DAR Case 96-D319 Case Manager (b)(6)

Date	Action
9-27-96	Case opened
10-24-96	Committee Report
10-30-96	Hit on hold - DoD coord. w. Commerce
2-5-97	Proceed with case.
2-11-97	Agree to interim rule.
2-17-97	Interim rule published - 62 FR 2615 D.L. 97-006
3-18-97	4 public comments received. Memo → FC, request policy guidance:
4-7-97	Waiver of 10 USC 2534(a) for qual. countries.
4-17-97	Agree to interim rule.
6-24-97	Revised interim rule in FR - DAC 91-12. (62 FR 34114)
9-10-97	Postpone discussion → 9-17-97
9-17-97	Agree to final rule.
9-29-97	→ analyst/ed. for next DAC
11-14-97	Withdraw final rule from DAC
11-19-97	Close case into 97-D321

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 203, 204, 208, 209, 212, 214, 215, 216, 219, 222, 224, 225, 227, 228, 229, 231, 232, 233, 234, 235, 236, 237, 239, 242, 243, 245, 246, 249, 252, 253, and Appendices G and I to Chapter 2

[Defense Acquisition Circular 91-12]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim and final rules.

SUMMARY: Defense Acquisition Circular 91-12 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on contract reporting, required sources of supplies and services, contractor qualifications, economic price adjustment, small business programs, labor laws, foreign acquisition, patent interchange agreements, insurance, taxes, overseas contracts, contract financing, contract disputes, construction contracts, acquisition of information resources, contract administration, government property, and quality assurance.

DATES: Effective date: June 24, 1997.

Comment date: Comments on the interim rule (Item XVIII: Sections 225.872-1; 225.872-2; 225.7005; 225.7007-1; 225.7007-3; 225.7007-4; 225.7010-1; 225.7010-2; 225.7010-3; 225.7016-1; 225.7016-2; 225.7016-3; 225.7019-1; 225.7019-1; 225.7019-3(a)(1)(iv); 225.7022-1; 225.7022-2; 225.7022-3; 252.225-7016; and 252.225-7029) should be submitted in writing to the address shown below on or before August 25, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule (Item XVIII) to: Defense Acquisition Regulations Council. Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Cite 96-D319 in all correspondence related to this rule.

FOR FURTHER INFORMATION CONTACT:
Item XVIII—Ms. Amy Williams, (703) 602-0131;
All other items—Ms. Susan Buckmaster, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91-12 includes 43 rules and miscellaneous editorial amendments. Twelve of the rules (Items I, III, VII, IX, XIV, XVII, XIX, XXII, XXIV, XXVII, XXXIII, and XXXIX) were published previously in the **Federal Register** and thus are not included as part of this notice of amendments to the Code of Federal Regulations. These twelve rules are being published in the DAC to incorporate the previously published amendments into the loose-leaf edition of the DFARS.

The following information pertains to Item XVIII, Authority to Waive Foreign Purchase Restrictions:

An interim DFARS rule implementing Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public 104-201) was published in the **Federal Register** on January 17, 1997 (62 FR 2615), with a request for public comments. Section 810, known as the "McCain Amendment," added new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534(a), applicable to buses, chemical weapons antidote, components for naval vessels, and ball and roller bearings, permitting waiver if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding with a foreign country. The interim rule provided this waiver authority to the head of the contracting activity. Public comments were received from four respondents, all seeking more positive and effective implementation of the McCain Amendment.

On April 7, 1997, the Under Secretary of Defense (Acquisition and Technology), waived the foreign source restrictions of 10 U.S.C. 2534(a) for the acquisition of defense items manufactured in qualifying countries listed in DFARS 225.872-1. This interim rule implements the waiver only for those items restricted in the DFARS. The restrictions on most naval vessel components are handled by the Department of the Navy. Acquisitions of anchor and mooring chain, totally enclosed lifeboat survival systems, and noncommercial ball and roller bearings are subject to additional defense appropriations act restrictions. The acquisition of chemical weapons antidote is subject to U.S. defense mobilization base requirements.

B. Determination To Issue an Interim Rule

A determination has been under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement the waiver by the Under Secretary of Defense (Acquisition and Technology) of the restrictions of 10 U.S.C. 2534(A). The waiver is authorized by 10 U.S.C. 2534(d)(3), as amended by Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201); the waiver became effective on April 7, 1997. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

DAC 91-12, Items II, IV, V, XII, XIII, XV, XXIII, XXVIII, XXXVI, XXXVII, XXXVIII, XLI, XLII, and XLIII

These rules do not constitute significant revisions within the meaning of Federal Acquisition Regulation 1.501 and Public Law 98-577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). Please cite the applicable DFARS case number in correspondence.

DAC 91-12 Items VI, VIII, X, XI, XVI, XX, XXI, XXVI, XXIX, XXX, XXXI, XXXII, XXXIV, and XXXV

DoD certifies that these rules will not 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:

Item VI, Institutions of Higher Education—This rule applies only to institutions of higher education that are determined to have an anti-ROTC policy.

Item VII, U.S. European Command Supplement—The rule applies only to contracts that are awarded or performed in a foreign country. More than 90 percent of such contracts are awarded to foreign firms. Those U.S. firms that are awarded such contracts generally are not small entities.

Item X, Certificate of Competency—The rule merely updates and clarifies existing policy pertaining to (1) the Small Business Administration Certificate of Competency Program, and (2) procurement from small disadvantaged business regular dealers.

Item XI, Comprehensive Subcontracting Plans—Small businesses are exempt from subcontracting plan requirements, and the rule does not change the obligation of large business concerns to maximize subcontracting opportunities for small business concerns.

Item XVI, Petroleum Products from Caribbean Basin Countries—Petroleum

and products derived from petroleum already are subject to the Trade Agreements Act. The consideration of Caribbean Basin country offers of petroleum and products derived from petroleum is not expected to have a significant effect on the petroleum market in this country. Furthermore, the Trade Agreements Act and the Caribbean Basin Economic Recovery Act apply only to acquisitions exceeding $190,000 in value.

Item XX, Preference for U.S. Firms on MILCON Overseas Construction—The rule applies only to contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

Item XXI, Restriction on MILCON Overseas Architect-Engineer Contracts—The rule applies only to architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

Item XXVI, Carbon Fiber—The only known domestic manufacturer of coal and petroleum pitch carbon fiber is a large business concern.

Item XXIX, Individual Compensation—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. In addition, this rule applies only to contractors that incur individual compensation costs in excess of $200,000 per year.

Item XXX, Individual Compensation—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. In addition, this rule applies only to contractors that incur individual compensation costs in excess of $250,000 per year.

Item XXXI, Restricting Costs/ Bonuses—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. In addition, this rule applies only to contractors that incur restructuring costs associated with a business combination.

Item XXXII, Restructuring Costs—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. In addition, this rule applies only to contractors that incur restructuring costs associated with a business combination.

Item XXXIV, Information Technology Management Reform Act—The rule primarily pertains to internal Government considerations regarding the acquisition of information technology.

Item XXXV, Automatic Data Processing Equipment Leasing Costs—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR or DFARS cost principles. In addition, this rule merely removes references and requirements pertaining to a cost principle that already has been removed from the FAR.

DAC 91-12, Item XVIII

This interim rule is not expected 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 there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, totally enclosed lifeboat survival systems, and noncommercial ball and roller bearings is presently restricted to domestic sources by defense appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings. An initial regulatory flexibility analysis has therefore not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D319 in correspondence.

DAC 91-12, Items XXV and XL

A final regulatory flexibility analysis has been performed for each of these rules. A copy of the analysis may be obtained from the address specified herein. Please cite the applicable DFARS case number in correspondence. The analyses are summarized as follows:

Item XXV, Ball and Roller Bearings—Waiver (DFARS Case 97-D300)—This rule implements 10 U.S.C. 2534(d)(6) with regard to the acquisition of ball and roller bearings. 10 U.S.C. 2534(d)(6) provides that the Secretary of Defense may waive the domestic source restrictions of 10 U.S.C. 2534(a) for an acquisition that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used. Because of other statutory provisions that pertain to the acquisition of ball and roller bearings, the waiver authority in this rule may be used only if (1) ball and roller bearings or bearing components are the end items being purchased, and (2) the ball and roller bearings or bearing components are commercial items, or no fiscal year 1996 or 1997 funds are being used. No comments were received in response to the initial regulatory flexibility analysis or the proposed rule published in the **Federal Register** at 62 FR 7432 on February 19, 1997. It is estimated that 11 small businesses could be affected by this rule. The rule imposes no new reporting, recordkeeping, or compliance requirements for offerors or contractors. There are no practical alternatives that will fully implement the provisions of 10 U.S.C. 2534(d)(6).

Item XL, notice of termination (DFARS Case 96-D320)—This rule implements Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 824 streamlines the statutory requirements for providing notification to contractors and subcontractors regarding contract terminations or reductions that are expected to occur as a result of reduced funding levels under major defense programs. No comments were received in response to the initial regulatory flexibility analysis. However, one comment was received in response to the interim rule published in the **Federal Register** at 61 FR 64636 on December 6, 1996. The comment reserved judgment on whether a 60-day notification period affords industry, particularly smaller firms, sufficient time to adjust to substantial funding reductions to, or terminations of, major defense program contracts. The industry association that authored the comment stated that its member companies will monitor implementation experience, and, if necessary, will recommend additional actions concerning the new notification procedures. No changes were made to the rule as a result of the public comment, because (1) the 60-day notification period is required by Section 824 of Public Law 104-201; (2) and the comment did not indicate a need for a change to the rule at this time. The rule applies to all large and small entities that have, under a major defense program, a prime contract, a first-tier subcontract of $500,000 or more, or a lower-tier subcontract of

$100,000 or more, that is expected to be terminated or substantially reduced as a result of reduced funding levels in an appropriations act. The rule imposes no additional reporting, recordkeeping, or compliance requirements on offerors or contractors. There are no practical alternatives that will adequately implement the requirements of Section of 824 of Public Law 104-201.

D. Paperwork Reduction Act

DAC 91-12, Items, II, IV, V, VI, X, XI, XII, XIII, XV, XVI, XVIII, XXI, XXIII, XXV, XXVI, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XL, XLI, XLII, XLIII

The Paperwork Reduction Act does not apply, because these rules impose no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

DAC 91-12, Items VIII and XX

The Paperwork Reduction Act applies. The Office of Management and Budget (OMB) has approved the information collection requirements as follows:

Item	OMB control No.
VIII	0704-0216 0704-0248 0704-0259 0704-0390 9000-0034
XX	0704-0255

Defense Acquisition Circular (DAC) 91-12 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Procurement Integrity (DFARS Case 96-D310)

This final rule was issued by Departmental Letter 97-003, effective January 17, 1997 (62 FR 2611, January 17, 1997). The rule amends DFARS Subpart 203.1 and 215.608, and removes the clause at 252.203-7000, to implement Section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106) and to conform to the FAR revisions published as Item I of Federal Acquisition Circular 90-45. Section 4304 amended the procurement integrity provisions at 41 U.S.C. 423 and repealed 10 U.S.C. 2397-2397c, which addressed post-Federal employment of certain DoD employees.

Item II—Reporting Real Property Leases (DFARS Case 97-D001)

This final rule amends DFARS 204.670-2(a) to clarify that the requirement to complete a DD Form 350 for contracting actions that obligate or deobligate more than $25,000 also applies to DoD actions that are for the purchase of land or rental or lease of real property.

Item III—Contract Reporting for Fiscal Year 1997 (DFARS Case 97-D315)

This final rule was issued by Departmental Letter 96-017, effective October 1, 1996 (61 FR 51030, September 30, 1996). The rule amends DFARS Parts 204 and 253 to revise DD Form 350 and DD Form 1057 contract action reporting requirements, for compliance with provisions of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355).

Item IV—Commercial Transactions with the Government of a Terrorist Country (DFARS Case 96-D026)

This final rule removes DFARS 209.104-1(g)(iii), 209.104-70(c) and (d), 252.209-7003, and 252.209-7004, which pertained to contractor disclosure of information commercial transactions with the Government of a terrorist country. The statutory authority for this disclosure requirement (Section 843 of Public Law 103-160) expired on September 30, 1996.

Item V—Foreign Environmental Technology (DFARS Case 96-D322)

This final rule amends DFARS 209.104-1 to implement Section 828 of the National Defense Authorization Act of Fiscal Year 1997. Section 828 provides that the Secretary of Defense may, in the case of a contract for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition on award of a contract to an entity controlled by a foreign government under certain circumstances.

Item VI—Institutions of Higher Education (DFARS Case 96-D305)

The interim rule published as Item VI of DAC 91-11 is converted to a final rule without change. The rule amended DFARS 209.470 and 243.105 to implement Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106). Section 541 provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has an anti-ROTC policy.

Item VII—Elimination of Certifications (DFARS Case 96-D306)

This final rule was issued by Departmental Letter 97-004, effective January 17, 1997 (62 FR 2612, January 17, 1997). The rule amends DFARS Parts 215, 219, 225, 226, 227, 233, and 252 to remove certification requirements for contractors and offerors that are not required by statute or otherwise approved for retention by the Secretary of Defense. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104-106).

Item VIII—U.S. European Command Supplement (DFARS Case 94-D001)

This final rule amends DFARS Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252 to incorporate guidance previously contained in the U.S. European Command Supplement for application to contracts to be performed in a foreign country. Contracts to be performed in a foreign country must include requirements imposed by the host country's government in addition to U.S. Government requirements, and must provide for customs and tax exemptions to which the U.S. Government is entitled.

Item IX—MILCON—Environmental Restoration (DFARS Case 96-D327)

This final rule was issued by Departmental Letter 97-001, effective January 8, 1997 (62 FR 1058, January 8, 1997). The rule revises DFARS 216.306 to implement Section 101 of the Military Construction Appropriations Act for Fiscal Year 1997 (Public Law 104-196). Section 101 continues to restrict the use of cost-plus-fixed-fee contracts for military construction, but provides an exception for contracts for environmental restoration at installations that are being closed or realigned where payments are made from a base realignment and closure account.

Item X—Certificate of Competency (DFARS Case 96-D003)

This final rule amends DFARS 219.602-3 and 252.219-7006 to (1) update the reference to the Small Business Administration offices involved in resolving differences between an agency and the Small Business Administration; (2) remove references to Section 8051 of Public Law 103-139 and Section 8012 of Public Law 103-335, which applied only to contracts awarded during fiscal years 1994 and 1995; and (3) clarify existing text.

Item XI—Comprehensive Subcontracting Plans (DFARS Case 96-D304)

The interim rule pulished as Item VIII of DAC 91-11 is converted to a final rule with an amendment at DFARS

252.219-7004. The rule reflects changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106). The final rule differs form the interim rule in that it amends the clause at 252.219-7004 to clarify instructions for contractor submission of Standard Form 295, Summary Subcontract Report.

Item XII—Bond Waivers (DFARS Case 96-D019)

This final rule removes DFARS 219.808, 219.811, and 252.219-7007, which pertained to waiver of Miller Act requirements for performance and payment bonds under 8(a) construction contracts. The statutory authority for waiver of these requirements (Section 813 of Public Law 102-190) applied only to contracts awarded during fiscal years 1992 through 1994.

Item XIII—Small Business Competitiveness Demonstration Program (DFARS Case 96-D025)

This final rule amends DFARS 219.1005 to remove dredging from the list of designated industry groups under the Small Business Competitiveness Demonstration Program. Dredging had been added to the list as part of a test program established under Section 722 of the Small Businesss Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366). The statutory authority for the test program expired on September 30, 1996.

Item XIV—Pilot Mentor-Protégé Program (DFARS Case 96-D317)

This final rule was issued by Departmental Letter 96-018, effective October 18, 1996 (61 FR 54346, October 18, 1996). The rule amends DFARS 219.7104 and Appendix I to implement Section 802 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 802: (1) Extends to September 30, 1998, the date by which an interested company must apply for participation as a mentor firm under the DoD Pilot Mentor-Protégé Program; and (2) extends to September 30, 1999, the date by which a mentor firm must incur costs in order to be eligible for reimbursement under the Program.

Item XV—Nondomestic Construction Materials (DFARS Case 97-D009)

This final rule removes the clause at DFARS 252.225-7004, Nondomestic Construction Materials, and the corresponding prescriptive language at 225.205. The DFARS clause has been superseded by the clauses at FAR 52.225-5, Buy American Act—Construction Materials, and 52.225-15, Buy American Act—Construciton Materials under Trade Agreements Act and North American Free Trade Agreement, as amended by Federal Acquisition Circular 90-46.

Item XVI—Petroleum Products from Caribbean Basin Countries (DFARS Case 96-D312)

The interim rule published as Item XI of DAC 91-11 is converted to a final rule without change. The rule amended DFARS 225.403 to fully implement Section 8094 of the National Defense Appropriations Act for Fiscal Year 1994 (Public Law 103-139). Section 8094 requires DoD to consider all qualified bids from eligible countries under the Caribbean Basin Economic Recovery Act as if they were offers from designated countries under the Trade Agreements Act. The rule also amended DFARS 225.403-70 and 252.225-7007 to clarify that the definition of Caribbean Basin country end products includes petroleum and any end product derived from petroleum.

Item XVII—Metalworking Machinery—Trade Agreements (DFARS Case 96-D030)

This final rule was issued by Departmental Letter 97—005, effective January 17, 1997 (62 FR 2615, January 17, 1997). The rule amends DFARS 225.403-70 to remove the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534. As a result, all metal working machinery products in Federal Supply Group 34 are subject to the trade agreements acts.

Item XVIII—Authority To Waive Foreign Purchase Restrictions (DFARS Case 96-D319)

This interim rule supersedes the interim rule issued by Departmental Letter 97-006 on January 17, 1997. The rule amends DFARS 225.872, 225.70, and clauses at 252.225-7016 and 252.225-7029 to implement the waiver by the Under Secretary of Defense (Acquisition and Technology) of the foreign source restrictions of 10 U.S.C. 2534(a), for the acquisition of defense items manufactured in a qualifying county. This waiver is authorized by 10 U.S.C. 2534(d)(3), as amended by section 810 (the McCain Amendment) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201).

Item XIX—Foreign Machine Tools and Powered and Non-Powered Valves (DFARS Case 96-D023)

This final rule was issued by Departmental Letter 96-019, effective November 15, 1996 (61 FR 58488, November 15, 1996). The rule amends DFARS Subpart 225.70, and removes the clause and provision at 252.225-7017 and 252.225-7040, to reflect the expiration of the restriction on the acquisition of machine tools and powered and non-powered valves at 10 U.S.C. 2534. Related amendments are made at 212.504(a) and 252.212-7001(b).

Item XX—Preference for U.S. Firms on MILCON Overseas Construction (DFARS Case 96-D328)

The interim rule issued by Departmental Letter 97-008, on January 17, 1997, is converted to a final rule without change. The rule amends DFARS 225.7000, 225.7003, 236.274, and 236.570, and adds a new provision at 252.236-7010, to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1997 (Public Law 104-196). Section 112 provides a 20 percent evaluation preference for U.S. firms on contracts estimated to exceed $1,000,000 for military construction projects in the U.S. territories and possessions in the Pacific and on Kwajalein atoll, or in countries bordering the Arabian Gulf.

Item XXI—Restriction on MILCON Overseas Architect-Engineer Contracts (DFARS Case 96-D329)

The interim rule issued by Departmental Letter 97-008, on January 17, 1997, is converted to a final rule without change. The rule adds new sections at DFARS 225.7004 and 236.602-70, amends 236.102 and 236.609-70, and adds a new provision at 252.236-7011, to implement Section 111 of the Military Construction Appropriations Act for Fiscal Year 1997 (Public Law 104-196). Section 111 restricts award of architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to U.S. firms or U.S. firms in joint venture with hose nation firms.

