029 retained the existing definition of "bearing component". As used in DFARS part 225 and the DFARS clause 252.225–7016, "bearing component" means the bearing element, retainer, inner race, or outer race (see 252.225–7016(a)). However, that rule added a new requirement at 225.7009–2(a)(2) and 252.225–7016(b)(2) that for each ball or roller bearing, the cost of the bearing components "mined, produced, or manufactured" in the United States or Canada must exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

The phrase "mined, produced, or manufactured" was adopted from the Buy American Act, which applies broadly to many types of items. This rule applies only to bearing components, which are manufactured items and not mined or produced. As used in the DFARS, the term "bearing component" does not refer to the materials that are utilized in the manufacture of the bearing components. There is no restriction with regard to where the iron ore is mined or where the resultant steel in a bearing component is produced. The requirement at 225.7009–2(a)(2) and 252.225–7016(b)(2) that for each ball or roller bearing, the cost of the bearing components "mined, produced, or manufactured" in the United States or Canada must exceed 50 percent of the total cost of the bearing components of that ball or roller bearing, has the same meaning as a requirement that for each ball or roller bearing, the cost of the bearing components "manufactured" in the United States or Canada must exceed 50 percent of the total cost of the bearing components of that ball or roller bearing. The words "mined" and "produced" are extraneous because they are inapplicable, since a ball or roller bearing is manufactured and not mined or produced. Therefore, this final rule under DFARS Case 2011–D017 removes the words "mined, produced, or" and

retains only the term "manufactured", to clarify the definition and alleviate any confusion these extraneous words may cause industry or Government personnel.

This final rule also makes a conforming change to the clause date for 252.225–7016, Restriction on the Acquisition of Ball and Roller Bearings, in the clause at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

B. Foreign Participation in Acquisitions in Support of Operations in Afghanistan

DoD published a proposed rule, "Foreign Participation in Acquisitions in Support of Operations in Afghanistan" on January 6, 2010 (DFARS Case 2009–D012)(75 FR 832), with request for public comments. DoD did not receive any public comments on the proposed rule. DoD published the final rule in the **Federal Register** (75 FR 81915) on December 29, 2010.

Although no public comments were received, DoD realized that the requirement for a contractor to inform its government of its participation in the acquisition should only apply if the contractor is from a South Caucasus/Central and South Asian (SC/CASA) state. The United States Trade Representative, when providing authority to the Secretary of Defense to waive the procurement prohibition in section 302(a) of the Trade Agreements Act of 1979 (USTR letter of June 2, 2009), included the provision that contractors from the SC/CASA states, which would not have been eligible to participate in the acquisition absent the waiver, advise their governments that they will generally not have such opportunities in the future unless their governments provide reciprocal procurement opportunities to U.S. products and services.

This requirement has meaning only when applied to a contractor from an SC/CASA state, to which the waiver applies. The required statement that the contractor would not have been eligible to participate in the acquisition absent the waiver would not be true for a contractor from other than an SC/CASA state. It would also be meaningless to ask a U.S. contractor to notify its government (the U.S. Government) that it should provide reciprocal procurement opportunities to U.S. products and services. However, the proposed rule did not explicitly limit the application of this requirement to contractors from an SC/CASA state.

The final rule under DFARS Case 2009–D012 revised paragraph (d) of Alternate II of DFARS clause 252.225–7021, Trade Agreements, to limit applicability to contractors from an SC/CASA state. The final rule inadvertently omitted similar amendment of the same requirement in paragraphs (d) of Alternates II and III of DFARS clause 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements.

This final rule under DFARS Case 2011–D017 remedies that oversight, adding "If the Contractor is from an SC/CASA state" to paragraph (d) in Alternates II and III of DFARS clause 252.225–7045, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, to conform to the same revision made under DFARS Case 2009–D012 to paragraph (d) of Alternate I of DFARS clause 252.225–7021.

C. Trade Agreements—Peru

The Peruvian Free Trade Agreement was initially implemented by DFARS Case 2008–D046, Trade Agreement—Costa Rica and Peru, that was published as an interim rule with a request for public comment (74 FR 37650). No public comments were received and the interim rule was converted to a final rule without change on July 29, 2009 (75 FR 179). This final rule added Peru to the definition of "Free Trade Agreement country" in DFARS clauses 252.225–7021, 252.225–7036, and 252.225–7045.

