



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 205, 212, 225, and 252**

**[Docket No. DARS-2015-0014]**

**RIN 0750-AI51**

**Defense Federal Acquisition Regulation Supplement: Acquisition of the American Flag (DFARS Case 2015-D005)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the Department of Defense Appropriations Acts for Fiscal Years 2014 and 2015 that prohibit use of funds made available under these acts for the purchase or manufacture of a flag of the United States, unless such flag is manufactured in the United States.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Tresa Sullivan, telephone 571-372-6089.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DoD published a proposed rule in the **Federal Register** at 80 FR 10452 on February 26, 2015, to amend the DFARS to implement section 8123 of the Department of Defense Appropriations Act, 2014 (division C, title VIII of Pub. L. 113-76) and section 8119 of the Department of Defense Appropriations Act, 2015 (division C, title VIII of Pub. L. 113-235). These sections prohibit the use of funds appropriated under those acts for the purchase or manufacture of a flag of the United States, unless such flag is treated as a covered item under 10 U.S.C. 2533a(b) (commonly known as the Berry Amendment). With some exceptions, the Berry Amendment restricts the purchase of certain items of food, clothing, fabrics, and hand or measuring tools (whether as end products or components), unless the items have been grown, reprocessed, reused, or produced in the United States. The public comment period ended April 27, 2015, with comments submitted by two respondents in response to the proposed rule.

### **II. Discussion and Analysis**

DoD reviewed the public comments in the development of the final rule. Two responses were received. There are no changes from the substance of the proposed rule. One respondent commended the rule. Another respondent requested flags be purchased from his company in Serbia; however, section 8123 and

section 8119 of the DoD Appropriations Acts for 2014 and 2015, respectively, prohibit the use of funds made available under the acts for the purchase or manufacture of a flag of the United States, unless such flag is manufactured in the United States.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This rule is necessary to implement sections 8123 and 8119 of the DoD Appropriations Acts for Fiscal Years 2014 and 2015,

respectively, and the same provisions in subsequent DoD appropriations acts.

The objective of the rule is to prohibit acquisition of a flag of the United States (Product or Service Code 8345), unless such flag, including the materials and components thereof, is manufactured in the United States, consistent with the requirements at 10 U.S.C. 2533a. The legal basis for the rule is sections 8123 and 8119 of the DoD Appropriations Acts for FYs 2014 and 2015 (Division C of Pub. Laws 113-76 and 113-235, respectively).

No comments were received from the public relative to the initial regulatory flexibility analysis.

DoD does not expect this final 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. Based on data available in the Federal Procurement Data System, there was only one acquisition of flags from a small business that exceeded the simplified acquisition threshold in fiscal year 2013. There are no reporting or recordkeeping requirements. The rule only requires that if a contractor is to provide flags of the United States to DoD under a contract that exceeds the simplified acquisition threshold, the flags must be manufactured in the United States.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives that meet the requirement of the statute.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 205, 212, 225, and 252**

Government procurement.

**Jennifer L. Hawes,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 205, 212, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 205, 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 205—PUBLICIZING CONTRACT ACTIONS**

**205.301 [Amended]**

2. Amend section 205.301, in paragraph (a) (S-70) (i) introductory text by removing "225.7002-1(a) (2) through (10)" and adding "225.7002-1(a) (1) (ii) through (x)" in its place.

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

3. Amend section 212.301 by—
  - a. Redesignating sections (f) (x) (C) through (BB) as paragraphs (f) (x) (D) through (CC), respectively; and
  - b. Adding a new paragraph (f) (x) (C).

The addition reads as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) \* \* \*

(x) \* \* \*

(C) Use the clause at 252.225-7006, Acquisition of the American Flag, as prescribed in 225.7002-3(c), to comply with section 8123 of the DoD Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent DoD appropriations acts.

\* \* \* \* \*

**PART 225—FOREIGN ACQUISITION**

4. Revise the section 225.7002 heading to read as follows:

**225.7002 Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.**

5. Amend section 225.7002-1 by—
  - a. Redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively;
  - b. Redesignating the introductory text as paragraph (a);

c. In the newly redesignated paragraph (1), further redesignating paragraphs (1) through (10) as paragraphs (1)(i) through (x), respectively;

d. In the newly redesignated paragraph (1)(ii), removing "PGI 225.7002-1(a)(2)" and adding "PGI 225.7002-1(a)(1)(ii)" in its place;

e. In the newly redesignated paragraph (1)(iii), further redesignating paragraphs (i) through (iii) as paragraphs (1)(iii)(A) through (C), respectively;

r. In the newly redesignated paragraph (1)(x), removing "(Federal Supply Class 8465)" and adding "(Product or Service Code (PSC) 8465)" in its place, and removing "paragraph (a)" and adding "paragraph (a)(1)" in its place;

g. In the newly redesignated paragraph (2), removing "see PGI 225.7002-1(b)" and adding "see PGI 225.7002-1(a)(2)" in its place; and

h. Adding a new paragraph (b).

The addition reads as follows:

**225.7002-1 Restrictions.**

\* \* \* \* \*

(b) In accordance with section 8123 of the Department of Defense Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent Defense appropriations acts, except as provided in 225.7002-2, do not acquire a flag of

the United States (PSC 8345), unless such flag, including the materials and components thereof, is manufactured in the United States, consistent with the requirements at 10 U.S.C. 2533a. This restriction does not apply to the acquisition of any end-items or components related to flying or displaying the flag (e.g., flag poles and accessories).

**225.7002-2 [Amended]**

- 6. Amend section 225.7002-2 by—
  - a. In paragraph (l), removing “Section 8118” and adding “section 8118” in its place;
  - b. In paragraph (m)(1)(i), removing “Federal Supply Group” and adding “Product or Service Group (PSG)” in its place;
  - c. In paragraph (m)(1)(ii), removing “Federal Supply Group” and adding “PSG” in its place in two places; and
  - d. In paragraph (m)(1)(iv), removing “Federal Supply Class” and adding “PSC” in its place.

- 7. Amend section 225.7002-3 by—
  - a. In the introductory text, removing “exception” and adding “exception at 223.7002-2” in its place; and
  - b. Adding a new paragraph (c).

The addition reads as follows:

**225.7002-3 Contract clauses.**

\* \* \* \* \*



(c) Use the clause at 252.225-7006, Acquisition of the American Flag, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the acquisition of the American flag, with an estimated value that exceeds the simplified acquisition threshold.

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

8. Add section 252.225-7006 to read as follows:

**252.225-7006 Acquisition of the American Flag.**

As prescribed in 225.7002-3(c), insert the following clause:

**ACQUISITION OF THE AMERICAN FLAG (AUG 2015)**

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) If the Contractor is required to deliver under this contract one or more American flags (Product or Service Code 8345), such flag(s), including the materials and components thereof, shall be manufactured in the United States, consistent with the requirements at 10 U.S.C. 2533a (commonly known as the "Berry Amendment").

(c) This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles and accessories).

(End of clause)

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