

not later than 7 days after contract award.

(iii) In addition to the information otherwise required in a synopsis of contract award, the synopsis must include one of the following statements as applicable:

(A) "The exception at DFARS 225.7002-2(b) applies to this acquisition, because the Secretary concerned has determined that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in satisfactory quality and sufficient quantity at U.S. market prices."

(B) "The exception at DFARS 225.7002-2(p) applies to this acquisition, because the contracting officer has determined that this acquisition of chemical warfare protective clothing furthers an agreement with a qualifying country identified in DFARS 225.872."

PART 225—FOREIGN ACQUISITION

■ 3. Section 225.7002-1 is amended in the introductory text by revising the first sentence to read as follows:

225.7002-1 Restrictions.

The following restrictions implement 10 U.S.C. 2533a (the "Berry Amendment"). * * *

■ 4. Section 225.7002-2 is amended by revising paragraphs (b) and (n) and by adding paragraph (p) to read as follows:

225.7002-2 Exceptions.

* * * * *

(b) Acquisitions of any of the items in 225.7002-1(a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

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(n) Acquisitions of specialty metals when the acquisition furthers an agreement with a qualifying country (see 225.872).

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(p) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See 225.872 and the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 216, and 225

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 reference numbers and correct typographical errors.

DATES: *Effective Date:* October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

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

- *Section 207.103.* Corrects typographical errors.
- *Section 216.603-4.* Updates a cross-reference.
- *Section 225.7013.* Updates a statutory reference.

List of Subjects in 48 CFR Parts 207, 216, and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 207, 216, and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 216, and 225 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

207.103 [Amended]

■ 2. Section 207.103 is amended as follows:

- a. In paragraph (h) introductory text by removing "SCMA" and adding in its place "SMCA"; and
- b. In paragraph (h)(ii), in the second sentence, by removing "SCMA" and adding in its place "SMCA".

PART 216—TYPES OF CONTRACTS

216.603-4 [Amended]

■ 3. Section 216.603-4 is amended in paragraph (b)(2) by removing

"217.7406" and adding in its place "217.7405".

PART 225—FOREIGN ACQUISITION

■ 4. Section 225.7013 is amended by revising the introductory text to read as follows:

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309 and 7310—

* * * * *

[FR Doc. E6-16400 Filed 10-3-06; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 234

RIN 0750-AF38

Defense Federal Acquisition Regulation Supplement; Acquisition of Major Weapon Systems as Commercial Items (DFARS Case 2006-D012)

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 Section 803 of the National Defense Authorization Act for Fiscal Year 2006. Section 803 places limitations on the acquisition of a major weapon system as a commercial item.

DATES: *Effective date:* October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D012, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2006-D012 in the subject line of the message.
- *Fax:* (703) 602-0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Bill Sain, OUSD(AT&L)DPAP(DARS), IMD 3C132, 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: Mr. Bill Sain, (703) 602-0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS policy to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 803 permits the treatment or acquisition of a major weapon system as a commercial item only if (1) the Secretary of Defense determines that the major weapon system meets the definition of commercial item at 41 U.S.C. 403(12) and such treatment is necessary to meet national security objectives; and (2) the congressional defense committees are notified at least 30 days before such treatment or acquisition occurs.

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 the rule relates to internal DoD considerations regarding the acquisition of major weapons systems. 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 2006-D012.

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 Section 803 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), which requires that, before DoD may treat or acquire a major weapon system as a commercial item (1) the Secretary of Defense must determine that the major weapon system meets the definition of commercial item at 41 U.S.C. 403(12) and that such treatment is necessary to meet national security objectives; and (2) the congressional defense committees must be notified at least 30 days in advance. 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 212 and 234

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 212 and 234 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 212 and 234 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.270 is added to read as follows:

§ 212.270 Major weapon systems as commercial items.

The DoD policy for acquiring major weapon systems as commercial items is in Subpart 234.70.

PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Subpart 234.70 is added to read as follows:

Subpart 234.70—Acquisition of Major Weapon Systems as Commercial Items

Sec.
234.7000 Scope of subpart.
234.7001 Definition.
234.7002 Policy.

Subpart 234.70—Acquisition of Major Weapon Systems as Commercial Items

§ 234.7000 Scope of subpart.

This subpart—

(a) Implements 10 U.S.C. 2379; and

(b) Requires a determination by the Secretary of Defense and a notification to Congress before acquiring a major weapon system as a commercial item.

§ 234.7001 Definition.

Major weapon system, as used in this subpart, means a weapon system acquired pursuant to a major defense acquisition program, as defined in 10 U.S.C. 2430 to be a program that—

(1) Is not a highly sensitive classified program, as determined by the Secretary of Defense; and

(2)(i) Is designated by the Secretary of Defense as a major defense acquisition program; or

(ii) Is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditures for procurement of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars).

§ 234.7002 Policy.

(a) A DoD major weapon system may be treated as a commercial item, or acquired under procedures established for the acquisition of commercial items, only if—

(1) The Secretary of Defense determines that—

(i) The major weapon system is a commercial item as defined in FAR 2.101; and

(ii) Such treatment is necessary to meet national security objectives; and

(2) The congressional defense committees are notified at least 30 days before such treatment or acquisition occurs. Follow the procedures at PGI 234.7002.

(b) A subsystem or component of a major weapon system that meets the definition of a commercial item—

(1) Shall be acquired under the procedures established for the acquisition of commercial items (see FAR Part 12); and

(2) Is not subject to the requirements of paragraph (a) of this section.

(c) The authority of the Secretary of Defense to make a determination under paragraph (a)(1) of this section may not be delegated below the level of Deputy Secretary of Defense.

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