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**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Blanca, Channel 249C2.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E8–4028 Filed 2–29–08; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 225 and 252

**RIN 0750–AD76**

## Defense Federal Acquisition Regulation Supplement; Codification and Modification of Berry Amendment (DFARS Case 2002–D002)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 832 of the National Defense Authorization Act for Fiscal Year 2002. Section 832 codified and made modifications to the provision of law known as the ''Berry Amendment,'' which requires the acquisition of certain items from domestic sources.

**DATES:** *Effective Date:* March 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2002–D002.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD published an interim rule at 67 FR 20697 on April 26, 2002. The rule amended the DFARS to implement Section 832 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107). Section 832 codified and made minor modifications to the provision of law known as the Berry Amendment (formerly 10 U.S.C. 2241 note, Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States; now codified at 10 U.S.C. 2533a).

Twenty-two sources submitted comments on the interim rule. A discussion of the comments is provided below:

*1. Clothing, Fabrics, and Fibers*

a. *De minimis exception for cotton, other natural fibers, or wool.*

(1) *Applicability of exception.*

*Comment:* One respondent commented on the applicability of the exception in the interim rule at 225.7002–2(i) (now 225.7002–2(j)) for incidental amounts of cotton, other natural fibers, or wool. The respondent stated that the exception should apply only to the incidental amount of cotton, other natural fibers, or wool, not to the end item itself, if the end item is otherwise subject to the Berry Amendment. For example, a jacket of synthetic fibers with cotton lining in the pockets would still be subject to the Berry Amendment with regard to origin of the jacket as a whole. Only the cotton lining of the pockets would be exempt.

*DoD Response:* DoD concurs and has clarified this point in the final rule.

(2) *Simplified acquisition threshold.*

*Comment:* One respondent requested that DoD revise the exception in the interim rule at 225.7002–2(i) (now 225.7002–2(j)) to clarify that cotton, other natural fibers, or wool must be sourced domestically if the simplified acquisition threshold is met, regardless of their worth as a percentage of the total price of the end product.

*DoD Response:* DoD agrees with the intent of the comment, but does not believe a DFARS change is necessary. DFARS 225.7002–2(j) already states that the exception applies only if the value of the fibers is not more than 10 percent of the total price of the end product and does not exceed the simplified acquisition threshold.

b. *Para-aramid fibers.*

*Comment:* One respondent recommended that the exception for para-aramid fibers at 225.7002–2(m)(2) (now 225.7002–2(o)(2)) be extended to include all fabrics produced in compliance with the North American Free Trade Agreement (NAFTA), and to allow for fabrics made with Kermel aramid fiber produced in France and spun into yarn that is woven and finished in Canada.

*DoD Response:* The comment is outside the scope of this DFARS case. Section 807 of Public Law 105–261 only provides authority for DoD to waive the Berry Amendment restrictions for procurement of para-aramid fibers from countries that are party to a defense memorandum of understanding (qualifying countries). Mexico is not a qualifying country. Canada and France are qualifying countries, and can request a waiver from the Under Secretary of Defense (Acquisition, Technology, and Logistics), as did the Netherlands.

c. *Examples of textile products.*

*Comment:* One respondent suggested that DoD modify the rule at 225.7002–2(m)(1) (now 225.7002–2(o)(1)) to state that ''Examples of textile products, made in whole or in part of fabric, include [but are not limited to]—''.

*DoD Response:* DoD does not believe the suggested change is necessary, since the term ''examples'' means that the list is not exhaustive. Similar language is common throughout the DFARS.

d. *Footwear.*

*Comment:* One respondent requested that DoD clarify in the regulations that footwear is indeed included under the Berry Amendment restriction on clothing.

*DoD Response:* This issue has since been clarified at DFARS 225.7002–1(a)(2), which now lists footwear as an item of clothing.

e. *Parachutes.*

*Comment:* Several respondents requested that DoD include parachutes as a listed item under the Berry Amendment. In the past several years, some parachutes have been manufactured in Mexico, although the synthetic fibers and fabric were manufactured in the United States.

*DoD Response:* DoD has implemented the law as written and cannot add items to the list of restricted items without a change to the law.

*2. Food Items—Exception for Products Manufactured or Processed in the United States*

a. *Raw products.*

*Comment:* There was mixed response as to whether procurement of food items that are manufactured or processed in

the United States, but are from raw products of foreign origin, should be allowed. Some respondents favored the clarification of the exception in the Berry Amendment relating to foods manufactured or processed in the United States. Other respondents objected on the basis of harm to small businesses and possible contamination of foreign food ingredients (particularly fish). Another respondent suggested that foreign suppliers of seafood raw materials should be held to the same third-party verification requirements for sanitation as domestic processors.