In order to make some further implementation of the Peru Free Trade Agreement in the trade agreements clauses, DoD utilized the final rule issued under DFARS Case 2009–D012, although the issue of the Peru Free Trade Agreement was peripheral to the main purpose of that case. DoD added a definition of Peruvian end products and added Peruvian end products to the Free Trade Agreement country end products that are not eligible products in the provision and clause at DFARS 252.225–7035 and 252.225–7036. This is consistent with the Peru Free Trade Agreement and the FAR, and ensures that Peruvian end products are not erroneously treated as eligible products in acquisitions that do not exceed the World Trade Organization Government Procurement Agreement threshold.

This change, however, created an inconsistency between Alternate I and the basic clause 252.225–7035. The basic clause now includes in paragraph (b)(2) the phrase "Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or Peruvian end products." The Alternate I, which limits the applicable Free Trade Agreements to just Canada, misquotes the phrase that is to be removed and replaced with the phrase "Canadian end products." Alternate I still quotes the old unrevised phrase as "Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products" and leaves off "or Peruvian end products" that was added by 2009–D012 final rule. Even though this phrase is being removed by Alternate I, the misquote creates an inconsistency, which might cause some confusion, although all of the corresponding regulations make it clear that the Peruvian Trade Agreement does not apply below the threshold of $70,079, when Alternate I is used (see threshold at FAR 25.402(b), clause prescription at DFARS 225.1101(10)(i), and comparable FAR clause 52.225–3 Alternate I).

These DFARS changes are characterized as clarifications and corrections to DFARS language that do not constitute significant revisions, as defined in FAR 1.501–1, because they do not alter the substantive meaning of the coverage.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501–1 because 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 the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

IV. Paperwork Reduction Act

The final 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.

Ynette R. Shelkin,

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. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.7009–2 [Amended]

■ 2. Amend section 225.7009–2 by removing from paragraph (a)(2) the words "mined, produced, or".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Amend section 252.212–7001 by revising the clause date in paragraph (b)(11) by removing "(DEC 2010)" and adding in its place "(JUN 2011)".

252.225–7016 [Amended]

■ 4. Amend section 252.225–7016 as follows:

■ a. Revise the clause date by removing "(DEC 2010)" and adding in its place "(JUN 2011)".

■ b. Amend paragraph (b)(2) by removing the words "mined, produced, or".

■ 5. Amend section 252.225–7035 by revising Alternate I to read as follows:

252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate

ALTERNATE I (JUN 2011)

As prescribed in 225.1101(10)(ii), substitute the phrase "Canadian end product" for the phrases "Bahrainian end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Moroccan end product," and "Peruvian end product" in paragraph (a) of the basic provision; substitute the phrase "Canadian end products" for the phrase "Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and delete the phrase "Australian or" from paragraph (c)(2)(i) of the basic provision.

252.225–7045 [Amended]

■ 6. Amend section 252.225–7045 as follows:

■ a. Revise the clause date of Alternate II by removing "(DEC 2010)" and adding in its place "(JUN 2011)".

■ b. Amend paragraph (d) of Alternate II by removing "The" and adding in its place "If the Contractor is from an SC/CASA state, the".

■ c. Revise the clause date of Alternate III by removing "(DEC 2010)" and adding in its place "(JUN 2011)".

■ d. Amend paragraph (d) of Alternate III by removing "The" and adding in its place "If the Contractor is from an SC/CASA state, the".

[FR Doc. 2011–13797 Filed 6–3–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AH22

Defense Federal Acquisition Regulation Supplement; Fire-Resistant Fiber for Production of Military Uniforms (DFARS Case 2011–D021)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule to implement section 821 of the National Defense Authorization Act for Fiscal Year 2011. Section 821 prohibits specification of the use of fire-resistant rayon fiber in solicitations issued before January 1, 2015.

DATES: *Effective date:* June 6, 2011.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 5, 2011.

ADDRESSES: Submit comments identified by DFARS Case 2011–D021, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2011–D021" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011–D021." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011–D021" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D021 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends DFARS subpart 225.70 to implement section 821 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 821 prohibits specification of the use of fire-resistant rayon fiber in solicitations issued before January 1, 2015.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this interim 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.*