Item XXII—Application of Berry Amendment (DFARS Case 96-D333)

This interim rule was issued by departmental Letter 97-009, effective February 7, 1997 (62 FR 5779, February 7, 1997). The rule amends DFARS 225.7002, 252.212-7001, 252.225-7012, and 252.225-7014; adds a new section

(ii) The entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the appropriate Congressional committees.

§ 209.104–70 [Amended]

15. Section 209.104–70 is amended by revising the section heading to read "Solicitation provisions."; and by removing paragraphs (c) and (d).

PART 212—ACQUISITION OF COMMERCIAL ITEMS

§ 212.301 [Amended]

16. Section 212.301 is amended in paragraph (f)(iii) by inserting, after the word "Statutes", the phrase "or Executive Orders".

PART 214—SEALED BIDDING

§§ 214.406 and 214.406–3 [Redesignated]

17. Sections 214.406 and 214.406–3 are redesignated as sections 214.407 and 214.407–3, respectively.

18. Newly designated section 214.407–3 is amended by revising in the introductory text of paragraph (e) the reference "FAR 14.406–3" to read "FAR 14.407–3", and by revising paragraphs (e)(v) to read as follows:

§ 214.407–3 Other mistakes disclosed before award.

(e) * * *

(v) National Imagery and Mapping Agency; General Counsel, NIMA.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

19. Section 215.872–4 is amended by revising paragraph (d)(1) to read as follows:

§ 215.872–4 Applicability.

* * * * *

(d) * * *

(1) Acquiring commercial items (see FAR Part 12);

* * * * *

PART 216—TYPES OF CONTRACTS

20. Section 216.203–4–70 is amended by adding paragraph (c) to read as follows:

§ 216.203–4–70 Additional clauses.

* * * * *

(c) *Price adjustment for wage rates or material prices controlled by a foreign government.*

(1) The price adjustment clause at 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

§ 216.307 [Removed]

21. Section 216.307 is removed.

PART 219—SMALL BUSINESS PROGRAMS

22. The heading of Subpart 219.6 is revised to read as follows:

Subpart 219.6—Certificates of Competency

§ 219.602–3 [Amended]

23. Section 219.602–3 is amended in paragraph (c)(i)(A) by removing the phrase "Central Office's" and inserting the word "Headquarters' " in its place.

§§ 219.808 through 219.811–3 [Removed]

24. Sections 219.808 through 219.811–3 are removed.

§ 219.1005 [Amended]

25. Section 219.1005 is amended in paragraph (a) by removing the introductory text.

26. Section 219.1006 is amended by revising paragraph (b)(2) to read as follows:

§ 219.1006 Procedures.

(b) * * *

(2) The Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International & Commercial Programs), will determine whether reinstatement of small business set-asides are necessary to meet the agency goal and will recommend reinstatement to the Director, Defense Procurement. Military departments and defense agencies shall not reinstate small business set-asides unless directed by the Director, Defense Procurement.

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

27. Subpart 222.72 is added to read as follows:

Subpart 222.72—Compliance with Labor Laws of Foreign Governments

Sec.
222.7200 Scope of subpart.
222.7201 Contract clauses.

§ 222.7200 Scope of subpart.

This subpart prescribes contract clauses, with respect to labor laws of foreign governments, for use when contracting for services or construction within a foreign country.

§ 222.7201 Contract clauses.

(a) Use the clause at 252.222–7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States, its possessions, and Puerto Rico.

(b) Use the clause at 252.222–7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Use the clause at 252.222–7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction to be performed in Spain.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

§ 224.202 [Redesignated]

28. Section 224.202 is redesignated as section 224.203.

PART 225—FOREIGN ACQUISITION

§ 225.202 [Amended]

29. Section 225.202 is amended by redesignating paragraph (b) as paragraph (a)(3).

§§ 225.205 and 225.205–70 [Removed]

30. Sections 225.205 and 225.205–70 are removed.

§ 225.403 [Amended]

31. Section 225.403 is amended by redesignating paragraphs (c) and (d)(1)(A) as paragraphs (b) and (c)(1)(A), respectively.

32. Section 225.872–1 is amended by adding paragraph (d) to read as follows:

§ 225.872–1 General.

* * * * *

(d) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for the acquisition of defense

items manufactured in a qualifying country listed in paragraph (a) or (b) of this subsection, in accordance with the provisions of 10 U.S.C. 2534(d)(3).

33. Section 225.872–2 is amended by revising paragraph (a)(3) to read as follows:

§ 225.872–2 Applicability.

(a) * * *

(3) Other U.S. laws or regulations (e.g., the annual defense appropriations act); and

* * * * *

34. Sections 225.971 and 225.972 are added to read as follows:

§ 225.971 Correspondence in English.

Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

§ 225.972 Authorization to perform.

Use the clause at 252.225–7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

35. The heading of Subpart 225.70 is revised to read as follows:

Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition

36. Section 225.7005 is revised to read as follows:

§ 225.7005 Waiver of certain restrictions.

(a) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for the acquisition of defense items manufactured in a qualifying country listed in 225.872–1, in accordance with the provisions of 10 U.S.C. 2534(d)(3).

(b) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable dalays.

(ii) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iv) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(vi) Application of the restriction is not in the national security interests of the United States.

(vii) Application of the restriction would adversely affect a U.S. company.

(2) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

37. Section 225.7007–1 is revised to read as follows:

§ 225.7007–1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(a), do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or a qualifying country.

38. Section 225.7007–3 is revised to read as follows:

§ 225.7007–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured in nonqualifying countries are needed for temporary use because buses manufactured in the United States or a qualifying country are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or a qualifying country.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured in nonqualifying countries may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured in nonqualifying countries are available at no cost to the U.S. Government.

(d) The acquisition is for an amount that does not exceed the simplified acquisition threshold.

39. Section 225.7007–4 is revised to read as follows:

§ 225.7007–4 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

§ 225.7009 [Removed and reserved]

40. Section 225.7009 is removed and reserved.

41. Section 225.7010–1 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 225.7010–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the injector or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

* * * * *

42. Section 225.7010–2 is revised to read as follows:

§ 225.7010–2 Exception.

In accordance with 10 U.S.C. 2534(g) and 225.7005(a), the restriction of 225.7010–1 does not apply to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity), if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) The chemical weapons antidote contained in automatic injectors, or the components for such injectors are manufactured in a qualifying country.

43. Section 225.7010–3 is revised to read as follows:

§ 225.7010–3 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

§ 225.7013 [Removed and reserved]

44. Section 225.7013 is removed and reserved.

§§ 225.7013–1 and 225.7013–2 [Removed]

45. Sections 225.7013–1 and 225.7013–2 are removed.

46. Section 115.7016–1 is revised to read as follows:

§ 225.7016–1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(a), do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or a qualifying country.

47. Section 225.7016–2 is revised to read as follows:

§ 225.7016–2 Exceptions.

This restriction does not apply if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support air circuit breakers manufactured in a nonqualifying country. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

48. Section 225.7016–3 is revised to read as follows:

§ 225.7016–3 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

49. Section 225.7019–1 is amended by revising paragraph (a) to read as follows:

§ 225.7019–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534 and 225.7005(a), through fiscal year 2000, do not acquire ball and roller bearings or bearing components that are not manufactured in the United States or a qualifying country.

* * * * *

50. Section 225.7019–3 is amended by revising paragraph (a)(1)(iv); by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively; and by adding a new paragraph (a)(2). The revised and added text reads as follows:

§ 225.7019–3 Waiver.

(a) * * *

(1) * * *

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

* * * * *

§ 225.7020 [Removed and reserved]

51. Section 225.7020 is removed and reserved.

§§ 225.7020–1 and 225.7020–2 [Removed]

52. Sections 225.7020–1 and 225.7020–2 are removed.

53. Section 225.7022–1 is amended by revising paragraph (b) to read as follows:

§ 225.7022–1 Restrictions.

* * * * *

(b) In accordance with 10 U.S.C. 2534(a)(3)(B) and 225.7005(a), do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States or a qualifying country. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor involved.

54. Section 225.7022–2 is revised to read as follows:

§ 225.7022.2 Exceptions.

The restriction in 225.7022–1(b) does not apply if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured in a nonqualifying country.

55. Section 225.7022–3 is revised to read as follows:

§ 225.7022–3 Waiver.

The waiver criteria at 225.7005(b) apply only to the restriction of 225.7022–1(b).

56. Subpart 225.71 is revised to read as follows:

Subpart 225.71—Other Restrictions on Foreign Acquisition

Sec.

§ 225.7100 Scope of subpart.

This subpart contains foreign product restrictions which are based on policies designed to protect the defense industrial base.

§ 225.7101 Definitions.

Relevant definitions are in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

§ 225.7102 Forgings.

§ 225.7102–1 Policy.

DoD requirements for the following forging items, whether as end items or components, shall be acquired from domestic sources (as described in the clause at 252.225–7025) to the maximum extent practicable—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

§ 225.7102–2 Exceptions.

The policy in 225.7102–1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

§ 225.7102–3 Waiver.

Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102–1.

§ 225.7102–4 Contract clause.

(a) Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, except for acquisitions—

(1) Excepted in 225.7102–2; or

(2) Where the contracting officer knows that the supplies being acquired do not contain the restricted items.

(b) If an exception under 225.7102–2 applies to any portion of the acquisition, specify the exception in the solicitation and contract.

§ 225.7103 Polyacrylonitrile (PAN) carbon fiber.

§ 225.7103–1 Policy.

All new major systems must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

§ 225.7103–2 Waivers.

Contracting officers may, with the approval of the chief of the contracting office, waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be

refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) "NAFTA country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) "Nondesignated country end product" means any end product that is not a U.S. made end product or a designated country end product.

(8) "North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

(9) "United States" means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(10) "U.S. made end product" means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of U.S. made, qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(iii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty.

(End of clause)

Alternate I (June, 1997). As prescribed in 225.408(a)(2), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

102. Section 252.225-7016 is amended by revising the clause date to read "(JUN 1997)"; and by revising paragraphs (b) and (c) to read as follows:

§ 252.225-7016 Restriction on acquisition of ball and roller bearings.

* * * * *

(b) The Contractor agrees that, except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United Stats or Canada. Unless otherwise specified, raw materials, such as performed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial items manufactured in a qualifying country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

* * * * *

103. Section 252.225-7022 is revised to read as follows:

§ 252.225-7022 Restriction on acquisition of polyacrylonitrile (PAN) carbon fiber.

As prescribed in 225.7103-3, use the following clause:

RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER (JUNE 1997)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the United States or Canada.

(c) The Contracting Officer may waive the requirement in paragraph (b) of this clause in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify U.S. or Canadian sources expeditiously.

(End of clause)

104. Section 252.225-7025 is revised to read as follows:

§ 252.225-7025 Restriction on acquisition of forgings.

As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (JUNE 1997)

(a) *Definitions.* As used in this clause—

(1) "Domestic manufacture" means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) "Forging items" means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)

105. Section 252.225-7029 is revised to read as follows:

§ 252.225-7029 Preference for United States or Canadian air circuit breakers.

As prescribed in 225.7016-4, use the following clause:

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (JUNE 1997)

(a) Unless otherwise specified in this offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States or a qualifying country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) Unless an exception applies or a waiver is granted under 225.7005(b)(1) of the DFARS, preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, except air circuit breakers manufactured in a qualifying country.

(End of clause)

§ 252.225-7034 [Removed and reserved]

106. Section 252.225-7034 is removed and reserved.

§ 252.225-7040 [Added and reserved]

107. Section 252.225-7040 is add and reserved.

108. Sections 252.225-7041 and 252-225-7042 are added to read as follows:

§ 252.225-7041 Correspondence in English.

As prescribed in 225.971, use the following clause:

CORRESPONDENCE IN ENGLISH (JUNE 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

§ 252.225-7042 Authorization to perform.

As prescribed in 225.97, use the following clause:

AUTHORIZATION TO PERFORM (JUNE 1997)

The Contractor represents that it has been duly authorized to operate and to do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

(End of clause)

§ 252.227-7030 [Amended]

109. Section 252.227-7030 is amended in the introductory text by removing the reference "227.7103-6(f)(2)" and inserting in its place the reference "227.7103-6(e)(2)".

110. Section 252.228-7006 is added to read as follows:

§ 252.8-7006 Compliance with Spanish laws and insurance.

As prescribed at 228.370(f), use the following clause:

COMPLIANCE WITH SPANISH LAWS AND INSURANCE (JUNE 1997)

(a) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor, and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free from any liability resulting from the Contractor's failure to comply with such laws.

(b) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen's compensation, employees' liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

(c) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the Notice to Proceed, that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation also shall state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage that could affect the United States Government's interests.

Type of insurance	Coverage per person	Coverage per accident	Property damage
Comprehensive General Liability	$300,000	$1,000,000	$100,000

(d) The Contractor shall provide the Contracting Officer with a similar representation for all subcontractors that will perform work under this contract.

(e) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall—

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows: "The insurance company waives any right of subrogation against the United States of America that may arise by reason of any payment under this policy.";

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)

111. Sections 252.229-7000 through 252.229-7010 are added to read as follows:

§ 252.229-7000 Invoices exclusive of taxes or duties.

As prescribed in 229.402-1, use the following clause:

INVOICES EXCLUSIVE OF TAXES OR DUTIES (JUNE 1997)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)

§ 252.229-7001 Tax relief.

As prescribed in 229.402-70(a), use the following clause:

TAX RELIEF (JUNE 1997)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror Insert) RATE (PERCENTAGE): (Offeror Insert)

(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

ALTERNATE I (JUNE 1997)

As prescribed in 229.402-70(a), add the following paragraph (d) to the basic clause:

DIRECTOR OF DEFENSE PROCUREMENT

OFFICE OF FOREIGN CONTRACTING

UNCLASSIFIED FACSIMILE

Date: April 9, 1997
Number of Pages 3

TO: (b)(6)
FAX Number: (b)(2)
Office Number:

From: (b)(6)
Office Number: (b)(2)
FAX Number: (b)(2)

(b)(6)

Faxing Kaminski's waiver.

(b)(6)

DETERMINATION AND WAIVER

I hereby make, as Under Secretary of Defense (Acquisition and Technology),the following findings, determination, and waiver regarding the application of the restrictions of 10 U.S.C. 2534:

Findings

1. Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (d), as amended by section 810 of the FY 1997 National Defense Authorization Act, Public Law 104-201, authorizes the Secretary of Defense to waive the limitation in subsection (a) of 10 U.S.C 2534 if he determines that application of the limitation "would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531" of title 10, U.S. Code, and if he determines that that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

2. The Department of Defense has Memoranda of Understanding (MOUs) with the following countries: Australia, Austria, Belgium, Canada, Denmark, Egypt, Germany, Finland, France, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

3. Many of the MOU countries have advised that firms in their countries have the capability to produce, and would be interested in selling to DoD, some or all of the items presently restricted by 10 U.S.C. 2534.

4. We have received numerous complaints from MOU countries that domestic source limitations, such as those in 10 U.S.C.2534, do in fact impede the reciprocal procurement of defense items, whereas we have received fewer complaints from U.S. industry that the MOU countries limit procurement to their domestic sources. Over the years, U.S. industry has sold more in defense articles to the MOU countries than we have purchased from them. Continued application of these limitations results in ill will that redounds to the detriment of U.S. interests far in excess of any potential benefit to the U.S. industrial base.

5. I find that none of the MOU countries discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in those countries.

Determination

Under the authority of 10 U.S.C. 2534(d), I hereby determine that application of the limitation of 10 U.S.C 2534(a) would impede the reciprocal procurement of defense items under memoranda of understanding providing for reciprocal procurement of defense items.

Waiver

I hereby waive the limitation in 10 U.S.C 2534(a) with respect to the countries listed in paragraph 2 above.

(b)(6)

(b)(6)

APR 7 1997

Under Secretary of Defense
(Acquisition and Technology)

26. Section 252.236-7006 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (c) to read as follows:

252.236-7006 Cost Limitation.

* * * * *

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

* * * * *

252.239-7007 [Amended].

27. Section 252.239-7007 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (d)(1) by removing the word "certified".

252.247-7001 [Amended].

28. Section 252.247-7001 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (g) by removing the word "certification" and inserting the word "statement" in its place.

[FR Doc. 97-1036 Filed 1-16-97; 8:45 am]

BILLING CODE 5000-04-M

48 CFR Part 225

[DFARS Case 96-D030]

Defense Federal Acquisition Regulation Supplement; Metalworking Machinery—Trade Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the expiration of certain statutory restrictions on the acquisition of machine tools.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131. Telefax (703) 602-0350. Please cite DFARS Case 96-D030 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534 (a)(4)(B) restricted the acquisition of non-domestic machine tools in certain Federal Supply Classes for metalworking machinery. This restriction ceased to be effective on October 1, 1996. On November 15, 1996 (61 FR 58488), the DFARS was amended to remove language that implemented 10 U.S.C. 2534(a)(4)(B), at 225.7004, 252.225-7017, and 225.7040. This final rule makes a related amendment at DFARS 225.403-70. The rule removes the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534(a)(4)(B).

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96-D030 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

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

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

PART 225—FOREIGN ACQUISITION

225.403-70 [Amended]

2. Section 225.403-70 is amended by removing the entry "34 Metalworking machinery (except 3408, 3410-3419, 3426, 3433, 3441-3443, 3446, 3448, 3449, 3460, 3461)" and inserting in its place the entry "34 Metalworking machinery".

[FR Doc. 97-1040 Filed 1-6-97; 8:45 am]

BILLING CODE 5000-04-M

48 CFR Part 225

[DFARS Case 96-D319]

Defense Federal Acquisition Regulation Supplement; Authority To Waive Foreign Purchase Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 810 of the National Defense Authorization Act of Fiscal Year 1997 (Public Law 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D319 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, applicable to buses, chemical weapons antidote, air circuit breakers, ball and roller bearings, totally enclosed lifeboat survival systems, and anchor and mooring chain, if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding. However, this waiver authority will not be effective with regard to the additional restrictions on the acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems, contained in defense appropriations acts (and implemented at DFARS 225.7012, 225.7019, and 225.7022, respectively).

B. Regulatory Flexibility Act

This interim rule is not expected 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 there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems is presently restricted to domestic sources by defense

appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D319 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by 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 this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, and was effective upon enactment on September 23, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

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

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7005 is amended by revising paragraph (a)(3) to read as follows:

225.7005 Waiver of certain restrictions.

* * * * *

(a) * * *

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

* * * * *

3. Section 225.7019–3 is amended by revising paragraph (a)(1)(iv) to read as follows:

225.7019–3 Waiver.

(a) * * *

(1) * * *

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

[FR Doc. 97–1038 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Parts 225 and 252

[DFARS Case 96–D021]

Defense Federal Acquisition Regulation Supplement; Contingent Fees—Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to changes adopted in the Federal Acquisition Regulation (FAR), pertaining to elimination of requirements for Government review of a prospective contractor's contingent fee arrangements.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D021 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 225.73, 252.212–7001, and 252.225–7027 to conform to the FAR revisions published as Item I of Federal Acquisition Circular 90–40 (61 FR 39188, July 26, 1996), which removed requirements for prospective contractors to provide certain information to the Government regarding contingent fee arrangements. This interim rule makes the associated DFARS changes related to contingent fees under contracts for foreign military sales.

