

Submission of Federal Rules Under the Congressional Review Act

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R0900
109332

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)
3. Rule Title Fish, Shellfish, and Seafood Products	
4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable) DFARS Case 2002-D034	
5. Major Rule <input type="radio"/> Non-major Rule <input checked="" type="radio"/>	
6. Final Rule <input checked="" type="radio"/> Other <input type="radio"/>	
7. With respect to this rule, did your agency solicit public comments? Yes <input checked="" type="radio"/> No <input type="radio"/> N/A <input type="radio"/>	
8. Priority of Regulation (fill in one) <input checked="" type="radio"/> Economically Significant; or Significant; or Substantive, Nonsignificant <input type="radio"/> 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) June 8, 2004 (estimated)	
10. Concise Summary of Rule (fill in one or both) attached <input checked="" type="radio"/> stated in rule <input type="radio"/>	

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

MAY 24 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____

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	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 checked="" type="radio"/>	<input type="radio"/>	<input 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 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: [Date of publication in Federal Register].

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 (Public Law 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 Public Law 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 Public Law 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 (Public Law 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 (1) to read as follows:

225.7002-2 Exceptions.

* * * * *

(1) 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 (Public Law 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.

* * * * *

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 (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.

(End of clause)