*DoD Response:* The issue relating to the requirement for seafood products manufactured or processed in the United States to be made from domestic fish or seafood was resolved by Section 8118 of the Defense Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287), which made this requirement permanent. This requirement is implemented at DFARS 225.7002–2(l). The other comments are outside the scope of this DFARS case.

b. *Definition of ''manufactured'' and ''processed.''*

*Comment:* There was mixed response regarding definition of the terms ''manufactured'' and ''processed.'' One respondent was concerned that suppliers may mistakenly consider packaging, repackaging, or blending sufficient processing to change the foreign raw materials into a product that could be procured by the U.S. military. The respondent cited the definition of ''processed food'' in the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(gg)).

Another respondent strongly urged that DoD take a ''common-sense'' approach and not attempt to impose a highly technical and potentially overly restrictive definition of what constitutes a product manufactured or processed in the United States. This respondent stated that widely accepted and robust definitions and standards already exist for such matters under U.S. Customs Law.

*DoD Response:* DoD agrees that the definition of these terms would be extremely complex and would probably vary depending on the food being manufactured or processed. The ''definition'' in the Federal Food, Drug and Cosmetic Act is not really definitive, because it only cites examples of processing ''such as canning, cooking, freezing, dehydration, or milling.'' This is not an exhaustive list of the ways in which food might be processed, and does not present criteria by which to determine whether the actions carried out constitute ''processing.''

c. *Packaging for meals-ready-to-eat (MRE).*

*Comment:* One respondent stated that the rule should explicitly require domestic sourcing for MRE packaging. The respondent acknowledged that packaging has never been explicitly included in the Berry Amendment, but believed that it has been strongly implied. The respondent expressed concern that the MRE pouches may be contaminated, and thus may contaminate the food.

*DoD Response:* The comment is outside the scope of this DFARS case, since food packaging is not covered by the Berry Amendment.

*3. Items of Individual Equipment*

*Comment:* One respondent objected to the parenthetical explanation of items of individual equipment at DFARS 225.7002–1(a)(10), ''(Federal Supply Class 8465).'' The respondent was concerned that, because of this insertion, items that normally may be considered under the Berry Amendment may inadvertently be excluded.

*DoD Response:* The comment is outside the scope of this DFARS case. The reference to Federal Supply Class 8465 has been in the DFARS since 1997, and was not changed by this DFARS rule. However, DoD recognizes the concerns of the respondent and is willing to further consider the issue under a separate DFARS case, if adequate supporting rationale is received.

*4. Specialty Metals*

One respondent had three objections to the DFARS implementation of the Berry Amendment with regard to specialty metals (none of which were changed by the interim rule). These objections are no longer pertinent, as the result of Section 842 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), which established separate restrictions on specialty metals under 10 U.S.C. 2533b; and Sections 804 and 884 of the National Defense Authorization Act for Fiscal Year 2008, which further amended the restrictions. DoD is implementing these statutory changes under a separate DFARS case.

*5. Other Exceptions*

a. *Activities located outside the United States.*

*Comment:* One respondent stated that the exceptions in the interim rule at 225.7002–2(e) and (f) (now 225.7002–2(e) and (g)) refer to ''activities located outside the United States'' instead of using the statutory language of ''establishment located outside the United States'' (10 U.S.C. 2533a(d)(3)).

*DoD Response:* The interim rule made no change to the cited DFARS language. DoD refers to its overseas establishments as ''activities'' and considers this term to accurately reflect the intent of the law.

b. *NAFTA.*

*Comment:* One respondent recommended that the Berry Amendment be expanded to include the partners of NAFTA, allowing Canadian and Mexican firms to participate in the U.S. purchasing process.

*DoD Response:* The comment is outside the scope of this DFARS case. To allow purchases of restricted items from Canada and Mexico would require a change to the Berry Amendment.

*6. Protectionism*

*Comment:* One respondent objected to the ''protectionism'' of the Berry Amendment because of increased costs.

*DoD Response:* The comment relates to the merits of the Berry Amendment itself, not the DFARS rule, and, therefore, is outside the scope of this DFARS case.