B. Regulatory Flexibility Act

This interim rule is not expected 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 rule removes requirements for contracting officer review of contingent fee arrangements under foreign military sales contracts, but does not change the policy pertaining to the allowability of contingent fees under these contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by 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 this interim rule prior to affording the public an opportunity to comment. This interim rule conforms the DFARS to changes already adopted in the FAR. Federal Acquisition Circular 90–40 (FAR Case 93–009) eliminated the clause at FAR 52.203–4, Contingent Fee Representation and Agreement; the

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND
TECHNOLOGY

January 17, 1997

DP(DAR)

In reply refer to
DFARS Case: 96-D319
D. L. 97-006

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Authority to Waive Foreign Purchase Restrictions

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.70, to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

for Roland G. Hasselbach
Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

JAN 23 1997

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Interim Rule

PART 225--FOREIGN ACQUISITION

* * * * *

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ~~PURCHASES~~ [ACQUISITION]
* * * * *

225.7005 Waiver of certain restrictions.

Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 may be waived as follows:

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

* * * * *

225.7019 Restrictions on ball and roller bearings.

* * * * *

225.7019-3 Waiver.

* * * * *

(a)(1)(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

Case Management Record

Discussion Handout

DFARS Case 96-D319	**Date** September 27, 1996	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Originator Code** L
Case Manager (b)(6)	**Case References**	
FAR Cites	**DFARS Cites** 225.7004-4(a)(3) & 225.7019-3(a)(4)	
Cognizant Committees International Acquisition Committee		
Coordination FC		
Recommendation Task IA Cmte. RD: 10/23/96		

This is a new case to implement Section 810 of the FY97 Defense Authorization Act (Public Law 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

Section 810 was effective upon enactment (September 23, 1996).

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(1) In consultation with the Secretary of the Treasury, an examination of the appropriate definition and treatment of compensation, including deferred compensation.

(2) An examination of the appropriate definition of senior executive positions and any other positions that should be covered under the cost allowability policy.

(3) An examination of how to apply the cost allowability policy to individual contracts and aggregations of contracts within a corporation.

(4) Any other matter related to the cost allowability of executive compensation that the Administrator considers appropriate.

(e) LEGISLATIVE PROPOSAL.—Not later than March 1, 1997, the President shall submit to Congress a legislative proposal incorporating the conclusions reached by the review conducted under subsection (d) and establishing a statutory Government standard on the cost allowability of executive compensation.

SEC. 810. EXCEPTION TO PROHIBITION ON PROCUREMENT OF FOREIGN GOODS.

Section 2534(d)(3) of title 10, United States Code, is amended by inserting "or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title," after "a foreign country,".

Subtitle B—Other Matters

SEC. 821. PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS UNDER FREEDOM OF INFORMATION ACT.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of the Department of Defense may not be made available to any person under section 552 of title 5.

"(2) Paragraph (1) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

"(3) In this subsection, the term 'proposal' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following new subsection:

"(m) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5, United States Code.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) **Ball bearings and roller bearings.**—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 1995. 2000

(d) **Waiver authority.**—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) **Sonobuoys.**—

(1) **Limitation.**—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) **Waiver authority.**—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) **Definition.**—In this subsection, the term "United States firm" has the meaning given such term in section 2532(d)(1) of this title.

(f) **Principle of construction with future laws.**—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

FEDERAL SUPPLY CLASSIFICATION (FSC)	NAME
3415	Grinding machines
3416	Lathes
3417	Milling machines
3418	Planers and shapers
3419	Miscellaneous machine tools
3426	Metal finishing equipment
3433	Gas welding, heat cutting, and metalizing equipment
3438	Miscellaneous welding equipment
3441	Bending and forming machines
3442	Hydraulic and pneumatic presses, power driven
3443	Mechanical presses, power driven
3445	Punching and shearing machines
3446	Forging machinery, and hammers
3448	Riveting machines
3449	Miscellaneous secondary metal forming and cutting machines
3460	Machine tool accessories
3461	Accessories for secondary metalworking machinery

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-5. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225-7040, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

(c) Valves restricted under this section are those powered and non-powered valves listed in Federal supply classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

225.7004-3 Exception.
This restriction does not apply if the acquisition is below the simplified acquisition threshold.

225.7004-4 Waiver.

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

225.7004-5 U.S. or Canadian origin.

(a) A valve or machine tool shall be considered to be of U.S. or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.

(b) The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

225.7004-6 Contract clauses.

(a) Unless an exception applies or a waiver has been granted, use the clause at 252.225-7017, Preference for United States and Canadian Valves and Machine Tools, in all solicitations and contracts for valves and machine tools.

(b) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

(c) Use the provision at 252.225-7040, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225-7017, except where—

225.7018-2 Waiver.

The restriction in 225.7018-1 may be waived on a case-by-case basis where the Secretary of the Military Department or the Under Secretary of Defense (Acquisition & Technology) certifies to the Committees on Appropriations of the House and Senate that—

(a) Adequate domestic supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7018-3 Contract clause.

Use the clause at 252.225-7033, Restriction on Acquisition of Four Ton Dolly Jacks, in solicitations and contracts that use fiscal year 1993 funds for the acquisition of four ton dolly jacks.

225.7019 Restriction on antifriction bearings.

225.7019-1 Restriction.

In accordance with 10 U.S.C. 2534, through fiscal year 1995, do not acquire antifriction bearings or bearing components which are not manufactured in the United States or Canada.

225.7019-2 Exceptions.

The restriction in 225.7019-1 does not apply to—

(a) Acquisitions below the simplified acquisition threshold;

(b) Purchases of commercial items incorporating antifriction bearings;

(c) Miniature and instrument ball bearings restricted under 225.71;

(d) Items acquired overseas for use overseas; or

(e) Antifriction bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement.

225.7019-3 Waiver.

The head of the contracting activity may waive the restriction in 225.7019-1—

(a) Upon execution of a determination and findings that—

(1) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(2) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(3) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(4) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(6) Application of the restriction is not in the national security interests of the United States; or

(7) Application of the restriction would adversely affect a U.S. company.

(b) For multiyear contracts or contracts exceeding 12 months, only if—

(1) The head of the contracting activity executes a determination and findings in accordance with paragraph (a) of this subsection;

(2) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(3) The plan—

(i) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(ii) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(iii) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(4) The contracting officer accepts the plan and incorporates it in the contract.

225.7019-4 Contract clause.

Use the clause at 252.225-7016, Restriction on Acquisition of Antifriction Bearings, in all solicitations and contracts, unless—

(a) An exception applies or a waiver has been granted; or

(b) The contracting officer knows that the items being acquired do not contain antifriction bearings.

225.7020 Restriction on coal and petroleum pitch carbon fiber.

225.7020-1 Restriction.

(a) Section 8040A of Pub. L. 102-172, and section 9040A of Pub. L. 102-396, require the Secretary of Defense to take such action as necessary to ensure by fiscal year 1994 that a minimum of 75 percent of the annual DoD requirements for coal and petroleum pitch carbon fibers is acquired from domestic sources.

(1) COMPONENTS FOR NAVAL VESSELS.—Subsection (a) does not apply to a procurement of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(2) VALVES AND MACHINE TOOLS.—(A) Contracts to which subsection (a) applies include the following contracts for the procurement of items described in paragraph (4) of such subsection:

(i) A contract for procurement of such an item for use in property under the control of the Department of Defense, including any Government-owned, contractor-operated facility.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) BALL BEARINGS AND ROLLER BEARINGS.—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 2000.

(4) VESSEL PROPELLERS.—Subsection (a)(3)(A)(iii) and this paragraph shall cease to be effective on February 10, 1998.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) DEFINITION.—In this subsection, the term "United States firm" has the meaning given such term in section 2532(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—(1) This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(2) Paragraph (1) does not apply to contracts for items described in subsection (a)(5) (relating to ball bearings and roller bearings), notwithstanding section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429).

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(3)(B), the Secretary of Defense—

(1) may not use contract clauses or certifications; and

(2) shall use management and oversight techniques that achieve the objective of the subsection without imposing a significant management burden on the Government or the contractor involved.

(Added as § 2400 P.L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1294; amended P.L. 100–180, §§ 124(a), (b)(1), 824(a), Dec. 4, 1987, 101 Stat. 1042, 1134; transferred, redesignated § 2502, and amended P.L. 100–370, § 3(b)(1), July 1988, 102 Stat. 855; redesignated § 2507 and amended P.L. 100–456, §§ 821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; amended P.L. 101–510,

§§ 835(a), 1421, Nov. 5, 1990, 104 Stat. 1614, 1682; P.L. 102–190, §§ 834, 835, Dec. 5, 1991, 105 Stat. 1447–1448; redesignated § 2534 and amended P.L. 102–484, §§ 831, 833(a), 1052(38), 4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; P.L. 103–160, § 904(d), Nov. 30, 1993, 107 Stat. 1728; P.L. 103–337, § 814, Oct. 5, 1994, 108 Stat. 2817; P.L. 103–355, § 4102(l), Oct. 13, 1994, 108 Stat. 3341; P.L. 104–106, §§ 806, 1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 512; P.L. 104–201, §§ 810, 1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659.)

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress (1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the Armed Forces in time of national emergency or in anticipation thereof; (2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible; (3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and (4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in this section, the Secretary is authorized and directed to—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the defense industrial reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term "Secretary" means Secretary of Defense.

(2) The term "Defense Industrial Reserve" means (A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use; (B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; (C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(3) The term "plant equipment package" means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added P.L. 102–484, § 4235, Oct. 23, 1992, 106 Stat. 2690 [transferred from sections 2, 3, and 4 of Defense Industrial Reserve Act (50 U.S.C. 452 et seq.)]; amended P.L. 103–35, § 201(c)(8), May 31, 1993, 107 Stat. 98; P.L. 103–337, § 379(a), Oct. 5, 1994, 108 Stat. 2737.)

§ 2536. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—(1) The Secretary concerned may waive the application of subsection (a) to a contract award if—

(A) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(1) In consultation with the Secretary of the Treasury, an examination of the appropriate definition and treatment of compensation, including deferred compensation.

(2) An examination of the appropriate definition of senior executive positions and any other positions that should be covered under the cost allowability policy.

(3) An examination of how to apply the cost allowability policy to individual contracts and aggregations of contracts within a corporation.

(4) Any other matter related to the cost allowability of executive compensation that the Administrator considers appropriate.

(e) LEGISLATIVE PROPOSAL.—Not later than March 1, 1997, the President shall submit to Congress a legislative proposal incorporating the conclusions reached by the review conducted under subsection (d) and establishing a statutory Government standard on the cost allowability of executive compensation.

SEC. 810. EXCEPTION TO PROHIBITION ON PROCUREMENT OF FOREIGN GOODS.

Section 2534(d)(3) of title 10, United States Code, is amended by inserting "or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title," after "a foreign country,".

Subtitle B—Other Matters

SEC. 821. PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS UNDER FREEDOM OF INFORMATION ACT.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of the Department of Defense may not be made available to any person under section 552 of title 5.

"(2) Paragraph (1) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

"(3) In this subsection, the term 'proposal' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following new subsection:

"(m) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5, United States Code.

November 14, 1997

(b)(6):

Please withdraw the final rule under DFARS Case 96-D319 from DAC 91-13. Due to anticipated changes under Section 811 of the Defense Authorization Act for FY 1998, we plan to close DFARS Case 96-D319 into new DFARS Case 97-D321, Waivers of Domestic Source Limitations.

(b)(6)

'PROVED DFARS COVERAG
TRANSMITTAL FORM (6/90)

CASE MANAGER: (b)(6) DATE: 9-29-97

DAR Case No: 96-D319 DAR Case Title: Authority to Waive Foreign Purchase Restrictions

DFARS Cite(s): 225.7010

Check One: Final ✓ Interim ____ Info ____

DAC Intro Item:
This final rule ~~is~~ The interim rule published as Item XVIII of DAC 91-12 is converted to a final rule with an amendment at DFARS 225.7010. The final rule differs from the interim rule in that it amends 225.7010 to correct the restriction and exception relation to the acquisition of chemical weapons antidote.

Public Comment:

____ (Interim Rule) Comments invited ____ day comment period.
____ (Interim/Final Rule) Does not have significant effect beyond internal operating procedures or significant cost or administrative impact on contractors.
✓ (Final Rule) Comments were requested on 6-24-97, 62 FR 34114.

Reg Flex:

____ (Interim/Final Rule) Does not apply. Rule does not constitute significant revision.
____ (Final Rule) Applies. A final RF analysis is attached.
✓ (Final rule) DoD certifies that final rule will not have significant economic impact because see attached

____ (Interim Rule) Applies. May have significant economic impact because ____

____ Initial RF analysis forwarded to SBA.
____ Initial RF analysis delayed because ____

____ but will be forwarded by ____.

____ (Interim Rule) Applies but not expected to have significant economic impact. No RF analysis

Paperwork Reduction:

✓ (Interim/Final Rule) No information collection requirements.
____ (Interim Rule) Applies. OMB approval requested.
____ (Final Rule) Applies. OMB approved. Control number ____.

Deviations:

✓ No

____ Yes. Deviation approval request attached.

Interim Rule:

____ Determination of Urgency attached

~~*DAC 91-12, Item XVIII*~~

~~This interim~~ rule is not ~~expected~~ 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~~ there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, totally enclosed lifeboat survival systems, and noncommercial ball and roller bearings is presently restricted to domestic sources by defense appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings

No public comments were received in response to the interim rule.

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Final Rule - Baseline is DAC 91-12.

PART 225—FOREIGN ACQUISITION

* * * * *

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72[)], do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless ~~the injector or component is~~ **[such items are]** manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

~~In accordance with 10 U.S.C. 2534(g) and 225.7005(a), t~~**[T]**he restriction of 225.7010-1 does not apply ~~to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity), if—~~

(1) **[If t]**~~T~~he acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(2) ~~The chemical weapons antidote contained in automatic injectors, or the components for such injectors,~~ **[To that portion of the requirement that exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity) and the items]** are manufactured in a qualifying country.

* * * * *

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND
TECHNOLOGY

August 28, 1997

DP/FC

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: DFARS 36-D319 - Authority to Waive Foreign Purchase Restrictions

I have reviewed the changes proposed by your staff to the interim rule on the subject waiver authority and concur with the changes as proposed for the final rule.

My point of contact for this matter is (b)(6), (b)(2).

Pete A. Bryan
Deputy Director, Defense
Procurement (Foreign Contracting)

FAX

TO: (b)(6) FAX NR. _____

PHONE NR. 697-9351

DATE: 8-27-97

3 Pages including this transmittal sheet

SUBJECT: 96-0319 Authority to Waive

MESSAGE:

1. Earlier coverage attached (Atch 1)
2. The coverage of the McCain amendment in DAC 91-12 is an interim rule (second one).
3. We are now considering converting the interim rule to a final rule. The draft final rule uses the revised interim rule in DAC 91-12 as the baseline (Atch 2).

FROM: (b)(6) Defense Acquisition Regulations Directorate, PDUSD(A&T)DP/DAR, (b)(2), FAX (b)(2) (b)(2).

PLEASE DELIVER IMMEDIATELY

of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is below the simplified acquisition threshold.

225.7007-4 Waiver.
The waiver criteria at 225.7004-4 also apply to this restriction.

225.7008 Restriction on research and development.

(a) Public Law 92-570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR Part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 Restriction on aircraft ejection seats.

(a) Do not use funds appropriated for DoD for FY1984 through 1989 to acquire aircraft ejection seats manufactured in a foreign nation if that foreign nation does not permit U.S. manufacturers to compete for its ejection seat requirements.

(b) This limitation applies only to ejection seats acquired for installation on aircraft produced or assembled in the United States.

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.
In accordance with 10 U.S.C. 2534, do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the injector or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.
This restriction does not apply if the acquisition is below the simplified acquisition threshold.

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Draft Final Rule - Baseline is DAC 91-12.

PART 225—FOREIGN ACQUISITION

* * * * *

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72[)], do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the ~~injector or component is~~ **[such items are]**[1] manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

~~In accordance with 10 U.S.C. 2534(g) and 225.7005(a), t~~**[T]**he restriction of 225.7010-1 does not apply ~~to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity),~~ [2]if—

(1) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(2) The ~~chemical weapons antidote contained in automatic injectors, or the components for such injectors,~~ **[quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity) and the items]** are manufactured in a qualifying country.

* * * * *

---

[1] The phrase "injector or component" is not the same as "chemical weapons antidote contained in automatic injectors, or the components for such injectors." We need to either repeat the whole thing, which is somewhat cumbersome, or just refer back to it.

[2] The exception for acquisitions below the simplified acquisition threshold is not subordinate to acquisition of amounts needed to maintain the U.S. defense mobilization base.

****
*** TX REPORT ***
****

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THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

JUL 7 1997

Honorable John F. Kerry
United States Senate
Washington, DC 20510

Dear John:

Thank you for your letter of April 29, 1997, regarding the waiver of the limitation in 10 U.S.C. 2534 signed by Under Secretary of Defense Paul Kaminski on April 7, 1997.

I appreciate your bringing to my attention that U.S. ship propellers may have not been sold to the governments of Great Britain or Sweden, and U.S. propeller castings have not been sold since 1990 or 1991. We are sending letters to those countries with a request for information on whether U.S. companies were permitted to compete for their propeller purchases.

Your letter refers to a DoD regulation promulgated in January this year that authorized waivers from 10 U.S.C.2534 on a case-by-case basis. I am enclosing a copy of the Determination and Waiver that was signed on April 7, and the newer regulation that was published on June 24 to implement the waiver.

Regarding your concern over the effect of the waiver on the LPD-17 program, the prime contract for the LPD-17 was awarded before the waiver was signed. The waiver applies only to new prime contracts awarded subsequent to the waiver.

We have memoranda of understanding on reciprocal defense procurement with the NATO countries and other allies. The balance of defense trade with those countries remains in our favor. Our decision to exercise the waiver of 10 U.S.C. 2534 for those countries was made after careful consideration. I believe that this waiver is in the best interest of the United States.

We are vigilant about the viability of the national technology and industrial base. We will restrict competition for particular procurements to domestic sources, under 10 U.S.C. 2304(c)(3), when that is necessary to maintain such sources in case of national emergency or to achieve industrial mobilization.

Sincerely,

Enclosure

U11825 /97

JOHN KERRY
MASSACHUSETTS

United States Senate

WASHINGTON, DC 20510

April 29, 1997

The Honorable William S. Cohen
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Cohen:

I am perplexed and concerned to learn that on April 7th Under Secretary Kaminski issued a blanket waiver to the domestic source requirement for Navy ship propellers and other items contained in 10 U.S.C. 2534. It was my understanding that the contracting authority would make the determination to waive the domestic source requirement on a *case-by-case* basis, in accord with a DoD regulation promulgated in January of this year (see attached).

It is also my understanding that the impetus behind this waiver is the desire by foreign manufacturers of MOU countries to compete on the LPD-17 program. Since the request for solicitations on the LPD-17 and the criteria for competition for that program were established in 1996, I would not interpret this waiver authority to be applicable to that program and would appreciate your confirmation of this interpretation.

