

(a)(i)(D), by removing "\$85,000" and adding "\$300,000" in its place.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002-D034]

Defense Federal Acquisition Regulation Supplement; Fish, Shellfish, and Seafood Products

AGENCY: 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 8136 of the DoD Appropriations Act for Fiscal Year 2003 and similar sections in subsequent DoD appropriations acts. Section 8136 requires the acquisition of domestic fish, shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2002-D034.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 7441 on February 14, 2003, to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248). Section 8136 relates to application of 10 U.S.C. 2533a (the Berry Amendment), which prohibits DoD from acquiring certain items unless they are grown, reprocessed, reused, or produced in the United States. 10 U.S.C. 2533a(f) provides an exception to this prohibition for foods manufactured or processed in the United States. Section 8136 of Pub. L. 107-248 made the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. The interim rule published on February 14, 2003, amended DFARS 225.7002-2 and the clause at DFARS 252.225-7012 to add requirements for the acquisition of domestic fish, shellfish, and seafood in accordance with section 8136 of Pub. L. 107-248.

As a result of public comments received on the interim rule, DoD published a proposed rule at 68 FR 53945 on September 15, 2003, to clarify what "produced in the United States" means with regard to fish, shellfish, and seafood. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule, with an update to the statutory reference at DFARS 225.7002-2 to reflect the recurrence of this provision in section 8118 of the DoD Appropriations Act for Fiscal Year 2004 (Pub. L. 108-87).

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 may 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.* DoD has prepared a final regulatory flexibility analysis. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 and similar sections in subsequent DoD appropriations acts. Section 8136 makes 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. 10 U.S.C. 2533a(f) is an exception to domestic source requirements that applies to foods manufactured or processed in the United States. The objective of the rule is to prohibit DoD acquisition of foreign fish, shellfish, and seafood, even if processed or manufactured in the United States. The rule applies to all suppliers, processors, and manufacturers of seafood products sold to DoD. There were no public comments on the initial regulatory flexibility analysis. As a result of public comments received on the interim rule, the final rule clarifies what "produced in the United States" means with regard to fish, shellfish, and seafood. The rule should have a beneficial impact on domestic suppliers of fish, shellfish, and seafood.

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,

Executive Editor, Defense Acquisition Regulations Council.

■ 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 225.7002-2 is amended by revising paragraph (l) to read as follows:

225.7002-2 Exceptions.

* * * * *

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248) and similar sections in subsequent DoD appropriations acts, this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

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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 "(JUN 2004)"; and

■ b. In paragraph (b), in entry "252.225-7012", by removing "(MAY 2004)" and adding in its place "(JUN 2004)".

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

■ a. By revising the clause date to read "(JUN 2004)";

■ b. By adding paragraphs (a)(3) and (a)(4);

■ c. By revising paragraph (b) introductory text and paragraph (c)(4); and

■ d. By adding paragraph (d) to read as follows:

252.225-7012 Preference for Certain Domestic Commodities.

* * * * *

(a) * * *

(3) *United States* means the 50 States, the District of Columbia, and outlying areas.

(4) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

* * * * *

(c) * * *

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

* * * * *

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

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DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

[DFARS Case 2003-D104]

Defense Federal Acquisition Regulation Supplement; Written Assurance of Technical Data Conformity

AGENCY: 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 844 of the National Defense Authorization Act for Fiscal Year 2004. Section 844 eliminates the requirement for a contractor to furnish written assurance that technical data delivered to the Government is complete and accurate and satisfies the requirements of the contract.

DATES: *Effective date:* June 8, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D104, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2003-D104 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 227.71 and removes the clause at DFARS 252.227-7036, Declaration of Technical Data Conformity, to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. This change reduces paperwork for contractors, but does not diminish the contractor's obligation to provide technical data that is complete and adequate, and that complies with contract requirements.

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 elimination of the requirement for a contractor to provide a written declaration of technical data conformity does not diminish the contractor's obligation to provide technical data that is complete and accurate and satisfies contract requirements. 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 2003-D104.

C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.227-7036, Declaration of Technical Data Conformity, are currently approved under Office of Management and Budget Control Number 0704-0369. Elimination of this clause will reduce estimated annual public reporting burden by 126,886 hours (estimated 507,545 declarations annually at .25 hours per declaration).

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 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. Section 844 became effective upon enactment on November 24, 2003. 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 227 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council

■ Therefore, 48 CFR Parts 227 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

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

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7103-6 [Amended]

■ 2. Section 227.7103-6 is amended as follows:

■ a. In paragraph (e)(2) by adding “and” after the semicolon;