*7. Training*

*Comment:* One respondent commented on the need for training on the Berry Amendment for procurement officers and other personnel to make the procurement process as seamless as possible. The respondent also recommended publication of ''Frequently Asked Questions'' on the Defense Procurement website to benefit the general public, as well as Congressional, Administration, and DoD staffs.

*DoD Response:* DoD recognizes the need for more information and training on the Berry Amendment. A Continuous Learning Module on the Berry Amendment (CLC 125) is now available at *https://learn.dau.mil.* In addition, answers to frequently asked questions are available at *http://www.acq.osd.mil/dpap/cpic/ic/berry_amendment_faq.html.* The Berry Amendment is a very complex issue that frequently requires case-by-case determination of applicability. However, DoD promotes a broader understanding of the basic concepts, so that procurement personnel will recognize the situations in which they need to seek additional guidance.

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 certifies that this final 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 the rule primarily clarifies existing policy pertaining to the acquisition of certain items from domestic sources.

**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 Parts 225 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 67 FR 20697 on April 26, 2002, 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 225.7002–2 is amended by revising paragraph (j) introductory text to read as follows:

**225.7002–2 Exceptions.**

(j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.212–7001 [Amended]**

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(MAR 2008)''; and

■ b. In paragraph (b)(5), by removing ''(JAN 2007)'' and adding in its place ''(MAR 2008)''.

■ 4. Section 252.225–7012 is amended by revising the clause date and paragraph (c)(2) introductory text to read as follows:

**252.225–7012 Preference for Certain Domestic Commodities.**

* * * * *

**PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (MAR 2008)**

* * * * *

(c) * * *

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

* * * * *

[FR Doc. E8–3946 Filed 2–29–08; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 232 and 252 and Appendix F to Chapter 2

**RIN 0750–AF63**

### Defense Federal Acquisition Regulation Supplement; Mandatory Use of Wide Area WorkFlow (DFARS Case 2006–D049)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require use of the Wide Area WorkFlow electronic system for submitting and processing payment requests and receiving reports under DoD contracts. Use of Wide Area WorkFlow facilitates timely and accurate payments to DoD contractors.

**DATES:** Effective Date: March 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (CPF), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0326; facsimile 703–602–7887. Please cite DFARS Case 2006–D049.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule requires use of the Wide Area WorkFlow (WAWF) electronic system for submission and processing of payment requests and receiving reports under DoD contracts. WAWF, when fully implemented, will eliminate paper documents, eliminate redundant data entry, improve data accuracy, reduce the number of lost or misplaced documents, and result in more timely payments to contractors.

DoD published a proposed rule at 72 FR 45405 on August 14, 2007. Sixteen respondents submitted comments on the proposed rule. A discussion of the comments is provided below:

*1. Recommendation To Allow Third Party Payment System (TPPS) U.S. Bank—PowerTrack Transactions*

*Comment:* Eight respondents expressed concern that the rule would no longer support the use of TPPS, indicating that the rule fails to acknowledge the unique needs of suppliers who invoice on a transaction basis, such as those in the express and ground package delivery industry.

*DoD Response:* The rule has been amended to permit the use of a DoD-approved electronic third party payment system or other exempt vendor payment/invoicing system (such as PowerTrack, Transportation Financial Management System, and Cargo and Billing System) for payment of commercial transportation services.

*2. Recommendation To Allow Continued Use of the Governmentwide Commercial Purchase Card*

*Comment:* One respondent questioned the functionality of WAWF to support Government purchase card (GPC) transactions.

*DoD Response:* DFARS 232.7002(a)(1) exempts purchases paid for with a GPC. Therefore, the requirement to submit payment requests electronically through WAWF does not extend to GPC purchases.

*3. Recommendation To Exclude Existing Foreign Military Sales Contracts*

*Comment:* One respondent expressed concern that the rule would require modification of existing foreign military sales contracts.

*DoD Response:* In accordance with FAR 1.108(d), the rule is prospective in nature, becoming effective for solicitations issued on or after the effective date of the rule. It does not require modification of existing contracts.

*4. Government Not Fully Compliant*

*Comment:* Three respondents expressed concern that WAWF has not been fully implemented within DoD.

*DoD Response:* There are currently over 145,000 Government users of WAWF, with new users being added at the rate of 2,500 per month. All of the military departments are expanding their use of WAWF and have targets to complete deployment in fiscal year 2008. However, DoD recognizes there are instances where WAWF cannot be used, such as in a contingency environment. Paragraph (c)(2) of the clause at 252.232–7003 provides an