Evidently, the Under Secretary concluded that these MOU countries do not discriminate against the procurement of the particular defense items cited in the waiver which are produced in the United States to a greater degree than the U.S. discriminates against defense items produced in those countries. Since U.S.--manufactured ship propellers have not been successfully sold to the governments of Sweden and Great Britain, both of which require substantial domestic content and offsets, I would appreciate your advising me of the nature of the data the Under Secretary used as a basis for his decision. (Note: Bird-Johnson Company's foundry was contracted to provide propeller castings in the 1990/1991 time frame when no domestic source in the United Kingdom was able to respond to the rigorous tolerance requirements of the Royal Navy on that particular propeller). Furthermore, Section 2534 limits to domestic sources the procurement of ship propellers greater than six feet, *including their castings*. Since Sweden does not have its own foundry capability for propellers of this size and typically subcontracts propeller castings to Poland, which is not an MOU country, I question the validity of this waiver with respect to Sweden for Navy ship propellers.

Another criterion for a waiver is that "United States producers of the item would not be jeopardized by competition from a foreign country." Before reaching a determination on whether this criterion has been satisfied in the use of ship propellers, it would appear prudent for DoD to consult the last remaining U.S. private manufacturer of ship propellers. Bird-Johnson Company advises there was no such consultation.

In closing, I support your authority to waive this domestic source procurement on a *case-by-case* basis when the waiver criteria are met and when a critical element of the defense industrial base of the United States will not be jeopardized. I do not believe this to be the case in this instance. I look forward to hearing from you soon regarding these issues with respect to this blanket waiver.

Sincerely,

John F. Kerry

Enclosure

ACQUISITION AND TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

January 17, 1997

DP(DAR)

In reply refer to
DFARS Case: 96-D319
D. L. 97-006

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Authority to Waive Foreign Purchase Restrictions

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.70, to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

for Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Interim Rule

PART 225–FOREIGN ACQUISITION

* * * * *

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ~~PURCHASES~~ [ACQUISITION]

* * * * *

225.7005 Waiver of certain restrictions.

Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 may be waived as follows:

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

* * * * *

225.7019 Restrictions on ball and roller bearings.

* * * * *

225.7019-3 Waiver.

* * * * *

(a)(1)(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

IM + SD [redacted] Suspense Route Sheet

DDP DK 5/7

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Visibility : UNRESTRICTED

Responsible Office : DDP

Action : Prepare Reply Sec Def

Action Officer : (b)(6)

oject : SENATOR KERRY'S LETTER RE [redacted] BLANKET WAIVER TO THE DOMESTIC SOURCE REQUIREMENT FOR NAVY SHIP PROPELLERS AND [redacted] OTHER ITEMS

scription : PROVIDE A COPY OF RESPON[redacted]NSE TO API/CAIR; COORD REPLY W/LA and GC

ion Officer Comments :

tus : 5/6 TO DDP

Due to DDP 5/16 - submit a 391 if you cannot meet the suspense - it has to be @ the Def by 5/20.

/ Words : KERRY
PROPELLERS
WAIVER
10 U.S.C. 2534

ginated from :

e U. S. Senate

JOH[redacted]N KERRY

e Received : 05/06/97

Date of D[redacted]Document : 04/29/97

Classification : Not applicable

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Sent To :

Final Addressee :

fice Level Assignment :

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Sub-Acti[redacted]ive Office

Suspense Officer

(b)(6)

P

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Congressional

	SECRETARY OF DEFENSE ROUTING SLIP	ACT COPY	INFO COPY
	SECRETARY OF DEFENSE		X
	DEPUTY SECRETARY OF DEFENSE		X
	THE SPECIAL ASSISTANT		
	EXECUTIVE SECRETARY		X
1	UNDER SEC FOR ACQUISITION & TECHNOLOGY	X	
	Director, Defense Research & Engineering		
	ATSD (NCB Defense Programs)		X
	UNDER SECRETARY FOR POLICY		
	ASD (International Security Affairs)		
	ASD (International Security Policy)		
	ASD (Special Operations/LIC)		
	ASD (Strategy & Requirements)		
	UNDER SECRETARY (COMPTROLLER)		
	Director, Program Analysis and Evaluation		
	UNDER SEC FOR PERSONNEL & READINESS		
	ASD (Force Management Policy)		
	ASD (Health Affairs)		
	ASD (Reserve Affairs)		
	ASD (C3I)		
	ASD (Legislative Affairs)		X
	ASD (Public Affairs)		
	GENERAL COUNSEL		
	INSPECTOR GENERAL		
	DIR, OPERATIONAL TEST & EVALUATION		
	DIR, ADMINISTRATION & MANAGEMENT		

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	SECRETARY OF THE ARMY		
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	CHAIRMAN, JOINT CHIEFS OF STAFF		
	Director, Joint Staff		
	BALLISTIC MISSILE DEFENSE ORGANIZATION		
	DEFENSE ADVANCED RESEARCH PROJECTS AGENCY		
	DEFENSE COMMISSARY AGENCY		
	DEFENSE CONTRACT AUDIT AGENCY		
	DEFENSE FINANCE & ACCOUNTING SERVICE		
	DEFENSE INFORMATION SYSTEMS AGENCY		
	DEFENSE INTELLIGENCE AGENCY		
	DEFENSE INVESTIGATIVE SERVICE		
	DEFENSE LEGAL SERVICES AGENCY		
	DEFENSE LOGISTICS AGENCY		
	DEFENSE SECURITY ASSISTANCE AGENCY		
	DEFENSE SPECIAL WEAPONS AGENCY		
	NATIONAL IMAGERY AND MAPPING AGENCY		
	NSA/CENTRAL SECURITY SERVICE		
	ON-SITE INSPECTION AGENCY		

TYPE OF ACTION REQUIRED

1	PREPARE REPLY FOR SEC OF DEF SIGNATURE		COMMENTS AND/OR RECOMMENDATIONS
	PREPARE REPLY FOR DEP SEC OF DEF SIGNATURE		INFORMATION AND RETENTION
	REPLY DIRECT *(Forward copy of reply to CCD, Room 3A948)*	X	COORDINATE REPLY WITH LA
	APPROPRIATE ACTION		

Remarks:

ACTION DUE DATE *(YYMMDD)*	ROUTING DATE *(YYMMDD)*	OSD CONTROL NUMBER	
970520	970506	U08147-97	

COORDINATION

OUSD(A&T)DP/FC

After COORDINATION Please call (b)(2) for Pick Up

Prepared by: (b)(6) /DP/FC / (b)(2) /970513

SUBJECT: Senator Kerry's Letter RE: BLANKET WAIVER TO THE DOMESTIC SOURCE REQUIREMENT FOR NAVY SHIP PROPELLERS AND OTHER ITEMS.

LA (b)(6) 5/16/97

GC _____

COMMENTS:

COORDINATION

OUSD(A&T)DP/FC

After COORDINATION Please call (b)(2) for Pick Up

Prepared by: (b)(6) /DP/FC / (b)(2) /970513

SUBJECT: Senator Kerry's Letter RE: BLANKET WAIVER TO THE DOMESTIC SOURCE REQUIREMENT FOR NAVY SHIP PROPELLERS AND OTHER ITEMS.

LA_____

GC_____ (b)(6) 6/4/97

COMMENTS:

AC 2177/7413-97 7/3

ACQUISITION AND TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

OFFICE OF THE SECRETARY OF DEFENSE

1997 JUL -2 PM 2:32

THE SPECIAL ASSISTANT TO SECDEF/DEPSECDEF HAS SEEN
8 JUL 1997

EXECUTIVE SUMMARY

MEMORANDUM FOR SECRETARY OF DEFENSE
~~DEPUTY SECRETARY OF DEFENSE~~

THROUGH: UNDER SECRETARY OF DEFENSE (ACQUISITION AND TECHNOLOGY)

FROM: DIRECTOR, DEFENSE PROCUREMENT
Prepared by: (b)(6) /FC/(b)(2) /970627

SUBJECT: Senator Kerry; Waiver of Restrictions -- ACTION

PURPOSE: To obtain your signature on a reply to Senator Kerry.

DISCUSSION:

- Senator John Kerry of Massachusetts has written to you at Tab B concerning domestic source limitations in 10 U.S.C.2534(a) and the waiver signed by Dr. Kaminski on April 7 under the authority of legislation sponsored last year by Senator McCain.

- The waiver removes limitations that impede the procurement of defense items under memoranda of understanding on reciprocal defense procurement. Senator Kerry thinks we should exercise the waiver case-by-case, taking into consideration the national technology and industrial base, rather than on a class basis.

- Similar letters were sent by Senators Cochran, Lott, and Kennedy. Ship propellers, one of the items covered by the waiver, are manufactured by Bird-Johnson, a company in Mississippi and Massachusetts.

COORDINATION: ASD(LA) and GC at Tab C.

RECOMMENDATION: Sign the attached reply to Senator Kerry at Tab A.

SECDEF DECISION:

WJC/NT Approved JUL 7 1997
_____ Disapproved
_____ Other

D11825 /97

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 06-May-1997 04:24pm
From: (b)(6)
Dept:
Tel No:

To: (b)(6)

Subject: Policy letter

(b)(6) At this time, there is no plan to do a policy letter on the McCain implementation in existing contracts. If the need arises, perhaps. FYI

(b)(6)

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 15-Apr-1997 03:35pm
From: (b)(6)
Dept:
Tel No:

To: (b)(6)
CC: (b)(6)

Subject: Interim Rule on Authority to Waive Freign Purchase Restrictions

This office has reviewed the draft rule on the subject topic and concur with the interim rule as drafted.

(b)(6)

FAX

TO: (b)(6) FAX NR. (b)(2)

PHONE NR. _____

DATE: 4-1-97

2 Pages including this transmittal sheet

SUBJECT: 96-D319

MESSAGE:

Response for (b)(6)

It would be helpful if future questions are in writing, to make sure we understand the question correctly.

FROM: (b)(6) Defense Acquisition Regulations Directorate, PDUSD(A&T)DP/DAR, (b)(2), FAX (b)(2) (b)(2).

PLEASE DELIVER

(b)(6)

Already get more questions than answers

(b)(6)

March 31, 1997

Subject: Authority to Waive Foreign Purchase Restrictions (96-D319)

The following question from Mr. Frank Greve, Nightrider Newspaper, was relayed to (b)(6) (DAR staff) by (b)(6) DoD Public Affairs.

QUESTION: Why does the summary of items for which the waiver authority of 10 U.S.C. 2534 is applicable (62 FR 2615) omit mention of vessel propellers with a diameter of six feet or more and other components of naval vessels listed at 10 U.S.C. 2534(a)(3)(B)?

ANSWER: Section 810 of the National Defense Authorization Act of Fiscal Year 1997 (Pub. L. 104-201) provided additional waiver authority for procurement of any items restricted under 10 U.S.C. 2534(a). The Background statement in the Federal Register notice for the interim rule under DFARS Case 96-D319 does not mention vessel propellers with a diameter of six feet or more, or other naval vessel components, because the notice is explaining how the interim DFARS rule implements Section 810, and therefore only mentions those aspects of the waiver authority applicable to DFARS.

Vessel propellers with a diameter of six feet or more and other components of naval vessels listed at 10 U.S.C. 2534(a)(3)(B) (other than totally enclosed lifeboats) are not restricted in the DFARS. Those restrictions are implemented by the Navy.

****
*** ACTIVITY REPORT ***
****

TRANSMISSION OK

TX/RX NO.	4689
CONNECTION TEL	(b)(2)
CONNECTION ID	
START TIME	04/01 14:41
USAGE TIME	01'19
PAGES	2
RESULT	OK

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND TECHNOLOGY

FEB 11, 1997

DP/FC

Colonel Johan G.C. Kiemeneij
Chairman, MOU Attaches Group
Royal Netherlands Embassy
Office of Defense Cooperation
4200 Linnean Avenue, NW
Washington, DC 20008

Dear Colonel Kiemeneij:

Thank you for your letter of January 24, 1997, concerning the interim rule issued on January 17 to implement the McCain Amendment.

Prior to issuing the interim rule, we asked the MOU attaches to identify items listed in 10 U.S.C. 2534 for which we should consider a class waiver. The group expressed support only for a blanket waiver, but did not provide data on particular items. It was difficult to justify a blanket waiver merely on the basis that memoranda of understanding (MOU) on reciprocal procurement were in place. However, we will consider all comments received prior to issuing a final rule. I am not opposed to issuing a class waiver for either particular items or all items covered by the statute provided we have adequate justification.

Thank you for bringing the views of your group to my personal attention. I hope the MOU countries now have time to do a more in-depth review and identify the items that foreign countries currently produce and would be interested in bidding on should the restriction be removed.

Sincerely,

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

OFFICE OF THE PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE (ACQUISITION AND TECHNOLOGY)
OFFICE DEPUTY DIRECTOR OF DEFENSE PROCUREMENT
(FOREIGN CONTRACTING)

UNCLASSIFIED FACSIMILE

Date: 3/18
Number of Pages 2

TO: (b)(6)
FAX Number: 62-0350
Office Number:

From: (b)(6)
Office Number: (b)(2)
FAX Number: (b)(2)

(b)(6) Attached is the letter we discussed. Could I get a copy of Col Kiemeneij's letter to you on the McCain amendment. (b)(6) would like to see.

Thanks. (b)(6)

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 03-Feb-1997 02:38pm
From: (b)(6)
Dept:
Tel No:

To: (b)(6)
CC: (b)(6)
CC: (b)(6)

Subject: DFARS Case 96-D319

(b)(6) As we discussed earlier, Pete and Ms. Spector met with some staffers who expressed concern that not all of the items restricted by 10.U.S.C.2534 were mentioned in the background section
of the Federal Register notice which addressed the new waiver authority (interim rule) under 10 U.S.C.2534. When preparing the final rule, it would be best if we just referred to "restrictions" imposed by 10 U.S.C. 2534 without going into specifics with regard to which items are covered. This will eliminate the need to deal with the numerous naval vessel components which are restricted but not addressed in the DFARS.

If you have any questions, please call me.

(b)(6)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND
TECHNOLOGY

December 30, 1996

DP(DAR)

In reply refer to
DFARS Case: 96-D319

Mr. Bruce McConnell
Chief, Information Policy and Technology Branch
Office of Information and Regulatory Affairs
Room 3235 NEOB
Washington, DC 20503

Dear Mr. McConnell:

We are preparing to publish an interim rule with request for public comment to amend language in the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

We are enclosing a courtesy copy of the DFARS language and would appreciate your clearance to proceed with publication.

Sincerely,

Linda W. Nelson
for D. S. Parry
Captain, SC, USN
Director, Defense Acquisition
Regulations Council

Enclosure

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND
TECHNOLOGY

December 5, 1996

DP/FC

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: DFARS Case 96-D319; Authority to Waiver Foreign Purchase Restrictions

On October 24, 1996, the International Acquisition (IA) committee submitted a proposed change to the DFARS to implement Section 810 of the FY 1997 Defense Authorization Act. Section 810 amends 10 U.S.C. Section 2534(d)(3) by expanding the waiver authority to include cases where the restriction would "impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 [of the Code]." The IA committee proposed revising 225.7005(3) as set forth in attachment (1) to this memorandum.

Based upon on-going discussions between the Department of Commerce and DoD regarding the need to consult on waivers issued pursuant to Section 810, my office advised the DARC to hold up publication of the proposed rule pending the outcome of these discussions. Resolution has not been obtained at this point and the Director, Defense Procurement has advised us to proceed with implementing Section 810 in the DFARS. Request that you proceed with this case utilizing the language drafted by the IA committee in attachment (1).

My point of contact for this matter is (b)(6) (b)(2).

Pete A. Bryan
Deputy Director, Defense
Procurement (Foreign Contracting)

25.7005 Waiver.

(a) (1)****

(2)****

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

****

(b)****

Attachment 1

FAX

TO: DAR Council FAX NR. _____

PHONE NR. _____

DATE: Oct 25, 1996

5 Pages including this transmittal sheet

SUBJECT: 96-D319, Authority to Waive

MESSAGE: The IA Committee has submitted the attached report. However, Foreign Contracting has asked us to delay action on the rule until various issues regarding implementation have been resolved with the Department of Commerce. So that we can proceed with implementation of DFARS Case 96-D023, Foreign Machine Tools and Powered and Non-powered Valves, I have modified the final rule under that case to incorporate the waiver provisions currently at 225.7004-4 in the new waiver section at 225.7005 and also changed the references at 225.7007-4, 225.7010-3, 225.7016-3, and 225.7022-3.

FROM: (b)(6) Defense Acquisition Regulations Directorate, PDUSD(A&T)DP/DAR, (b)(2), FAX (b)(2) (b)(2).

PLEASE DELIVER IMMEDIATELY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND
TECHNOLOGY

October 18, 1996

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: FY97 Authorization and Appropriations Acts

In response to your memorandum of October 15, 1996, my office is interested in the following DFARS cases:

1. DFARS Case 96-D319, which I understand has been assigned to the International Acquisition Committee.

2. DFARS Case 96-D333, which I understand has been assigned to the International Acquisition Committee.

3. DFARS Case 96-D331. My office has reviewed a draft proposed rule prepared by (b)(6) of your staff, and I have concurred with the draft rule as proposed.

My point of contact for these cases is (b)(6), (b)(2).

Pete Bryan
Pete A. Bryan
Deputy Director, Defense
Procurement (Foreign Contracting)

CASE MANAGEMENT RECORD

INFORMATION H/O

DFARS Case 96-D319	Date 16 OCT 1996	
Title AUTHORITY TO WAIVE FOREIGN PURCHASE RESTRICTIONS		
Priority 1	Submitted By N-1	Originator Code
Case Manager: (b)(6)	Case References:	
FAR Cites	DFARS Cites	
Cognizant Committees: INTERNATIONAL ACQUISITION		
Coordination		
Recommendation NONE -- FOR INFORMATION ONLY		

COPY OF NAVY TASKING REQUESTING PREPARATION OF A DRAFT INTERIM RULE TO IMPLEMENT SECTION 810 OF THE FY 1997 DEFENSE AUTHORIZATION ACT.

R/D: 23 OCT 1996

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

3 October 1996

MEMORANDUM FOR FRED BEER, CHAIR OF THE INTERNATIONAL ACQUISITION COMMITTEE

Subj: DFARS CASE 96-D319; AUTHORITY TO WAIVE FOREIGN PURCHASE RESTRICTIONS

Encl: (1) CMR dated Sept 27, 1996 with attachments

Enclosure (1) forwards a newly opened DAR Council case, DFARS Case 95-D319. The principal purpose of the case is to implement Section 810 of the FY 1997 Defense Authorization Act. Section 810 amends 10 U.S.C. Section 2534(d)(3) by providing an additional basis for waiving foreign purchase restrictions. Since the subject matter of this case is under the cognizance of the International Acquisition Committee, I am requesting that your committee review enclosure (1) and take action, as appropriate, to develop a draft interim DFARS rule to make any required DFARS changes.

The committee's recommendations are due to me by **Noon on Tuesday, 22 October 1996** and should be submitted as part of a Committee Report, consisting of:

(i) a brief statement explaining the problem/reason the report has been prepared;
(ii) the committee's recommendations;
(iii) a discussion of the analysis and rationale underlying the committee's recommendations; and
(iv) a discussion of collateral requirements, with detailed rationale, regarding the need to publish the proposed rule in the Federal Register for public comments and the applicability of the Regulatory Flexibility Act (RFA) and the Paperwork Reduction Act to the committee's proposed rule. **If the committee believes the RFA applies, the report should specifically include, to the extent the committee is able to do so, an estimate of the number or percentage of small businesses that may be impacted by the rule. Additionally, the report should identify alternative approaches the committee considered for implementing the statutory requirement and why the chosen approach is best. The latter information is particularly important.**

The committee should also submit the text of any changed portions of the DFARS that would result from its recommendations. If these changes are extensive, the changed text should be submitted both in hard copy and on a floppy disk in "Word" format (if possible). If the changes are not extensive (i.e., no more than a paragraph or two), a hard copy will suffice.

