

MAY 26 2004

AS

# Submission of Federal Rules Under the Congressional Review Act

President of the Senate

Speaker of the House of Representatives

GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency Department of Defense	2. Subdivision or Office OUSD(AT&L)DPAP(DAR)
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3. Rule Title  
Berry Amendment Changes

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)  
DFARS Case 2003-D099

5. Major Rule  Non-major Rule

6. Final Rule  Other  Interim Rule

7. With respect to this rule, did your agency solicit public comments? Yes  No  N/A

8. Priority of Regulation (fill in one)  
 Economically Significant; or Significant; or Substantive, Nonsignificant  
 Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)

9. Effective Date (if applicable) May 12, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both), attached  stated in rule

Submitted by: *Deidre A. Lee* (signature)

MAY 03 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

RECEIVED  
 MAY 26 PM 3:10  
 SPEAKERS ROOMS  
 U.S. HOUSE OF REPS.

For Congressional Use Only:

Date Received: \_\_\_\_\_

Committee of Jurisdiction: \_\_\_\_\_

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			
_____			
_____			
_____			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2003-D099]

Defense Federal Acquisition Regulation Supplement;

Berry Amendment Changes

**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 Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004. Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment. Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

**DATES:** Effective date: [Date of publication in Federal Register].

Comment date: Comments on the interim rule should be submitted to the address shown below on or before [60 days after date of publication], to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcom>. As an alternative, respondents may e-mail comments to: [dfars@osd.mil](mailto:dfars@osd.mil). Please cite DFARS Case 2003-D099 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D099.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

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

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS 225.7002-1 contains requirements for the acquisition of certain items from domestic sources in accordance with the Berry Amendment (10 U.S.C. 2533a). DFARS 225.7002-2 provides exceptions to these requirements. This interim rule adds new exceptions to DFARS 225.7002-2 to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 826 applies to the acquisition of

food, specialty metals, and hand or measuring tools when needed to support contingency operations or when the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives. A corresponding change is made to the clause at DFARS 252.225-7012.

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 exceptions to domestic source requirements authorized by the rule are limited to acquisitions of items needed to support contingency operations, to fulfill requirements that are of unusual and compelling urgency, or to produce propellants and explosives. 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-D099.

**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 Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment (10 U.S.C. 2533a). Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives. Sections 826 and 827 became effective 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 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 as follows:

a. By redesignating paragraphs (f) through (i) and (j) through (m) as paragraphs (g) through (j) and (l) through (o), respectively; and

b. By adding new paragraphs (f) and (k) to read as follows:

**225.7002-2 Exceptions.**

\* \* \* \* \*

(f) Acquisitions of food, specialty metals, or hand or measuring tools—

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.

\* \* \* \* \*

(k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

\* \* \* \* \*

**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 "(MAY 2004)";

and

b. In paragraph (b), in entry "252.225-7012", by removing "(FEB 2003)" and adding in its place "(MAY 2004)".

4. Section 252.225-7012 is amended as follows:

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

b. By redesignating paragraphs (c)(3) through (5) as paragraphs (c)(4) through (6), respectively; and

c. By adding a new paragraph (c)(3) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

\* \* \* \* \*