



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS-2018-0004]

RIN 0750-AJ22

Defense Federal Acquisition Regulation Supplement: Restrictions on Acquisitions from Foreign Sources (DFARS Case 2017-D011);

Correction

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

ACTION: Correcting amendments.

SUMMARY: On December 21, 2018, DoD published a final rule to implement sections of the National Defense Authorization Act for Fiscal Year 2017, including a section that added Australia and the United Kingdom to the definition of the "National Technology and Industrial Base." This action corrects several sections of the regulations where the revised definition of the "National Technology and Industrial Base" was inadvertently not implemented. This document corrects the final regulations in order to acquire from Australia or the United Kingdom, without waiver, certain naval vessel components.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 42828 on August 24, 2018, that included implementation of section 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. The final rule was published in the *Federal Register* at 83 FR 65560 on December 21, 2018. Section 881(b) amends 10 U.S.C. 2500(1) by adding Australia and the United Kingdom of Great Britain and Northern Ireland to the United States and Canada, as countries within which the activities of the national technology and industrial base are conducted. Title 10 U.S.C. 2534 requires that DoD only procure certain items, if the manufacturer of the items is part of the national technology and industrial base, unless a waiver is granted by the Secretary of Defense (previously delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics); now the Under Secretary of Defense (Acquisition and Sustainment). The Under Secretary of Defense (Acquisition, Technology and Logistics) had granted annual waivers for certain naval vessel components from the United Kingdom. Such waivers are no longer required now that the United Kingdom is part of the national technology and industrial base.

II. Discussion and Analysis

At the time of the final rule, the DFARS addressed the following restrictions of 10 U.S.C. 25234:

Citation	Item	Waiver	Action taken
225.7004	Foreign buses	No	Added Australia and U.K. at 225.7004-1 and 225.7004-3.
225.7006, 252.225-7037, and 252.225-7038	Air circuit breakers for naval vessels	Yes - U.K.	Added Australia and U.K. at 225.7006-1. Added Australia at 252.225-7037(b) and 252.225-7038. Removed the information regarding the U.K. waiver at 225.7006-3(b) and 225.7006-4(a)(2).
225.7010	Certain naval vessel components: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, totally enclosed lifeboats.	Yes - U.K.	Inadvertently, no action taken.

The actions comparable to those that were taken with regard to the air circuit breakers for naval vessels should have been taken for the other naval vessel components. These naval vessel components are listed in a separate section, because 10 U.S.C. 2534(h) prohibits the use of contract clauses or certifications to implement this restriction. Australia and the United Kingdom should have been added to the list of countries in the national technology and industrial base at DFARS 225.7010-1 and paragraph

(b) addressing the waiver for items from the U.K. at 225.7010-3 should have been removed. Because of the existing waiver for certain naval vessel components from the United Kingdom, this lack of action has only impacted the acquisition of these naval vessel components from Australia.

In addition, there is a section at DFARS 225.7008 that addresses the waiver of restrictions of 10 U.S.C. 2534 in general. For consistency with the new definition of "national technology and industrial base," Australia and the United Kingdom should have been added to the discussions of satisfactory quality, only one source, and unreasonable costs at DFARS 225.7008(a)(2)(ii) and (iii) and (a)(3) respectively; and 225.7008(b) that addresses the waiver of the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom should have been deleted as no longer necessary. There have been no requests for waiver of 10 U.S.C. 2534 since the final rule was issued.

III. Publication of This Final Rule Correction for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled "Publication of Proposed Regulations." Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification

thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule correction is not required to be published for public comment, because the public received notice and opportunity to comment on the proposed rule, which stated that—

- The rule was implementing section 881(b) of the NDAA for FY 2017, that Australia and the United Kingdom were now included as the countries within which the activities of the national technology and industrial base are conducted;
- Title 10 U.S.C. 2534 requires that DoD only procure certain items if the manufacturer of the items is part of the national technology and industrial base; and
- DFARS sections that implement the restrictions of 10 U.S.C. 2534 are being modified to allow acquisitions from Australia and the United Kingdom.

In addition, the proposed rule mentioned that annual waivers authorizing purchases from the United Kingdom cover air circuit breakers for naval vessels and certain other naval vessel components.

Immediate correction of the error is necessary, because the new definition of national technology and industrial base has been in effect since December 2, 2019, and this correction is necessary in order to avoid inconsistent implementation of the restrictions of 10 U.S.C. 2534.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This final rule correction does not impact any provisions or clauses.

V. 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.

VI. Executive Order 13771

This final rule correction rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

The final rule correction 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 Part 225

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 continues to read as follows:

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

2. Amend section 225.7008 by—

a. Removing paragraph (b).

b. Redesignating paragraph (a) (2) and (3) as paragraphs (b) and (c), respectively;

c. Redesignating paragraphs (a) introductory text and (a) (1) (i) through (iv) as undesignated introductory text and paragraphs (a) (1) through (4), respectively;

d. In the newly redesignated paragraph (a) (1) introductory text, removing "(Acquisition, Technology, and Logistics) (USD(AT&L))" and adding "(Acquisition and Sustainment) (USD(A&S))" in its place;

e. Further redesignating newly redesignated paragraphs (a) (1) (A) and (B) as paragraphs (a) (1) (i) and (ii), respectively;

f. Further redesignating newly redesignated paragraphs (a) (4) (A) and (B) as paragraphs (a) (4) (i) and (ii), respectively;

g. Further redesignating newly redesignated paragraphs (b) (i) through (v) as paragraphs (b) (1) through (5), respectively; and

h. Revising newly redesignated paragraphs (b) (2) and (3) and (c).

The revisions read as follows:

225.7008 Waiver of restrictions of 10 U.S.C. 2534.

* * * * *

(b) * * *

(2) Satisfactory quality items manufactured in the United States, Australia, or Canada, or the United Kingdom are not available.

(3) Application of the restriction would result in the existence of only one source for the item in the United States, Australia, or Canada, or the United Kingdom.

* * * * *

(c) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S., Australian, Canadian, or United Kingdom origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S., Australian, Canadian, or United Kingdom origin.

225.7010-1 [Amended]

3. Amend section 225.7010-1 introductory text by removing "United States or Canada" and adding "United States, Australia, Canada, or the United Kingdom" in its place.

4. Revise section 225.7010-3 to read as follows:

225.7010-3 Waiver.

The waiver criteria at 225.7008(a) apply to this restriction.

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