Please let me know if you have any questions regarding this tasking. Also please include the following legend on the bottom of at least the cover page of the committee's report: "DAR Council case file documents under open cases are generally considered pre-decisional and deliberative and may, if released, cause harm. Therefore, please do not release these documents outside your office, and refer any requests for such documents to the DAR Council staff."

Inasmuch as Section 810 was effective as of the date of enactment, the DAR Council is treating this case as a "Fast-Track" case. Accordingly, please make every reasonable effort to submit the committee report by the required due date.

Sid Tronic

Sidney A. Tronic
Navy Policy Representative
DAR Council

Case Management Record

Information Handout

DFARS Case 96-D319	**Date** November 19, 1997	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References**	
FAR Cites	**DFARS Cites** 225.872, 225.70, 252.225	
Cognizant Committees IA		
Coordination FC		
Recommendation Close case into 97-D321.		

We published a revised interim rule in DAC 91-12, to implement the waiver by USD(A&T) of the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country. No public comments were received. The DARC agreed to a final rule on 9/17/97.

Section 811 of the Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-56) limits the authority to waive the restrictions of 10 U.S.C. 2534(a) for contracts and subcontracts (and some options) entered into on or after the date of enactment (10-08-97). Therefore, we plan to close this case into DFARS Case 97-D321, Waivers of Domestic Source Limitations, which was initiated to implement Section 811.

NOV 19 1997

Case Management Record

Information Handout

DFARS Case 96-D319	**Date** November 19, 1997	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References**	
FAR Cites	**DFARS Cites** 225.872, 225.70, 252.225	
Cognizant Committees IA		
Coordination FC		
Recommendation Close case into 97-D321.		

We published a revised interim rule in DAC 91-12, to implement the waiver by USD(A&T) of the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country. No public comments were received. The DARC agreed to a final rule on 9/17/97.

Section 811 of the Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-56) limits the authority to waive the restrictions of 10 U.S.C. 2534(a) for contracts and subcontracts (and some options) entered into on or after the date of enactment (10-08-97). Therefore, we plan to close this case into DFARS Case 97-D321, Waivers of Domestic Source Limitations, which was initiated to implement Section 811.

NOV 19 1997

Official Case Record

Date: September 10, 1997	**DFARS Case**: 96-D319

Case Title: Authority to Waive Foreign Purchase Restrictions

Origination: L	**Sponsor:** N	**Committee:International Acquisition**

Case Manager: (b)(6)	**FAR/DFARS:** DFARS 225.7010
Statute: Pub. L. 104-201, Sec 810	**Statutory Date:**

Outside Interest (Circle): IG OFPP OMB DCAA GAO Industry Other Commerce

Coordination/Comments (Circle): DDP MPI CPA CPF DSPS **FC** GC Other _____

Action Scheduled Today: Discuss draft final rule prepared by case manager (TAB A), revising interim rule relating to restriction of chemical weapons antidote.

OSD Position: Concur with draft final. FC concurrence at TAB B.

Discussions/Actions Taken:

CAM Update: Agree to final rule, as drafted

Case Management Record

Clearance ~~Information~~ Handout

DFARS Case 96-D319	**Date** September 4, 1997	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References**	
FAR Cites	**DFARS Cites** 225.872, 225.70, 252.225	
Cognizant Committees IA		
Coordination FC		
Recommendation Discuss draft final rule at TAB A 9-10.		

We published a revised interim rule in DAC 91-12, to implement the waiver by USD(A&T) of the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country. We received no public comments on the revised interim rule. However, the coverage relating to chemical weapons antidote erroneously makes the acquisition of quantities in excess of the amount needed to maintain the defense industrial base a prerequisite for the exception for acquisitions below the simplified acquisition threshold. Neither the Industrial Preparedness Program (see 208.7204(a) nor 10 U.S.C. 2534 generally apply below the simplified acquisition threshold. Therefore, we recommend conversion to a final rule, with the attached changes to section 225.7010.

TAB A

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Draft Final Rule - Baseline is DAC 91-12.

PART 225—FOREIGN ACQUISITION

* * * * *

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72[)], do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless ~~the injector or component is~~ **[such items are]**[1] manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

~~In accordance with 10 U.S.C. 2534(g) and 225.7005(a), t~~**[T]**he restriction of 225.7010-1 does not apply ~~to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity),~~[2] ~~if—~~

(1) ~~The~~ If the acquisition is for an amount that does not exceed the simplified acquisition threshold; or To that portion of the requirement that

(2) The ~~chemical weapons antidote contained in automatic injectors, or the components for such injectors,~~ **[quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity) and the items]** are manufactured in a qualifying country.

* * * * *

---

[1] The phrase "injector or component" is not the same as "chemical weapons antidote contained in automatic injectors, or the components for such injectors." We need to either repeat the whole thing, which is somewhat cumbersome, or just refer back to it.

[2] The exception for acquisitions below the simplified acquisition threshold is not subordinate to acquisition of amounts needed to maintain the U.S. defense mobilization base.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND
TECHNOLOGY

August 28, 1997

DP/FC

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: DFARS 36-D319 - Authority to Waive Foreign Purchase Restrictions

I have reviewed the changes proposed by your staff to the interim rule on the subject waiver authority and concur with the changes as proposed for the final rule.

My point of contact for this matter is (b)(6), (b)(2).

Pete A. Bryan
Deputy Director, Defense
Procurement (Foreign Contracting)

TAB B

Case Management Record

Discussion
~~Information~~ Handout

DFARS Case 96-D319	**Date** September 4, 1997	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References**	
FAR Cites	**DFARS Cites** 225.872, 225.70, 252.225	
Cognizant Committees IA		
Coordination FC		
Recommendation Discuss draft final rule at TAB A (9/10)		

We published a revised interim rule in DAC 91-12, to implement the waiver by USD(A&T) of the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country. We received no public comments on the revised interim rule. However, the coverage relating to chemical weapons antidote erroneously makes the acquisition of quantities in excess of the amount needed to maintain the defense industrial base a prerequisite for the exception for acquisitions below the simplified acquisition threshold. Neither the Industrial Preparedness Program (see 208.7204(a) nor 10 U.S.C. 2534 generally apply below the simplified acquisition threshold. Therefore, we recommend conversion to a final rule, with the attached changes to section 225.7010,

SEP 04 1997

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Draft Final Rule - Baseline is DAC 91-12.

PART 225—FOREIGN ACQUISITION

* * * * *

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72[)], do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless ~~the injector or component is~~ **[such items are]**[1] manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

~~In accordance with 10 U.S.C. 2534(g) and 225.7005(a), t~~**[T]**he restriction of 225.7010-1 does not apply ~~to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity),~~ [2]if—

(1) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(2) The ~~chemical weapons antidote contained in automatic injectors, or the components for such injectors,~~ **[quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity) and the items]** are manufactured in a qualifying country.

* * * * *

---

[1] The phrase "injector or component" is not the same as "chemical weapons antidote contained in automatic injectors, or the components for such injectors." We need to either repeat the whole thing, which is somewhat cumbersome, or just refer back to it.

[2] The exception for acquisitions below the simplified acquisition threshold is not subordinate to acquisition of amounts needed to maintain the U.S. defense mobilization base.

Official Case Record

Date: April 17, 1997	**DFARS Case:** 96-D319

Case Title: Authority to Waive Foreign Purchase Restrictions

Origination: L	**Sponsor:** N	**Committee:International Acquisition**

Case Manager: (b)(6)	**FAR/DFARS:** DFARS 208.7203, 225.872, 225.70, 252.225-7016, 252.225-7029
Statute: Pub. L. 104-201, Sec 810	**Statutory Date:**

Outside Interest (Circle): IG OFPP OMB DCAA GAO Industry Other **Commerce**

Coordination/Comments (Circle): DDP MPI CPA CPF DSPS **FC** GC Other _____

Action Scheduled Today: Discuss revised draft interim rule prepared by case manager (CMR 4-11-97), implementing waiver of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country.

OSD Position: Concur with draft interim rule. Susan Hildner and Pete Bryan agreed with this draft in a meeting with the case manager on April 11, 1997.

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 13

To (b)(6)	From (b)(6)
Co.	Co.
Dept.	Phone #
Fax #	Fax #

Discussions/Actions Taken:

CAM Update: Agree to interim rule as edited

Case Management Record

Information Handout

DFARS Case 96-D319	**Date** April 11, 1997	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References** 96-D023	
FAR Cites	**DFARS Cites** 225.70	
Cognizant Committees IA		
Coordination FC		
Recommendation Discuss TAB A on April 17, 1997.		

USD(A&T) has waived the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in any qualifying country listed at DFARS 225.872-1, in accordance with the waiver authority at 10 U.S.C. 2534(d)(3). A copy of this waiver was provided on April 9, 1997. (The waiver of the BAA for IT when the Trade Agreements Act applies is still in process.)

The case manager, in cooperation with Foreign Contracting, has drafted a revised interim rule to implement this waiver. Because OSD would like to implement this waiver as soon as possible, we have added this case to the agenda for discussion on April 17, 1997. We request that each DAR Council policy member coordinate with the appropriate member of the International Acquisition Committee prior to that date.

Note that implementation is complicated by the existence of overlapping Appropriations Act restrictions and mobilization base restrictions. In addition, the waiver will require further implementation by the Navy for those naval vessel components not restricted in the DFARS.

APR 17 1997

DFARS Case 96-D319
Authority to Waive Foreign Purchase Restrictions
Draft Interim Rule

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

* * * * *

208.7203 Authority.
Authority under current contracting procedures to accomplish industrial planning actions includes—

(a) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947, 10 U.S.C. 2667;

(b) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3;

(c) Acquisition **[of items restricted]** under **[225.7010 and]** 225.71 ~~of—~~

~~(1) Miniature and instrument bearings;~~

~~(2) Precision components for mechanical time devices;~~

~~(3) High purity silicon;~~

~~(4) High-carbon ferrochrome;~~

~~(5) Anti-friction bearings; and~~

~~(6) Forgings and welded shipboard anchor chain;~~[1]

* * * * *

PART 225–FOREIGN ACQUISITION

225.000-70 Definitions.
As used in this part—

* * * * *

(i) "Qualifying country" is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872-1.

* * * * *

225.872 Contracting with qualifying country sources.

225.872-1 General.

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[1] Paragraphs (c)(1) through (c)(6) to be deleted under case 96-D010, to be published in DAC 91-12.

(a) As a result of memoranda of understanding and other international agreements, the DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in any of the following countries (referred to in this part as "qualifying countries")—

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest—

Austria
Finland
Sweden
Switzerland

(c) The determination in paragraph (a) of this subsection does not limit the authority of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source in instances where considered necessary for national defense reasons.

[(d) DoD has waived the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country listed in paragraphs (a) or (b) of this subsection, in accordance with the provisions of 10 U.S.C. 2534(d)(3) (see 225.7005(a)).]

225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except where restricted by—

(1) Provision of U.S. National Disclosure Policy (NDP), DODD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers—

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Assistant Secretary of Defense (Industrial Affairs);

(3) **[Other]** U.S. laws or regulations (e.g., the annual DoD Appropriations Act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

* * * * *

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

* * * * *

225.7005 Waiver of certain restrictions.

[(a) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in a qualifying country listed in subsection 225.872-1, in accordance with the provisions of 10 U.S.C. 2534(d)(3).

(b)] Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534**[(a)]** may be waived as follows:

(~~a~~**[1]**) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(~~1~~**[i]**) The restriction would cause unreasonable delays.

(~~2~~**[ii]**) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(~~3~~**[iii]**) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country ~~or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872~~, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4**[iv]**) Satisfactory quality items manufactured in the United States or Canada are not available.

(~~5~~[v]) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(~~6~~[vi]) Application of the restriction is not in the national security interests of the United States.

(~~7~~[vii]) Application of the restriction would adversely affect a U.S. company.

(~~b~~[2]) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

* * * * *

225.7007 Restriction on acquisition of foreign buses.

225.7007-1 Restriction.

In accordance with 10 U.S.C. 2534 **and 225.7005(a)]**, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or ~~Canada~~**[a qualifying country]**.

225.7007-2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7007-3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured ~~outside the United States and Canada~~ **[in nonqualifying countries]** are needed for temporary use because buses manufactured in the United States or ~~Canada~~**[a qualifying country]** are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or ~~Canada~~**[a qualifying country]**.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured ~~outside the United States and~~ ~~Canada~~**[in nonqualifying countries]** may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured ~~outside the United States and Canada~~**[in nonqualifying countries]** are available at no cost to the U.S. Government.

(d) The acquisition is below the simplified acquisition threshold.

225.7007-4 Waiver.

The waiver criteria at 225.7005**[(b)]** also apply to this restriction.

* * * * *

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 **[and FAR 6.302-3(a)(i)]**, do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the injector or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the Industrial Preparedness Program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

[(a)] This restriction does not apply if the acquisition is below the simplified acquisition threshold.

[(b) In accordance with 225.7005(a), the restriction of 10 U.S.C. 2534(a) has been wiaved for defense items manufactured in qualifying countries. Therefore, when the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity), the restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.]

225.7010-3 Waiver.

The waiver criteria at 225.7005**[(b)]** also apply to this restriction.

* * * * *

225.7012 Restrictions on anchor and mooring chain.

225.7012-1 Restrictions.

(a) Under Pub. L. 101-511, Section 8041, and similar sections in subsequent Defense appropriations acts, DoD appropriations for fiscal years 1991 and after may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) Acquisition of welded shipboard anchor and mooring chain, four inches in diameter and under, when used as a component of a naval vessel, is also restricted under 10 U.S.C. 2534(a)(3)(ii). However, the more stringent restriction under 225.7012-1(a) takes precedence.

225.7012-2 Waiver.

The restriction in 225.7012-1(a) may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(a) Document the waiver in a written D&F containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(b) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

225.7012-3 Contract clause.
Use the clause at 252.225-7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(a) Using fiscal year 1991 or later funds; and

(b) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

* * * * *

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.
In accordance with 10 U.S.C. 2534 **[and 225.7005-(a)]**, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or ~~Canada~~**[a qualifying country]**.

225.7016-2 Exceptions.
This restriction does not apply if—

(a) The acquisition is below the simplified acquisition threshold; or

(b) Spares and repair parts are needed to support air circuit breakers manufactured ~~outside the United States or Canada~~**[in a nonqualifying country]**. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7016-3 Waiver.
The waiver criteria at 225.7005**[(b)]** also apply to this restriction.

225.7016-4 Contract clause.
Use the clause at 252.225-7029, Preference for United States or Canadian Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016-2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016-3.

* * * * *

225.7019 Restrictions on ball and roller bearings.

225.7019-1 Restrictions.

(a) In accordance with 10 U.S.C. 2534 **[and 225.7005(b)]**, through fiscal year 2000, do not acquire ball and roller bearings or bearing components which are not manufactured in the United States or ~~Canada~~**[a qualifying country]**.

(b) In accordance with Section 8099 of Pub. L. 104-61 and similar sections in subsequent Defense appropriations acts, do not use fiscal year 1996 or subsequently appropriated funds to acquire ball and roller bearings other than those produced by a domestic source and of domestic origin, i.e., bearings and bearing components manufactured in the United States or Canada.

225.7019-2 Exceptions.

(a) The restriction in 225.7019-1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Purchases of commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings when necessary to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7019-1(b) does not apply to contracts for acquisition of commercial items or subcontracts for acquisition of commercial items or commercial components (see 212.503(a)(xi) and 212.504(a)(xxvi)).

225.7019-3 Waiver.

(a) The head of the contracting activity may waive the restriction in 225.7019-1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization

base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country ~~or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872~~, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(v) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(vi) Application of the restriction is not in the national security interests of the United States; or

(vii) Application of the restriction would adversely affect a U.S. company.

(2) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, only if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (a) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the plan and incorporates it in the contract.

(3) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(b) The Secretary of the department responsible for the acquisition may waive the restriction in 225.7019-1(b) on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

225.7019-4 Contract clause.

Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in all solicitations and contracts, unless—

(a) The restrictions in 225.7019-1 do not apply or a waiver has been granted; or

(b) The contracting officer knows that the items being acquired do not contain ball or roller bearings.

* * * * *

225.7022 Restrictions on totally enclosed lifeboat survival systems.

225.7022-1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a)(3)(B) **[and 225.7005(a)]**, do not purchase a totally enclosed lifeboat which is a component of a naval vessel, unless it is manufactured in the United States or ~~Canada~~**[a qualifying country]**. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor involved.

225.7022-2 Exceptions.

The restriction in 225.7022-1(b) does not apply if—

(a) The acquisition is at or below the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured outside the United States or ~~Canada~~**[a qualifying country]**.

225.7022-3 Waiver.

The waiver criteria at 225.7005**[(b)]** apply only to the restriction of 225.7022-1(b).

225.7022-4 Contract clause.
Use the clause at 252.225-7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in all solicitations and contracts which require delivery of totally enclosed lifeboat survival systems.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.
As prescribed in 225.7019-4, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (~~SEP 1996~~ OCT)

(a) *Definitions.*
As used in this clause—

(1) "Bearing components" means the bearing element, retainer, inner race, or outer race.

(2) "Miniature and instrument ball bearings" means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that**[, except as provided in paragraph (c),]** all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)**[(1)]** The restriction in paragraph (b) of this clause does not apply to the extent that**[**—

(i) T]the end items or components containing ball or roller bearings are commercial items**[; or (ii) The ball or roller bearings are commercial items manufactured in a qualifying country]**.

[(2)] The commercial item exception **[in paragraph (c)(1) of this clause]** does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019-3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

* * * * *

252.225-7029 Preference for United States or Canadian Air Circuit Breakers.
As prescribed in 225.7016-4, use the following clause:

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (~~APR 1995~~ DATE)

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States or ~~Canada~~**[a qualifying country listed under Defense Federal Acquisition Regulation Supplement (DFARS) 225.872-1]**.

(b) Unless an exception applies or a waiver is granted under ~~225.7016-3(a)~~ **[225.7005(b)(1)]** of the ~~Defense Federal Acquisition Regulation Supplement~~**[DFARS]**, preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent **[for evaluation purposes]** to the offered price of all other air circuit breakers**[, except air circuit breakers manufactured in a qualifying country]** ~~for evaluation purposes~~.

(End of clause)

Case Management Record

Information Handout

DFARS Case 96-D319	**Date** April 9, 1997	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References** 96-D023	
FAR Cites	**DFARS Cites** 225.70	
Cognizant Committees IA		
Coordination FC		
Recommendation		

USD(A&T) has waived the restrictions of 10 U.S.C. 2534(a) for acquisition of defense items manufactured in any qualifying country listed at DFARS 225.872-1, in accordance with the waiver authority at 10 U.S.C. 2534(d)(3).

DETERMINATION AND WAIVER

I hereby make, as Under Secretary of Defense (Acquisition and Technology),the following findings, determination, and waiver regarding the application of the restrictions of 10 U.S.C. 2534:

Findings

1. Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (d), as amended by section 810 of the FY 1997 National Defense Authorization Act, Public Law 104-201, authorizes the Secretary of Defense to waive the limitation in subsection (a) of 10 U.S.C 2534 if he determines that application of the limitation "would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531" of title 10, U.S. Code, and if he determines that that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

2. The Department of Defense has Memoranda of Understanding (MOUs) with the following countries: Australia, Austria, Belgium, Canada, Denmark, Egypt, Germany, Finland, France, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

3. Many of the MOU countries have advised that firms in their countries have the capability to produce, and would be interested in selling to DoD, some or all of the items presently restricted by 10 U.S.C. 2534.

