

*DoD Response:* The recommendation is considered to be outside the scope of this DFARS case. Therefore, DoD has made no change to the rule as a result of this comment.

DoD has adopted the proposed rule as a final rule without change.

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 pertains only to DoD administrative procedures for numbering of contract line items, exhibits, and attachments.

### 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 204

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Part 204 is amended as follows:

■ 1. The authority citation for 48 CFR Part 204 continues to read as follows:

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

#### PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.7102 is revised to read as follows:

##### 204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

- (1) Solicitations;
- (2) Solicitation line and subline item numbers;
- (3) Contracts as defined in FAR Subpart 2.1;
- (4) Contract line and subline item numbers;
- (5) Exhibits;
- (6) Exhibit line and subline items; and
- (7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

- (1) The contract is an indefinite-delivery type for petroleum products

against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(2) The contract is a communications service authorization issued by the Defense Information Systems Agency's Defense Information Technology Contracting Organization.

■ 3. Section 204.7105 is revised to read as follows:

##### 204.7105 Contract exhibits and attachments.

Follow the procedures at PGI 204.7105 for use and numbering of contract exhibits and attachments.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 212

#### Defense Federal Acquisition Regulation Supplement; Technical Amendment

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

**ACTION:** Final rule.

**SUMMARY:** DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to update a cross-reference within the DFARS text.

**DATES:** *Effective Date:* February 23, 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.

#### 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.

#### 212.301 [Amended]

■ 2. Section 212.301 is amended in paragraph (f)(ii), in the second sentence, by removing “(see 225.770-3)” and adding in its place “(see 225.670-3)”.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225 and 252

RIN 0750-AF29

#### Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds and Morocco Free Trade Agreement (DFARS Case 2005-D017)

**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 incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. The rule also implements a new Free Trade Agreement with Morocco and amends the list of end products that are subject to trade agreements.

**DATES:** *Effective Date:* February 23, 2006.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before April 24, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005-D017, 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 2005-D017 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, 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:** Ms. Amy Williams, (703) 602-0328.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends the clause prescriptions at DFARS 225.1101 and 225.7503 to reflect increased thresholds for application of the trade agreements.

Every 2 years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following thresholds (70 FR 73510, December 12, 2005):

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
World Trade Organization Government Procurement Agreement .....	\$193,000	\$193,000	\$7,407,000
Free Trade Agreements (FTA):			
Australia FTA .....	64,786	64,786	7,407,000
Chile FTA .....	64,786	64,786	7,407,000
Morocco FTA .....	193,000	193,000	7,407,000
Singapore FTA .....	64,786	64,786	7,407,000
NAFTA:			
—Canada .....	25,000	64,786	8,422,165
—Mexico .....	64,786	64,786	8,422,165

In addition, this interim rule implements a new Free Trade Agreement with Morocco as approved by Congress (Pub. L. 108-302). The Morocco Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from Morocco, and specifies procurement procedures designed to ensure fairness.

The World Trade Organization Government Procurement Agreement and the other free trade agreements each list the items to which the trade agreements do not apply when acquired by DoD. DFARS 225.401-70 lists the end products that are subject to trade agreements if the value of the acquisition is at or above the applicable dollar threshold. The following items are not excluded for DoD from coverage by the trade agreements and, therefore, have been added to the list at DFARS 225.401-70: Pins, needles, sewing kits, flag staffs, flagpoles, flagstaff trucks, and tobacco products.

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 dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Although the rule opens up DoD procurement to the products of Morocco, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-

defense items listed at DFARS 225.401-70, and procurements that are set aside for small businesses are exempt from application of the trade agreements. 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 2005-D017.

**C. Paperwork Reduction Act**

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under Office of Management and Budget Control Number 0704-0229. However, there is no impact on the estimated burden hours. The dollar threshold changes are in line with inflation and maintain the status quo. Reporting of products from Morocco as Free Trade Agreement end products rather than other foreign end products has no impact on paperwork burden.

**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 incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. In

addition, the rule implements a new Free Trade Agreement with Morocco, as approved by Congress (Pub. L. 108-302). The Morocco Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from Morocco and specifies procurement procedures designed to ensure fairness. The increased dollar thresholds and the Morocco Free Trade Agreement became effective on January 1, 2006. 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 225.401-70 is amended in the table by adding, in numerical order, two new entries to read as follows:

**§ 225.401-70 End products subject to trade agreements.**

\* \* \* \* \*

83 Pins, needles, and sewing kits (only part of 8315) and flag staffs, flagpoles, and flagstaff trucks (only part of 8345)

\* \* \* \* \*

89 Tobacco products (only 8975)

\* \* \* \* \*

■ 3. Section 225.1101 is amended by revising paragraph (10)(i) to read as follows:

**§ 225.1101 Acquisition of supplies.**

\* \* \* \* \*

(10)(i) Use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds \$25,000, but is less than \$193,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$64,786.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$64,786.

\* \* \* \* \*

■ 4. Section 225.7503 is revised to read as follows:

**§ 225.7503 Contract clauses.**

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a) Use the clause at 252.225–7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than \$7,407,000.

(b) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,407,000 or more. For acquisitions with a value of \$7,407,000 or more, but less than \$8,422,165, use the clause with its Alternate I.

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

**252.212–7001 [Amended]**

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

■ a. By revising the clause date to read “(FEB 2006)”; and

■ b. In paragraph (b), in entry “252.225–7021”, by removing “(DEC 2005)” and adding in its place “(FEB 2006)”.

■ 6. Section 252.225–7021 is amended by revising the clause date and paragraph (a)(3)(ii) to read as follows:

**§ 252.225–7021 Trade agreements.**

\* \* \* \* \*

**Trade Agreements (FEB 2006)**

(a) \* \* \*

(3) \* \* \*

(ii) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

\* \* \* \* \*

■ 7. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a), by revising paragraph (2) of the definition of “Designated country”; and

■ c. By revising Alternate I to read as follows:

**§ 252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

\* \* \* \* \*

**Balance of Payments Program—Construction Material Under Trade Agreements (Feb 2006)**

(a) \* \* \*

*Designated country means—*

\* \* \* \* \*

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

\* \* \* \* \*

*Alternate I (Feb 2006).* As prescribed in 225.7503(b), delete the definitions of “designated country” and “designated country construction material” from the definitions in paragraph (a) of the basic clause, add the following definition of “Australian, Chilean, or Moroccan construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

*Australian, Chilean, or Moroccan construction material means a construction material that—*

(1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile, or Morocco into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of

Payments Program restrictions are waived for WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

(c) The Contractor shall use only domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate “none”]*

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 231**

[DFARS Case 2004–D026]

**Defense Federal Acquisition Regulation Supplement; Business Restructuring Costs—Delegation of Authority To Make Determinations Relating to Payment**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 819 of the National Defense Authorization Act for Fiscal Year 2005. Section 819 contains changes concerning delegation of authority to make determinations relating to payment of defense contractors for business restructuring costs.

**DATES:** *Effective Date:* February 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Sain, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2004–D026.

**SUPPLEMENTARY INFORMATION:**