4. We have received numerous complaints from MOU countries that domestic source limitations, such as those in 10 U.S.C.2534, do in fact impede the reciprocal procurement of defense items, whereas we have received fewer complaints from U.S. industry that the MOU countries limit procurement to their domestic sources. Over the years, U.S. industry has sold more in defense articles to the MOU countries than we have purchased from them. Continued application of these limitations results in ill will that redounds to the detriment of U.S. interests far in excess of any potential benefit to the U.S. industrial base.

5. I find that none of the MOU countries discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in those countries.

Determination

Under the authority of 10 U.S.C. 2534(d), I hereby determine that application of the limitation of 10 U.S.C 2534(a) would impede the reciprocal procurement of defense items under memoranda of understanding providing for reciprocal procurement of defense items.

Waiver

I hereby waive the limitation in 10 U.S.C 2534(a) with respect to the countries listed in paragraph 2 above.

(b)(6)

(b)(6)

APR 7 1997

Under Secretary of Defense
(Acquisition and Technology)

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term "goods which are other than American goods" means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added as § 2501 P.L. 100-370, § 3(a)(1), July 19, 1988, 102 Stat. 855; redesignated § 2506 P.L. 100-456, § 821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; redesignated § 2533 P.L. 102-484, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; amended P.L. 103-337, § 812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; P.L. 104-106, § 4321(b)(20), Feb. 10, 1996, 110 Stat. 673.)

§ 2534. Miscellaneous limitations on the procurement of goods other than United States goods[6]

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

[6] Section 832 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102-190, 105 Stat. 1446; 10 U.S.C. 113 note) provides:

SEC. 832. REQUIREMENTS RELATING TO EUROPEAN MILITARY PROCUREMENT PRACTICES.

(a) EUROPEAN PROCUREMENT PRACTICES.—The Secretary of Defense shall—

(1) compute the total value of American-made military goods and services procured each year by European governments or companies;

(2) review defense procurement practices of European governments to determine what factors are considered in the selection of contractors and to determine whether American firms are discriminated against in the selection of contractors for purchases by such governments of military goods and services; and

(3) establish a procedure for discussion with European governments about defense contract awards made by them that American firms believe were awarded unfairly.

(b) DEFENSE TRADE AND COOPERATION WORKING GROUP.—The Secretary of Defense shall establish a defense trade and cooperation working group. The purpose of the group is to evaluate the impact of, and formulate United States positions on, European initiatives that affect United States defense trade, cooperation, and technology security. In carrying out the responsibilities of the working group, members of the group shall consult, as appropriate, with personnel in the Departments of State and Commerce and in the Office of the United States Trade Representative.

(c) [omitted]

(2) CHEMICAL WEAPONS ANTIDOTE.—Chemical weapons antidote contained in automatic injectors (and components for such injectors).

(3) COMPONENTS FOR NAVAL VESSELS.—(A) The following components:

(i) Air circuit breakers.

(ii) Welded shipboard anchor and mooring chain with a diameter of four inches or less.

(iii) Vessel propellers with a diameter of six feet or more.

(B) The following components of vessels, to the extent they are unique to marine applications: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, and totally enclosed lifeboats.

(4) VALVES AND MACHINE TOOLS.—Items in the following categories:

(A) Powered and non-powered valves in Federal Supply Classes 4810 and 4820 used in piping for naval surface ships and submarines.

(B) Machine tools in the Federal Supply Classes for metal-working machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(5) BALL BEARINGS AND ROLLER BEARINGS.—Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

(1) GENERAL REQUIREMENT.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) MANUFACTURERS OF CHEMICAL WEAPONS ANTIDOTE.—In the case of a procurement of chemical weapons antidote referred to in subsection (a)(2), a manufacturer meets the requirements of this subsection only if the manufacturer—

(A) meets the requirement set forth in paragraph (1);

(B) is an existing producer under the industrial preparedness program at the time the contract is awarded;

(C) has received all required regulatory approvals; and

(D) when the contract for the procurement is awarded, has in existence in the national technology and industrial base the plant, equipment, and personnel necessary to perform the contract.

(3) MANUFACTURER OF VESSEL PROPELLERS.—In the case of a procurement of vessel propellers referred to in subsection (a)(3)(A)(ii), the manufacturer of the propellers meets the requirements of this subsection only if—

(A) the manufacturer meets the requirements set forth in paragraph (1); and

(B) all castings incorporated into such propellers are poured and finished in the United States.

(c) APPLICABILITY TO CERTAIN ITEMS.—

Official Case Record

Date: December 11, 1996	**DFARS Case**: 96-D319	
Case Title: Authority to Waive Foreign Purchase Restrictions		
Origination: L	**Sponsor:** N	**Committee:International Acquisition**
Case Manager: (b)(6)	**FAR/DFARS:** DFARS 225.7005(a)(3) and 225.7019(a)(1)(iv)	
Statute: Pub. L. 104-201, Sec 810	**Statutory Date:**	

Outside Interest (Circle): IG OFPP OMB DCAA GAO Industry Other **Commerce**

Coordination/Comments (Circle): DDP MPI CPA CPF DSPS **FC** GC Other _____

Action Scheduled Today: Discuss draft interim rule prepared by case manager (CMR 12-6-96). Language is the same as proposed by IA Committee, but uses new baseline of D.L. 96-019 (November 15, 1996), which issued final rules under DFARS Cases 96-D023 and 96-D331.

OSD Position: Concur with draft interim rule.

Discussions/Actions Taken:

CAM Update: Agree to interim rule

Case Management Record

Discussion Handout

DFARS Case 96-D319	**Date** December 6, 1996	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References** 96-D023	
FAR Cites	**DFARS Cites** 225.70	
Cognizant Committees IA		
Coordination FC		
Recommendation Discuss draft at TAB A _____.		

Foreign Contracting has requested that we now take action on the draft interim rule until the various issues regarding implementation have been resolved with the Department of Commerce (TAB B).

DFARS Case 96-D023, Foreign Machine Tools and Powered and Non-Powered Valves, was modified to incorporate the waiver provisions currently at 225.7004-4 in the new waiver section at 225.7005 and also changed the references at 225.7007-4, 225.7010-3, 225.7016-3, and 225.7022-3.

DFARS Case 96-D319
Draft Interim Rule

PART 225--FOREIGN ACQUISITION

* * * * *

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ~~PURCHASES~~ ACQUISITION

* * * * *

225.7005 Waiver of Certain Restrictions.

Where provided for elsewhere in this Subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 may be waived as follows:

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

* * * * *

225.7019 Restrictions on ball and roller bearings.

TAB A

* * * * *

225.7019-3 Waiver.

* * * * *

(a)(1)(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country **[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]**, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND TECHNOLOGY

December 5, 1996

DP/FC

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: DFARS Case 96-D319; Authority to Waiver Foreign Purchase Restrictions

On October 24, 1996, the International Acquisition (IA) committee submitted a proposed change to the DFARS to implement Section 810 of the FY 1997 Defense Authorization Act. Section 810 amends 10 U.S.C. Section 2534(d)(3) by expanding the waiver authority to include cases where the restriction would "impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 [of the Code]." The IA committee proposed revising 225.7005(3) as set forth in attachment (1) to this memorandum.

Based upon on-going discussions between the Department of Commerce and DoD regarding the need to consult on waivers issued pursuant to Section 810, my office advised the DARC to hold up publication of the proposed rule pending the outcome of these discussions. Resolution has not been obtained at this point and the Director, Defense Procurement has advised us to proceed with implementing Section 810 in the DFARS. Request that you proceed with this case utilizing the language drafted by the IA committee in attachment (1).

My point of contact for this matter is (b)(6) (b)(2).

Pete A. Bryan
Deputy Director, Defense
Procurement (Foreign Contracting)

Post-It™ brand fax transmittal memo 7671 | # of pages ▸ 2

To (b)(6)	From (b)(6)
Co.	Co.
Dept.	Phone #
Fax # (b)(2)	Fax #

TAB B

25.7005 Waiver.

(a) (1)****

(2)****

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country [**or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872**], and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

****

(b)****

Attachment 1

INFO

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND TECHNOLOGY

November 15, 1996

DP(DAR)

In reply refer to
DFARS Cases: 96-D023/96-D331
D. L. 96-019

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Foreign Machine Tools, Powered and Non-Powered Valves, and Ball and Roller Bearings

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the expiration on October 1, 1996, of the restriction on machine tools and powered and non-powered valves at 10 U.S.C 2534 and to implement Section 8082 of the Fiscal Year 1997 Defense Appropriations Act (Public Law 104-208). Section 8082 extends applicability of the fiscal year 1996 restriction on procurement of foreign ball and roller bearings to acquisitions using fiscal year 1997 funds.

The attached final DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

NOV 20 1996

DFARS Case 96-D023,
Foreign Machine Tools and Powered and Non-Powered Valves
Final Rule

DFARS Case 96-D331,
Ball and Roller Bearings
Final Rule

PART 212--ACQUISITION OF COMMERCIAL ITEMS

* * * * *

SUBPART 212.5--APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS

* * * * *

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

* * * * *

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xix) ~~10 U.S.C. 2534(c), Preference for United States and Canadian Valves and Machine Tools~~**[Reserved]**.

(xx) ~~10 U.S.C. 2534(d), Restriction on Acquisition of Carbonyl Iron Powder~~**[Reserved]**.

(xxi) ~~10 U.S.C. 2534(e), Restriction on Acquisition of Air Circuit Breakers~~**[Reserved]**.

* * * * *

PART 225--FOREIGN ACQUISITION

* * * * *

SUBPART 225.70--AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

* * * * *

225.7004 ~~Restriction on machine tools and powered and non-powered valves~~[Reserved].

~~225.7004-1 Restriction.~~
~~In accordance with 10 U.S.C. 2534, through fiscal year 1996, do not acquire, either directly as end items or indirectly on behalf of the Government, the machine tools or powered and non-powered valves in 225.7004-2 unless they are of U.S. or Canadian origin.~~

225.7004-2 Applicability.

(a) Machine tools restricted under this section are those tools listed in Federal supply classes of metalworking machinery in the following categories:

FEDERAL SUPPLY CLASSIFICATION (FSC)	NAME
3405	Saw and filing machines
3408	Machine centers and way type machines
3410	Electrical and ultrasonic erosion machines
3411	Boring machines
3412	Broaching machines
3413	Drilling and tapping machines
3414	Gear cutting and finishing machines
3415	Grinding machines
3416	Lathes
3417	Milling machines
3418	Planers and shapers
3419	Miscellaneous machine tools
3426	Metal finishing equipment
3433	Gas welding, heat cutting, and metalizing equipment
3438	Miscellaneous welding equipment
3441	Bending and forming machines
3442	Hydraulic and pneumatic presses, power driven
3443	Mechanical presses, power driven
3445	Punching and shearing machines
3446	Forging machinery, and hammers
3448	Riveting machines
3449	Miscellaneous secondary metal forming and cutting machines
3460	Machine tool accessories
3461	Accessories for secondary metalworking machinery

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-5. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225-7040, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

(c) Valves restricted under this section are those powered and non-powered valves listed in Federal supply classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

225.7004-3 Exception.
This restriction does not apply if the acquisition is below the simplified acquisition threshold.

225.7004-4 Waiver.

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

225.7004-5 U.S. or Canadian origin.

(a) A valve or machine tool shall be considered to be of U.S. or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.

(b) The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

225.7004-6 Contract clauses.

(a) Unless an exception applies or a waiver has been granted, use the clause at 252.225-7017, Preference for United States and Canadian Valves and Machine Tools, in all solicitations and contracts for valves and machine tools.

(b) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

(c) Use the provision at 252.225-7040, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225-7017, except where—

~~(1) All machine tool accessories are listed as separate line items; and~~

~~(2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.~~

* * * * *

225.7005 ~~Reserved.~~[Waiver of certain restrictions.
Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 may be waived as follows:

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

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

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.]

* * * * *

225.7007 Restriction on acquisition of foreign buses.

* * * * *

225.7007-4 Waiver.
The waiver criteria at 225.~~7004-4~~[7005] ~~also~~ apply to this restriction.

* * * * *

225.7010 Restriction on certain chemical weapons antidote.

* * * * *

225.7010-3 Waiver.
The waiver criteria at 225.~~7004-4~~**[7005]** ~~also~~ apply to this restriction.

* * * * *

225.7016 Restriction on air circuit breakers for naval vessels.

* * * * *

225.7016-3 Waiver.
The waiver criteria at 225.~~7004-4~~**[7005]** ~~also~~ apply to this restriction.

* * * * *

225.7019 Restrictions on ball and roller bearings.

225.7019-1 Restrictions.

(a) In accordance with 10 U.S.C. 2534, through fiscal year 2000, do not acquire ball and roller bearings or bearing components which are not manufactured in the United States or Canada.

(b) In accordance with Section 8099 of Pub. L. 104-61 **[and similar sections in subsequent Defense appropriations acts]**, do not use fiscal year 1996 **[or subsequently appropriated]** funds to acquire ball and roller bearings other than those produced by a domestic source and of domestic origin, i.e., bearings and bearing components manufactured in the United States or Canada.

* * * * *

225.7022 Restrictions on totally enclosed lifeboat survival systems.

* * * * *

225.7022-3 Waiver.
The waiver criteria at 225.~~7004-4~~ **[7005]** apply only to the restriction of 225.7022-1(b).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.
As prescribed in 212.301(f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (~~NOV 1995~~**[NOV 1996]**)

(a) * * *

(b) The Contractor agrees to comply with any clause that is checked on the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items or components.

* * * * *

~~252.225-7017 Preference for United States and Canadian Valves and Machine Tools (10 U.S.C. 2534(c)(2)).~~

* * * * *

252.225-7017 ~~Preference for United States and Canadian Valves and Machine Tools~~[Reserved].

~~As prescribed in 225.7004-6(a), use the following clause:~~

~~PREFERENCE FOR UNITED STATES AND CANADIAN VALVES AND MACHINE TOOLS (APR 1995)~~

~~(a) For the purpose of this clause, a valve, machine tool, or machine tool accessory is considered to be of United States or Canadian origin if—~~

~~(1) It is manufactured in the United States or Canada; and~~

~~(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).~~

~~(b) Unless otherwise specified in its offer, the Contractor agrees that valves used in piping for naval surface ships and submarines within Federal supply classifications 4810 (valves, powered) and 4820 (valves, non-powered), machine tools within the Federal supply classifications for metalworking machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448 and 3449, and machine tool accessories numbered 3460 and 3461 delivered as end items or purchased indirectly on behalf of the Government under this contract shall be of United States or Canadian origin.~~

~~(c) Unless an exception applies or a waiver is granted under 225.7004-4(a) of the Defense Federal Acquisition Regulation Supplement, preference will be given to valves and~~

machine tools of United States or Canadian origin by adding 50 percent to the offered price of all other valves and machine tools for evaluation purposes.

(End of clause)

* * * * *

252.225-7040 Machine Tool List.
As prescribed in 225.7004-6(c), use the following provision:

MACHINE TOOL LIST (MAY 1995)

The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian origin, as defined in the Preference for United States and Canadian Valves and Machine Tools clause of this solicitation, indicate the country in which the accessory was manufactured and the cost of the accessory.

Line Item No.	Accessory	Country of Manufacture	Cost

(End of provision)

* * * * *

(1) In consultation with the Secretary of the Treasury, an examination of the appropriate definition and treatment of compensation, including deferred compensation.

(2) An examination of the appropriate definition of senior executive positions and any other positions that should be covered under the cost allowability policy.

(3) An examination of how to apply the cost allowability policy to individual contracts and aggregations of contracts within a corporation.

(4) Any other matter related to the cost allowability of executive compensation that the Administrator considers appropriate.

(e) LEGISLATIVE PROPOSAL.—Not later than March 1, 1997, the President shall submit to Congress a legislative proposal incorporating the conclusions reached by the review conducted under subsection (d) and establishing a statutory Government standard on the cost allowability of executive compensation.

SEC. 810. EXCEPTION TO PROHIBITION ON PROCUREMENT OF FOREIGN GOODS.

Section 2534(d)(3) of title 10, United States Code, is amended by inserting "or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title," after "a foreign country,".

Subtitle B—Other Matters

SEC. 821. PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS UNDER FREEDOM OF INFORMATION ACT.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of the Department of Defense may not be made available to any person under section 552 of title 5.

"(2) Paragraph (1) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

"(3) In this subsection, the term 'proposal' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following new subsection:

"(m) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5, United States Code.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) **Ball bearings and roller bearings.**—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 1996.

(d) **Waiver authority.**—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) **Sonobuoys.**—

(1) **Limitation.**—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) **Waiver authority.**—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) **Definition.**—In this subsection, the term "United States firm" has the meaning given such term in section 2532(d)(1) of this title.

(f) **Principle of construction with future laws.**—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

Case Management Record

Discussion Handout

DFARS Case 96-D319	**Date** October 30, 1996	
Title Authority to Waive Foreign Purchase Restrictions		
Priority 1	**Submitted By** (b)(6)	**Origination Code** L
Case Manager (b)(6)	**Case References** 96-D023	
FAR Cites	**DFARS Cites** 225.70	
Cognizant Committees IA		
Coordination FC		
Recommendation Delay action on the draft interim rule.		

Foreign Contracting has requested that we delay action on the draft interim rule until the various issues regarding implementation have been resolved with the Department of Commerce.

So that we can proceed with implementation of DFARS Case 96-D023, Foreign Machine Tools and Powered and Non-Powered Valves, I have modified the final rule under that case to incorporate the waiver provisions currently at 225.7004-4 in the new waiver section at 225.7005 and also changed the references at 225.7007-4, 225.7010-3, 225.7016-3, and 225.7022-3.

OCT 30 1996

CASE MANAGEMENT RECORD

DISCUSSION H/O

DFARS Case 96-D319	Date 24 OCTOBER 1996	
Title: AUTHORITY TO WAIVE FOREIGN PURCHASE RESTRICTIONS		
Priority: 1	Submitted By: N-1	Originator Code:
Case Manager: (b)(6)	Case References:	
FAR Cites:	DFARS Cites:	
Cognizant Committee(s): INTERNATIONAL ACQUISITION		
Coordination:		
Recommendation: DISCUSS: 10/30/96		
Remarks: THIS IS THE COMMITTEE'S REPORT RE: IMPLEMENTATION OF SECTION 810 OF THE FY 1997 DEFENSE AUTHORIZATION ACT. WE WILL DISCUSS IT AT NEXT WEEK'S MEETING.		

DEPARTMENT OF THE NAVY
NAVY INTERNATIONAL PROGRAMS OFFICE
1111 JEFFERSON DAVIS HIGHWAY
CRYSTAL GATEWAY NORTH, SUITE 701 E.
ARLINGTON, VA 22202-1111

24 October 1996

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

Subject: **DFARS CASE 96-D319; AUTHORITY TO WAIVE FOREIGN PURCHASE RESTRICTIONS**

I. PROBLEM: By memorandum dated 3 October 1996, the council tasked the International Acquisition Committee with the review and analysis of a revision of 10 U.S.C. 2534 that provides additional authority for waiving the foreign purchase restrictions of the statute.

II. RECOMMENDATION: Revise the DFARS in accordance with TAB A.

III. DISCUSSION: Section 810 of the FY 1997 Defense Authorization Act amends 10 U.S.C. Section 2534(d)(3) by expanding the waiver authority to include cases where the restriction would "impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 [of the Code]." The new waiver authority embraces the reciprocal memoranda of understanding between DoD and the qualifying countries listed at DFARS 225.872.

DFARS currently lists the waiver provisions of 10 U.S.C. 2534 at **225.7004, Restriction on machine tools and powered and non-powered valves** (see DFARS Case 94-D314). The waiver authority at 10 U.S.C. 2534(d)(3) is implemented in **.7004-4(a)(3)**. The committee proposes to expand the DFARS authority in a manner similar to how the statute was expanded.

Several subsequent sections that specify items restricted under 10 U.S.C 2534, e.g. 225.7007 **Restriction on acquisition of foreign buses**, refer back to **.7004-4** for their waiver provisions (instead of repeating the lengthy waiver provisions several times in the subpart). However, DFARS Case 96-D023, still open, proposes to delete **225.7004**, which has expired. Therefore, we propose to locate the revised waiver provisions at **.7005** (now reserved) and to reference **.7005** in subsequent DFARS restrictions under 10 U.S.C. 2534 where appropriate.

We did not propose revising the coverage for anchor and mooring chain **225.7012**, since those purchases fall under an appropriation act provision that is more restrictive than the statute.

IV. COLLATERAL REQUIREMENTS: The proposed DFARS revision does not require the collection of data from the public under the Paperwork Reduction Act. It does not require a Regulatory Flexibility Act analysis because it would not have a significant impact upon a substantial number of small businesses. The proposed regulation is not a significant revision to the DFARS and need not be published for public comment in the Federal Register.

V. CONCURRENCE: All DoD committee members concur with this report.

(b)(6)

Chairman, International
Acquisition Committee

cc: Members:

(b)(6) -- Army
(b)(6) -- Air Force
(b)(6) -- DLA
(b)(6) -- OSD

Revisions to DFARS 225.70:

1. Insert the following:
[225.7005 Waiver of Certain Restrictions.
Where provided for elsewhere in this Subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 may be waived on a case-by-case basis.

225-7005-1 Waiver.
(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:
(1) The restriction would cause unreasonable delays.
(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.
(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country ***[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]***, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.
(4) Satisfactory quality items manufactured in the United States or Canada are not available.
(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.
(6) Application of the restriction is not in the national security interests of the United States.
(7) Application of the restriction would adversely affect a U.S. company.
(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.]

2. At: 225.7007-4,
225.7010-3,
225.7016-3,
225.7022-3,
delete "225.7004-4" and insert "225.7005."

3. Revise 225.7019-3(a)(1)(iv) as follows:
"Application of the restriction would impede cooperative programs entered into between DoD and a foreign country ***[or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872]***, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;"

96-0319-

Royal Netherlands Embassy
Office of Defense Cooperation
4200 Linnean Avenue N.W.
Washington, D.C. 20008
202-274-2694/5300
fax: 202-363-1042
e-mail: defmat@aol.com

February 13, 1997

No: 6587/4012

To: Defense Acquisition Regulations Council
ATTN: (b)(6)
PDUSD (A&T) DP (DAR)
1 MD 3D139
3062 Defense Pentagon
Washington, D.C. 20301-3062
Fax: (b)(2)

c.c. (b)(6)
Legislative Assistant to Senator John McCain
241 Russell Senate Building
Washington, D.C. 20510
Fax: (b)(2)

Re: My letter of Febr. 5, 1997 no. 6587/4012

Dear (b)(6)

Please be advised that my referenced letter has been canceled.
With reference to the text of the interim rule (DFARS Case 96-D-319) to implement the so-called McCain Amendment I observe that in the summary of items for which the waiver authority of 10 U.S.C. 2534 is applicable, the "vessel propellers with a diameter of six feet or more" (10 U.S.C. 2534 (a) (3) (iii), as amended by the '96 Defense Appropriation Act) is not mentioned.
I like to suggest to you to include in the interim rule all the items for which the McCain Amendment is applicable.

The Netherlands Defense
Cooperation Attaché

Johan G.C. Kiemeneij
Colonel, Royal Netherlands Army

96-D319-1

Royal Netherlands Embassy
Office of Defense Cooperation
4200 Linnean Avenue N.W.
Washington, D.C. 20008
202-274-2694/5300
fax: 202-363-1042
e-mail: defmat@aol.com

February 5, 1997

No: 6587/4012

To: Defense Acquisition Regulations Council
ATTN: (b)(6)
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1 MD 3D139
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Fax: (b)(2)

c.c.: (b)(6)
Legislative Assistant to Senator John McCain
241 Russell Senate Building
Washington, D.C. 20510
Fax: (b)(2)

With reference to the text of the interim rule (DFARS Case 96-D319), to implement the so-called McCain Amendment, I noticed that "vessel propellers with a diameter of six feet or more" (10 USC S.2524 a.(3).a.(iii)) were not mentioned.

I like to suggest to you to include in the interim rule all the items for which the McCain Amendment is applicable.

The Netherlands Defense
Cooperation Attaché

Johan G.C. Kiemeneij
Colonel, Royal Netherlands Army

96-D319-2

From: T M Kennedy, Attaché Defence Supply

DEFENCE SUPPLY OFFICE
BRITISH DEFENCE STAFF (WASHINGTON)
British Embassy 3100 Massachusetts Avenue NW
Washington DC 20008-3688

Telephone: (202) 588 6752
Facsimile: (202) 588 7877
E-Mail: mkennedy@moduk.org

Defense Acquisition Regulations Council
Attn: (b)(6)
Procurement Directorate - Under Secretary of Defense
(A&T) DP (DAR)
IMD 3S139
3062 Defense Pentagon
Washington D.C. 20301-30602

Your reference:
Our reference: DS/4/Gen/9
Date: 14 March 1997

Dear (b)(6)

I am pleased to offer comments on the DFARS Case 96-D319 and Interim Rule published on January 17, 1997, on behalf of the United Kingdom Ministry of Defence.

The United Kingdom is a signatory to a reciprocal procurement MOU with the United States Government. The MOU is designed to enhance common defence through the mutual flow of defence equipment. Both governments undertake to give full consideration to suitable equipment from each other's national industries and not to apply price differentials under "Buy National" laws and regulations. In the US this means that Buy America Act/Balance of Payments Program restrictions are not applied to government acquisitions of defence equipment from the UK and UK firms are allowed to participate in Department of Defense acquisitions in fair competition with US firms. The UK reciprocates fully in affording access to US firms to compete for Ministry of Defence contracts.

The Defense Authorization Act for FY1997 contained an amendment, sponsored by Senator John McCain (the "McCain Amendment"). In remarks from the Senate floor on 26 January 1996, Senator McCain said the purpose was to remove "counter-productive domestic source restrictions to ensure free and open markets for defense goods and services." It was intended, specifically, to free countries referred to by Senator McCain as "our most important allies" from domestic source restrictions previously imposed on DoD by Congress. The countries referred to were those that have entered into memoranda of understanding providing for procurement of defence items, that have demonstrated that their defence markets are open to US sellers, and which habitually buy more from US companies than the US Government buys from companies

in those countries. The United Kingdom was singled out for special mention as one such "important ally". Senator McCain clearly intended that British companies should not be precluded from competing for United States defence business because of US domestic source restrictions. A note recording further the remarks of Senator McCain and analysing the legislative intent, is attached.

In our opinion DoD's Interim Final Rule, does not give effect to the clear intent of the McCain Amendment and will have little or no effect in practice. The Interim Rule merely restates the language of the statute and fails to provide guidance to ensure that the Statute will be implemented so that its purposes are achieved. To give real practical effect to the McCain Amendment we suggest that the Interim Rule be revised to include a presumption that the domestic source restrictions in question shall not apply to items originating in a country that is party to a memorandum of understanding with the US for reciprocal procurement of defence items, if that country has certified in writing to the DoD that it does not discriminate against US defence contractors to a greater degree than the United States discriminates against theirs. Therefore, we propose that the Interim Rule be amended to add the following language:

> "A country shall be presumed eligible for a waiver if (1) that country is a qualifying country under DFARS 225.872-1; and (2) a responsible official of that country certifies to the Department of Defense that it does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defence items produced in that country. The foregoing presumption may be withdrawn upon a determination and finding by the Secretary of Defense that either of these circumstances has ceased to pertain."

We believe that a rule of this nature would give the intended effect to the McCain Amendment, and would also protect the legitimate interests of the US Government and US industry by providing three safeguards. First and foremost, the presumption would apply only in the case of MOU countries. The authority of the Secretary of Defense to negotiate and implement memoranda of understanding with foreign countries is limited - an MOU will not be entered into or implemented if it has, or is likely to have, a significant adverse effect on US industry that outweighs the benefits of the MOU (10 USC, 2531(c)). Secondly, for additional assurance, formal certification would be provided by the governments concerned that they do not discriminate against US-made defence items to a greater degree than the United States discriminates against theirs. Thirdly, the US would, of course, be able to review the certification at its discretion and the Secretary of Defense would retain authority to withdraw DoD's recognition of the certification, should circumstances alter such that it was no longer accurate.

The UK Ministry of Defence attaches great importance to the McCain Amendment, which it hopes to see implemented fully, in accordance with the spirit and intent of the statute. I hope this letter provides sufficient commentary for your purposes, but I should be pleased to provide further assistance if you would find it helpful.

Yours faithfully

Martin Kennedy

Legislative Intent

In a speech on the Senate floor on January 26 1996, Senator McCain criticised the Fiscal Year 1996 National Defense Authorization Bill that had been reported by the Conference Committee. The Conference had added certain Buy American restrictions to the bill. Senator McCain argued that these restrictions were counterproductive and harmful to US trading interests. He said:

> "...[T]he bill adds "Buy America" restrictions for propellers, ball bearings, and many other items which, frankly, are counterproductive to our ongoing relations with our most important allies.
>
> As an example, the British placed orders for approximately $5 billion in United States-made defense articles last year, United States orders of British-made defense items totalled only about $800 million last year, a ratio of 4-to-1 to our economic advantage... I am advised that, on average, the British Government purchases twice as much defense equipment from the United States as we do from them.
>
> Yet even with this obvious economic advantage to the United States of doing business with the British Government, the new restrictions in this conference agreement would require the Pentagon to purchase many items from United States manufacturers rather than allowing competition from British and other foreign manufacturers. The result is that the US taxpayer will not necessarily get the best deal on the price of these goods, and our trade relations with our allies will suffer as a result."

Cong. Rec. Jan 26 1996, S 451.

Senator McCain noted that there are firms in the United Kingdom that are competent to manufacture the restricted items.

> "The bill restricts the purchase of ball and roller bearings; there is a competent British manufacturer of these items. The bill also restricts procurement of propellers for naval vessels; a competent British source exists for these items. British companies are also capable of producing electrical navigation charts, propulsion systems, and a number of the other items that are limited in this bill to American companies."

Id

Senator McCain also called attention to the number of United States contractors that team with British firms to supply defence items to the United States. He warned that restrictions such as those in the Conference bill might prevent these United States firms from competing for DoD contracts.

> ...[M]any British companies have entered into teaming arrangements with United States companies to compete for contracts for some very important United States military programs...
>
> "Judging by the enthusiasm of Congress for legislating Buy America restrictions, some of these British companies could, in the future, be precluded from competing for United States defense business. The secondary impact of additional Buy America restrictions would then be preventing their US teaming partners from competing for these contracts. That is an outcome that I suspect many of my colleagues had not considered."

Id. at S 451-2

Senator McCain explained, finally, that protectionist restrictions could prompt United States trading partners to modify their own policies allowing purchase of United States-made goods. This, he noted, could threaten the United States' trade balance with its allies:

> "Mr President, I talked with the British Defense Minister last week. The British Defense Minister made it very clear, very clear, that, if these Buy America provisions prevailed, they will have to re-evaluate their policies of purchasing defense and other products from the United States of America.
>
> "In my view, [these additional protections] are extremely short-sighted, in that they do not take into account the distinct possibility that our trading partners may understandably decide to retaliate against these unfair, protectionist restrictions by denying the United States access to their markets, defense or otherwise.
>
> "It is a bizarre circumstance, in my view, when the US Congress concocts legislation which operates counter to the best interests of the taxpayer and which threatens our positive defense trade balance with allies like the British."

Id. at S 452.

Senator McCain was not able, however, to remove the harmful language from the Conference bill. In the 1996 Authorization Act, as finally passed, the domestic source restrictions of which Senator McCain had complained were retained. Senator McCain concluded his speech on January 26 1996 by stating (again on page S 452) that he would seek to remove the domestic source restrictions through action late in the same 104th Congress:

> "I had hoped that the unnecessary restrictions added in this bill would be removed in the second conference, as requested in the President's veto message, but they were not. I intend to work to remove these counter-productive domestic source restrictions to ensure free and open markets for defense goods and services. A true two-way street arrangement with our loyal allies, such as the British, is the best way to ensure the future availability of defense items which are vital to the continued readiness of our Armed Forces and those of our allies."

To carry out his purpose to remove the protectionist features that had been enacted in the Fiscal 1996 Defense Authorization bill, Senator McCain introduced his amendment to the 1997 Defense Authorization Bill (the "McCain Amendment") on May 8 1996. In debate on the Senate floor on June 28 1996, Senator McCain noted that the Committee-reported bill contained his Amendment. He said:

> "The committee also adopted an amendment to provide the Secretary of Defense with the authority to waive counterproductive "Buy America" restrictions which were adopted in last year's defense authorization bill... The new waiver may be exercised at the Secretary's discretion to allow the Department of Defense to purchase items from a firm located in a foreign country, if that country has a reciprocal defence procurement memorandum of understanding with the United States. The new waiver will once again allow free trade between the United States and our allies for defense contracts." (emphasis added).

Senator McCain's remarks make it clear that he, the author of the Amendment, and the Congress understood that the Amendment effected the free trade principles he had stated in his floor speech of January 26 1996.

Commenting on the McCain Amendment shortly before its enactment, DoD's Under Secretary for Procurement, Dr Paul Kaminski, stated that Buy America restrictions "send a bad signal, and the Amendment offered by Senator McCain is a very constructive way of opening things up." Defense Daily vol. 191, no 43, May 30 1996

96-0319-3

OFICINA COMERCIAL DE ESPAÑA

COMMERCIAL OFFICE
EMBASSY OF SPAIN

2558 Massachusetts Avenue, N. W.
Washington, D.C. 20008-2865
Tel. (202) 265-8600
Telex 64226 OFCOM UW
Fax (202) 265-9478

March 17, 1997
Ref.: 311 VE/cr

TO: Defense Acquisition Regulations Council,
Attn: (b)(6)
PDUSD (A&T) DP (DAR) IMD 3D139, 3062 Defense Pentagon,
Washington, D.C.20301-3062
Fax (b)(2)

Subject : DFARS Case 96-D319

TEXT:

We propose that the Interim Rule, in order to give real practical effect to the McCain Amendment should be amended to add the following language:

"A country shall be presumed eligible for a waiver if (1) that country is a qualifying country under DFARS 225.872-1; and (2) a responsible official of that country certifies to the Department of Defense that is does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country. The foregoing presumption may be withdrawn upon a determination and finding by the Secretary of Defense that either of these circumstances has ceased to pertain".

Sincerely,

Victor Echevarría
Counselor for Economic and Commercial Affairs

96-0319-4

EMBASSY OF SWEDEN

WASHINGTON, DC March 19, 1997

Defense Acquisitions
Regulations Council
Attn. (b)(6)
Procurement Directorate
Under Secretary of Defense, (A&T) DP/DRA
IMD 3S 139
3062 Defense Pentagon
Washington, DC 20301-3060

Dear (b)(6)

With reference to the McCain Amendment and Buy American restriction, Swedish companies have during recent years been unable to participate in US government and US defense industry's procurement of the following items and systems.

US government procurement of high technology ball bearings. Affected Swedish company SKF.

US government procurement of propeller shaft for fast sealift ship and naval ships in general. Affected Swedish company Motala Verkstad AB and Kamewa AB.

US government procurement of propellers for fast sealift ships and other naval ships in general. Affected Swedish company Kamewa AB.

US government procurement of welded shipboard anchor and mooring chain. Affected Swedish company Björneborg AB.

US government procurement of propulsion and machinery control systems such as diesel engines. Affected Swedish company Wärsilä Diesel.

US government procurement of emergency water for life rafts and life boats. Affected Swedish company MP Water Ltd.

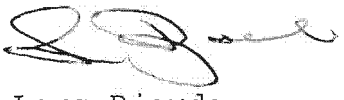
Furthermore the two Swedish companies Volvo and Scania are world recognized producers of trucks and buses. Neither of the companies have been engaged in the US government procurement based on the existing restriction on foreign built buses.

The same reason as above exist for some other Swedish companies which produces equipment, such as pumps and machinery control system.

There is now restrictions for US companies to participate in Swedish government procurement of the above listed components and systems.

With reference to the defense trade balance between Sweden and the United States, it would be most appreciated if restrictions such as these could be waived in order to create better opportunities for a balanced defense trade between Sweden and the United States.

Sincerely,



Lars Bjerde
Counselor for Defense Cooperation

cc. Ms Eleanor Spector, Dir, Defense Procurement, Office of the Under Secretary of Defense, 3000 Defense Pentagon, Room 3E144, Washington, DC 20301-3000

Defense Acquisition Regulations Directorate
Memo

March 25, 1997

To: Mr. Pete Bryan (FC)

Subject: Authority to Waive Foreign Purchase Restrictions

The interim rule under DFARS Case 96-D319 was published for comment on January 17, 1997 (62 FR 2615), with comments due by March 18, 1997 (Atch 1).

We have received four public comments, from the embassies of the Netherlands, Great Britain, Spain, and Sweden (Atch 2). Before we assign these comments to the International Acquisition Committee for analysis, we are interested in any recommendations you may have regarding the policy issues involved, especially with regard to whether or not language that would encourage use of the McCain Amendment is appropriate for inclusion in the DFARS.

Our case manager is (b)(6) (b)(2).

Linda W. Neilson
Deputy Director, Defense
Acquisition Regulations Council

Attachments

26. Section 252.236–7006 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (c) to read as follows:

252.236–7006 Cost Limitation.

* * * * *

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

* * * * *

252.239–7007 [Amended].

27. Section 252.239–7007 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (d)(1) by removing the word "certified".

252.247–7001 [Amended].

28. Section 252.247–7001 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (g) by removing the word "certification" and inserting the word "statement" in its place.

[FR Doc. 97–1036 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 225

[DFARS Case 96–D030]

Defense Federal Acquisition Regulation Supplement; Metalworking Machinery—Trade Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the expiration of certain statutory restrictions on the acquisition of machine tools.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 96–D030 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534 (a)(4)(B) restricted the acquisition of non-domestic machine tools in certain Federal Supply Classes for metalworking machinery. This restriction ceased to be effective on October 1, 1996. On November 15, 1996 (61 FR 58488), the DFARS was amended to remove language that implemented 10 U.S.C. 2534(a)(4)(B), at 225.7004, 252.225–7017, and 225.7040. This final rule makes a related amendment at DFARS 225.403–70. The rule removes the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534(a)(4)(B).

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D030 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

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

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

PART 225—FOREIGN ACQUISITION

225.403–70 [Amended]

2. Section 225.403–70 is amended by removing the entry "34 Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)" and inserting in its place the entry "34 Metalworking machinery".

[FR Doc. 97–1040 Filed 1–6–97; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 225

[DFARS Case 96–D319]

Defense Federal Acquisition Regulation Supplement; Authority To Waive Foreign Purchase Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 810 of the National Defense Authorization Act of Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D319 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, applicable to buses, chemical weapons antidote, air circuit breakers, ball and roller bearings, totally enclosed lifeboat survival systems, and anchor and mooring chain, if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding. However, this waiver authority will not be effective with regard to the additional restrictions on the acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems, contained in defense appropriations acts (and implemented at DFARS 225.7012, 225.7019, and 225.7022, respectively).

B. Regulatory Flexibility Act

This interim rule is not expected 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 there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems is presently restricted to domestic sources by defense

Atch 1

appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D319 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by 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 this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, and was effective upon enactment on September 23, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

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

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7005 is amended by revising paragraph (a)(3) to read as follows:

225.7005 Waiver of certain restrictions.

* * * * *

(a) * * *

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

* * * * *

3. Section 225.7019–3 is amended by revising paragraph (a)(1)(iv) to read as follows:

225.7019–3 Waiver.

(a) * * *

(1) * * *

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

[FR Doc. 97–1038 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Parts 225 and 252

[DFARS Case 96–D021]

Defense Federal Acquisition Regulation Supplement; Contingent Fees—Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to changes adopted in the Federal Acquisition Regulation (FAR), pertaining to elimination of requirements for Government review of a prospective contractor's contingent fee arrangements.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D021 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 225.73, 252.212–7001, and 252.225–7027 to conform to the FAR revisions published as Item I of Federal Acquisition Circular 90–40 (61 FR 39188, July 26, 1996), which removed requirements for prospective contractors to provide certain information to the Government regarding contingent fee arrangements. This interim rule makes the associated DFARS changes related to contingent fees under contracts for foreign military sales.

B. Regulatory Flexibility Act

This interim rule is not expected 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 rule removes requirements for contracting officer review of contingent fee arrangements under foreign military sales contracts, but does not change the policy pertaining to the allowability of contingent fees under these contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by 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 this interim rule prior to affording the public an opportunity to comment. This interim rule conforms the DFARS to changes already adopted in the FAR. Federal Acquisition Circular 90–40 (FAR Case 93–009) eliminated the clause at FAR 52.203–4, Contingent Fee Representation and Agreement; the

96-0319-1

Royal Netherlands Embassy
Office of Defense Cooperation
4200 Linnean Avenue N.W.
Washington, D.C. 20008
202-274-2694/5300
fax: 202-363-1042
e-mail: defmat@aol.com

February 13, 1997

No: 6587/4012

To: Defense Acquisition Regulations Council
ATTN (b)(6)
PDUSD (A&T) DP (DAR)
1 MD 3D139
3062 Defense Pentagon
Washington, D.C. 20301-3062
Fax: (b)(2)

c.c.: (b)(6)
Legislative Assistant to Senator John McCain
241 Russell Senate Building
Washington, D.C. 20510
Fax: (b)(2)

Re: My letter of Febr. 5, 1997 no. 6587/4012

Dear (b)(6)

Please be advised that my referenced letter has been canceled.
With reference to the text of the interim rule (DFARS Case 96-D-319) to implement the so-called McCain Amendment I observe that in the summary of items for which the waiver authority of 10 U.S.C. 2534 is applicable, the "vessel propellers with a diameter of six feet or more" (10 U.S.C. 2534 (a) (3) (iii), as amended by the '96 Defense Appropriation Act) is not mentioned.
I like to suggest to you to include in the interim rule all the items for which the McCain Amendment is applicable.

The Netherlands Defense
Cooperation Attaché

Johan G.C. Kiemeneij
Colonel, Royal Netherlands Army

Atch 2

96-0319-1

Royal Netherlands Embassy
Office of Defense Cooperation
4200 Linnean Avenue N.W.
Washington, D.C. 20008
202-274-2694/5300
fax: 202-363-1042
e-mail: defmat@aol.com

February 5, 1997

No: 6587/4012

To: Defense Acquisition Regulations Council
ATTN: (b)(6)
PDUSD (A&T) DP (DAR)
1 MD 3D139
3062 Defense Pentagon
Washington, D.C. 20301-3062
Fax: (b)(2)

c.c.: (b)(6)
Legislative Assistant to Senator John McCain
241 Russell Senate Building
Washington, D.C. 20510
Fax: (b)(2)

With reference to the text of the interim rule (DFARS Case 96-D319), to implement the so-called McCain Amendment, I noticed that "vessel propellers with a diameter of six feet or more" (10 USC S.2524 a.(3).a.(iii)) were not mentioned.

I like to suggest to you to include in the interim rule all the items for which the McCain Amendment is applicable.

The Netherlands Defense
Cooperation Attaché

Johan G.C. Kiemeneij
Colonel, Royal Netherlands Army

96-D319-2

From: T M Kennedy, Attaché Defence Supply

DEFENCE SUPPLY OFFICE
BRITISH DEFENCE STAFF (WASHINGTON)
British Embassy 3100 Massachusetts Avenue NW
Washington DC 20008-3688

Telephone: (202) 588 6752
Facsimile: (202) 588 7877
E-Mail: mkennedy@moduk.org

Defense Acquisition Regulations Council
Attn: (b)(6)
Procurement Directorate - Under Secretary of Defense
(A&T) DP (DAR)
IMD 3S139
3062 Defense Pentagon
Washington D.C. 20301-30602

Your reference:
Our reference: DS/4/Gen/9
Date: 14 March 1997

Dear (b)(6)

I am pleased to offer comments on the DFARS Case 96-D319 and Interim Rule published on January 17, 1997, on behalf of the United Kingdom Ministry of Defence.

The United Kingdom is a signatory to a reciprocal procurement MOU with the United States Government. The MOU is designed to enhance common defence through the mutual flow of defence equipment. Both governments undertake to give full consideration to suitable equipment from each other's national industries and not to apply price differentials under "Buy National" laws and regulations. In the US this means that Buy America Act/Balance of Payments Program restrictions are not applied to government acquisitions of defence equipment from the UK and UK firms are allowed to participate in Department of Defense acquisitions in fair competition with US firms. The UK reciprocates fully in affording access to US firms to compete for Ministry of Defence contracts.

The Defense Authorization Act for FY1997 contained an amendment, sponsored by Senator John McCain (the "McCain Amendment"). In remarks from the Senate floor on 26 January 1996, Senator McCain said the purpose was to remove "counter-productive domestic source restrictions to ensure free and open markets for defense goods and services." It was intended, specifically, to free countries referred to by Senator McCain as "our most important allies" from domestic source restrictions previously imposed on DoD by Congress. The countries referred to were those that have entered into memoranda of understanding providing for procurement of defence items, that have demonstrated that their defence markets are open to US sellers, and which habitually buy more from US companies than the US Government buys from companies

in those countries. The United Kingdom was singled out for special mention as one such "important ally". Senator McCain clearly intended that British companies should not be precluded from competing for United States defence business because of US domestic source restrictions. A note recording further the remarks of Senator McCain and analysing the legislative intent, is attached.

In our opinion DoD's Interim Final Rule, does not give effect to the clear intent of the McCain Amendment and will have little or no effect in practice. The Interim Rule merely restates the language of the statute and fails to provide guidance to ensure that the Statute will be implemented so that its purposes are achieved. To give real practical effect to the McCain Amendment we suggest that the Interim Rule be revised to include a presumption that the domestic source restrictions in question shall not apply to items originating in a country that is party to a memorandum of understanding with the US for reciprocal procurement of defence items, if that country has certified in writing to the DoD that it does not discriminate against US defence contractors to a greater degree than the United States discriminates against theirs. Therefore, we propose that the Interim Rule be amended to add the following language:

> "A country shall be presumed eligible for a waiver if (1) that country is a qualifying country under DFARS 225.872-1; and (2) a responsible official of that country certifies to the Department of Defense that it does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defence items produced in that country. The foregoing presumption may be withdrawn upon a determination and finding by the Secretary of Defense that either of these circumstances has ceased to pertain."

We believe that a rule of this nature would give the intended effect to the McCain Amendment, and would also protect the legitimate interests of the US Government and US industry by providing three safeguards. First and foremost, the presumption would apply only in the case of MOU countries. The authority of the Secretary of Defense to negotiate and implement memoranda of understanding with foreign countries is limited - an MOU will not be entered into or implemented if it has, or is likely to have, a significant adverse effect on US industry that outweighs the benefits of the MOU (10 USC, 2531(c)). Secondly, for additional assurance, formal certification would be provided by the governments concerned that they do not discriminate against US-made defence items to a greater degree than the United States discriminates against theirs. Thirdly, the US would, of course, be able to review the certification at its discretion and the Secretary of Defense would retain authority to withdraw DoD's recognition of the certification, should circumstances alter such that it was no longer accurate.

The UK Ministry of Defence attaches great importance to the McCain Amendment, which it hopes to see implemented fully, in accordance with the spirit and intent of the statute. I hope this letter provides sufficient commentary for your purposes, but I should be pleased to provide further assistance if you would find it helpful.

Yours faithfully

Martin Kennedy

Annex A

Legislative Intent

In a speech on the Senate floor on January 26 1996, Senator McCain criticised the Fiscal Year 1996 National Defense Authorization Bill that had been reported by the Conference Committee. The Conference had added certain Buy American restrictions to the bill. Senator McCain argued that these restrictions were counterproductive and harmful to US trading interests. He said:

> "...[T]he bill adds "Buy America" restrictions for propellers, ball bearings, and many other items which, frankly, are counterproductive to our ongoing relations with our most important allies.
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> Yet even with this obvious economic advantage to the United States of doing business with the British Government, the new restrictions in this conference agreement would require the Pentagon to purchase many items from United States manufacturers rather than allowing competition from British and other foreign manufacturers. The result is that the US taxpayer will not necessarily get the best deal on the price of these goods, and our trade relations with our allies will suffer as a result."

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"Judging by the enthusiasm of Congress for legislating Buy America restrictions, some of these British companies could, in the future, be precluded from competing for United States defense business. The secondary impact of additional Buy America restrictions would then be preventing their US teaming partners from competing for these contracts. That is an outcome that I suspect many of my colleagues had not considered."

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"In my view, [these additional protections] are extremely short-sighted, in that they do not take into account the distinct possibility that our trading partners may understandably decide to retaliate against these unfair, protectionist restrictions by denying the United States access to their markets, defense or otherwise.

"It is a bizarre circumstance, in my view, when the US Congress concocts legislation which operates counter to the best interests of the taxpayer and which threatens our positive defense trade balance with allies like the British."

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"I had hoped that the unnecessary restrictions added in this bill would be removed in the second conference, as requested in the President's veto message, but they were not. I intend to work to remove these counter-productive domestic source restrictions to ensure free and open markets for defense goods and services. A true two-way street arrangement with our loyal allies, such as the British, is the best way to ensure the future availability of defense items which are vital to the continued readiness of our Armed Forces and those of our allies."

To carry out his purpose to remove the protectionist features that had been enacted in the Fiscal 1996 Defense Authorization bill, Senator McCain introduced his amendment to the 1997 Defense Authorization Bill (the "McCain Amendment") on May 8 1996. In debate on the Senate floor on June 28 1996, Senator McCain noted that the Committee-reported bill contained his Amendment. He said:

> "The committee also adopted an amendment to provide the Secretary of Defense with the authority to waive counterproductive "Buy America" restrictions which were adopted in last year's defense authorization bill... The new waiver may be exercised at the Secretary's discretion to allow the Department of Defense to purchase items from a firm located in a foreign country, if that country has a reciprocal defence procurement memorandum of understanding with the United States. The new waiver will once again allow free trade between the United States and our allies for defense contracts." (emphasis added).

Senator McCain's remarks make it clear that he, the author of the Amendment, and the Congress understood that the Amendment effected the free trade principles he had stated in his floor speech of January 26 1996.

Commenting on the McCain Amendment shortly before its enactment, DoD's Under Secretary for Procurement, Dr Paul Kaminski, stated that Buy America restrictions "send a bad signal, and the Amendment offered by Senator McCain is a very constructive way of opening things up." Defense Daily vol. 191, no 43, May 30 1996

96-0319-3

OFICINA COMERCIAL DE ESPAÑA

COMMERCIAL OFFICE
EMBASSY OF SPAIN

2558 Massachusetts Avenue, N. W.
Washington, D.C. 20008-2865
Tel. (202) 265-8600
Telex 64228 OFCOM UW
Fax (202) 265-9478

March 17, 1997
Ref.: 311 VE/cr

TO: Defense Acquisition Regulations Council,
Attn: (b)(6)
PDUSD (A&T) DP (DAR) IMD 3D139, 3062 Defense Pentagon,
Washington, D.C.20301-3062
Fax (b)(2)

Subject : DFARS Case 96-D319

TEXT:

We propose that the Interim Rule, in order to give real practical effect to the McCain Amendment should be amended to add the following language:

"A country shall be presumed eligible for a waiver if (1) that country is a qualifying country under DFARS 225.872-1; and (2) a responsible official of that country certifies to the Department of Defense that is does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country. The foregoing presumption may be withdrawn upon a determination and finding by the Secretary of Defense that either of these circumstances has ceased to pertain".

Sincerely,

Victor Echevarría
Counselor for Economic and Commercial Affairs

96-0319-Y

EMBASSY OF SWEDEN

WASHINGTON, DC March 19, 1997

Defense Acquisitions
Regulations Council
Attn. (b)(6)
Procurement Directorate
Under Secretary of Defense, (A&T) DP/DRA
IMD 3S 139
3062 Defense Pentagon
Washington, DC 20301-3060

Dear (b)(6)

With reference to the McCain Amendment and Buy American restriction, Swedish companies have during recent years been unable to participate in US government and US defense industry's procurement of the following items and systems.

US government procurement of high technology ball bearings. Affected Swedish company SKF.

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US government procurement of propulsion and machinery control systems such as diesel engines. Affected Swedish company Wärsilä Diesel.

US government procurement of emergency water for life rafts and life boats. Affected Swedish company MP Water Ltd.

Address	Telephone	Telegram	Telefax	Telex
1501 M Street, NW Washington, D.C. 20005 USA	(202) 467-2600	Svensk	(202) 467-2699	RCA 248347, SVSK UR

Furthermore the two Swedish companies Volvo and Scania are world recognized producers of trucks and buses. Neither of the companies have been engaged in the US government procurement based on the existing restriction on foreign built buses.

The same reason as above exist for some other Swedish companies which produces equipment, such as pumps and machinery control system.

There is now restrictions for US companies to participate in Swedish government procurement of the above listed components and systems.

With reference to the defense trade balance between Sweden and the United States, it would be most appreciated if restrictions such as these could be waived in order to create better opportunities for a balanced defense trade between Sweden and the United States.

Sincerely,

Lars Bjerde
Counselor for Defense Cooperation

cc. Ms Eleanor Spector, Dir, Defense Procurement, Office of the Under Secretary of Defense, 3000 Defense Pentagon, Room 3E144, Washington, DC 20301-3000

FAX

TO: (b)(6) FAX NR. (b)(2)

PHONE NR. (b)(2)

DATE: 3-24-97

11 Pages including this transmittal sheet

SUBJECT: Authority to Waive Foreign Product Restrictions 96-0319

MESSAGE:

In response to request of Frank Grave Nightrider newspaper: Public comments received in response to 96-0319, published 1-17-97 (62 FR 2615), comments requested on or before March 18 1997

(b)(6)

FROM: (b)(6) Defense Acquisition Regulations Directorate, PDUSD(A&T)DP/DAR, (b)(2), FAX (b)(2)

(b)(2)

PLEASE DELIVER IMMEDIATELY

96-0319-1

Royal Netherlands Embassy
Office of Defense Cooperation
4200 Linnean Avenue N.W.
Washington, D.C. 20008
202-274-2694/5300
fax: 202-363-1042
e-mail: defmat@aol.com

February 13, 1997

No: 6587/4012

To: Defense Acquisition Regulations Council
ATTN: (b)(6)
PDUSD (A&T) DP (DAR)
1 MD 3D139
3062 Defense Pentagon
Washington, D.C. 20301-3062
Fax (b)(2)

c.c.: (b)(6)
Legislative Assistant to Senator John McCain
241 Russell Senate Building
Washington, D.C. 20510
Fax: (b)(2)

Re: My letter of Febr. 5, 1997 no. 6587/4012

Dear (b)(6)

Please be advised that my referenced letter has been canceled.
With reference to the text of the interim rule (DFARS Case 96-D-319) to implement the so-called McCain Amendment I observe that in the summary of items for which the waiver authority of 10 U.S.C. 2534 is applicable, the "vessel propellers with a diameter of six feet or more" (10 U.S.C. 2534 (a) (3) (iii), as amended by the '96 Defense Appropriation Act) is not mentioned.
I like to suggest to you to include in the interim rule all the items for which the McCain Amendment is applicable.

The Netherlands Defense
Cooperation Attaché

Johan G.C. Kiemeneij
Colonel, Royal Netherlands Army

96-0319-1

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Office of Defense Cooperation
4200 Linnean Avenue N.W.
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February 5, 1997

No: 6587/4012

To: Defense Acquisition Regulations Council
ATTN: (b)(6)
PDUSD (A&T) DP (DAR)
1 MD 3D139
3062 Defense Pentagon
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96-D319-2

From: T M Kennedy, Attaché Defence Supply

DEFENCE SUPPLY OFFICE
BRITISH DEFENCE STAFF (WASHINGTON)
British Embassy 3100 Massachusetts Avenue NW
Washington DC 20008-3688

Telephone: (202) 588 6752
Facsimile: (202) 588 7877
E-Mail: mkennedy@moduk.org

Defense Acquisition Regulations Council
Attn: (b)(6)
Procurement Directorate - Under Secretary of Defense
(A&T) DP (DAR)
IMD 3S139
3062 Defense Pentagon
Washington D.C. 20301-30602

Your reference:
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Annex A

Legislative Intent

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96-0319-3

OFICINA COMERCIAL DE ESPAÑA

COMMERCIAL OFFICE
EMBASSY OF SPAIN

2558 Massachusetts Avenue, N.W.
Washington, D.C. 20008-2865
Tel. (202) 265-8600
Telex 84228 OFCOM UW
Fax (202) 265-9478

March 17, 1997
Ref.: 311 VE/cr

TO: Defense Acquisition Regulations Council,
Attn (b)(6)
PDUSD (A&T) DP (DAR) IMD 3D139, 3062 Defense Pentagon,
Washington, D.C.20301-3062
Fax (b)(2)

Subject : DFARS Case 96-D319

TEXT:

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Sincerely,

Victor Echevarria
Counselor for Economic and Commercial Affairs

76-D317-7

EMBASSY OF SWEDEN

WASHINGTON, DC March 19, 1997

Defense Acquisitions
Regulations Council
Attn. (b)(6)
Procurement Directorate
Under Secretary of Defense, (A&T) DP/DRA
IMD 3S 139
3062 Defense Pentagon
Washington, DC 20301-3060

Dear (b)(6)

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1501 M Street, NW Washington, D.C. 20005 USA	(202) 467-2600	Svensk	(202) 467-2699	RCA 248347, SVSK UR

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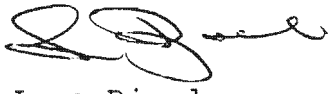

Lars Bjerde
Counselor for Defense Cooperation

cc. Ms Eleanor Spector, Dir, Defense Procurement, Office of the Under Secretary of Defense, 3000 Defense Pentagon, Room 3E144, Washington, DC 20301-3000

****
*** ACTIVITY REPORT ***
****

TRANSMISSION OK

TX/RX NO.	4615
CONNECTION TEL	(b)(2)
CONNECTION ID	
START TIME	03/24 15:45
USAGE TIME	09'13
PAGES	11
RESULT	OK