may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold if certain conditions are met. See 213.301(3).

(5) *Imprest funds and third party drafts.* Imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.305–3(d)(iii)(A).

(6) *Standard Form (SF) 44, Purchase Order-Invoice-Voucher.* SF 44s may be used for purchases not exceeding the simplified acquisition threshold for overseas transactions by contracting officers in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.306(a)(1)(B).

(7) *Undefinitized contract actions.* The head of the agency may waive certain limitations for undefinitized contract actions if the head of the agency determines that the waiver is necessary to support a contingency operation or a humanitarian or peacekeeping operation. See 217.7404–5(b).

(8) *Prohibited sources.* DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control. See 225.701–70.

(9) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302–2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002–2.

(10) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by deployed contracting officers in the course of military operations, including contingency operations or humanitarian or peacekeeping operations. See 232.7002(a)(4).

218.202 Defense or recovery from certain attacks.

Policy for unique item identification. Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. See 211.274–2(b).

218.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(1) *Establishing or maintaining alternative sources.* PGI contains a sample format for Determination and Findings citing the authority of FAR 6.202(a), regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI 206.202.

(2) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies. See 232.7002(a)(4).

[FR Doc. E7–730 Filed 1–19–07; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 244, 246, and 252

RIN 0750–AF12

Defense Federal Acquisition Regulation Supplement; Notification Requirements for Critical Safety Items (DFARS Case 2004–D008)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding notification of potential safety issues under DoD contracts. The rule contains a contract clause requiring contractors to promptly notify the Government of any nonconformance or deficiency that could impact item safety.

DATES: *Effective Date:* January 22, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0302; facsimile (703) 602–0350. Please cite DFARS Case 2004–D008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains a new contract clause requiring contractors to notify the Government of any nonconformance or deficiency that could impact the safety of items acquired by or serviced for the Government. The rule is a result of Section 8143 of the Fiscal Year 2004 DoD Appropriations Act (Pub. L. 108–87), which required examination of appropriate standards and procedures to ensure timely notification to the Government and contractors regarding safety issues, including defective parts.

DoD published a proposed rule at 70 FR 44077 on August 1, 2005. Thirteen respondents submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent recommended amending the clause prescription at DFARS 246.371(a)(2) and (3) to change the term ''system'' to ''critical safety system.''

DoD Response: The term ''system'' relates to an assemblage of subsystems, assemblies, and components that comprise an end item. Adding ''critical safety'' to the term ''system'' is unnecessary and would be confusing where major or less-than-major systems are not described in terms such as ''critical safety.''

2. *Comment:* Five respondents suggested requiring the use of the Government-Industry Data Exchange Program (GIDEP) as the method for notification of safety issues and for reporting all types of technical data and reliability information.

DoD Response: The primary objective of this DFARS rule is to ensure that contractors who have delivered defective products with potential safety implications notify affected contracting offices quickly, using whatever method

the contractor determines to be most expeditious. GIDEP may not be the most efficient or effective notification approach in many situations.

3. *Comment:* One respondent suggested DoD include integrated environmental safety and occupational health issues in the coverage.

DoD Response: Environmental safety and occupational health issues were not included in the mandate that resulted in the issuance of this DFARS rule (Section 8143 of the Fiscal Year 2004 DoD Appropriations Act (Pub. L. 108–87)).

4. *Comment:* One respondent recommended that the DFARS rule include a timeframe for reaction by the Government after notification.

DoD Response: The intent of the DFARS rule is to ensure timely notification of potential safety defects. The time required by the Government to respond to and effectively investigate each incident will depend upon the circumstances of the situation.

5. *Comment:* One respondent requested a more specific definition of ''safety'' in the rule.

DoD Response: DoD has reexamined all references to safety in the DFARS rule and has determined that the term is adequately explained in its context each time it is used.

6. *Comment:* Five respondents submitted comments regarding timeframes for notification of potential safety defects. One respondent indicated that the requirement for notifying the procuring contracting officer (PCO) and the administrative contracting officer (ACO) within 72 hours of potential safety issues may cause over-reporting, because the contractor will have insufficient time to investigate the situation internally. The respondent requested flexibility regarding notification but did not provide a proposed timeframe for notification. Another respondent questioned whether 72 hours would be realistic but provided no recommended time frame. Other respondents recommended notification periods of 3 business days; 5 business days; and 10–30 working days.

DoD Response: DoD concurs in lengthening the written notification period to 5 working days, but does not concur in making the initial reporting period for a potential safety defect flexible. The initial notification of 72 hours is intended to ensure that the customer is aware of potential safety issues in delivered products, has a basic understanding of the circumstances, and has a point of contact to begin addressing a mutually acceptable plan of action. Because of the potential safety implications, the initial notification is a matter of urgency. The 5-day written notification period is consistent with similar requirements in the civil sector. The Federal Aviation Administration regulations at 14 CFR 21.3(e) require reporting of aviation failures, malfunctions, or defects within 24 hours after it has been determined that the failure, malfunction, or defect has occurred. Similarly, federal regulations governing motor vehicles at 49 CFR 573.6(b) require submission of a report not more than 5 working days after a safety-related defect or noncompliance has been determined to exist.

7. *Comment:* One respondent expressed concern that the DFARS rule does not indicate what information has to be communicated or the distribution or communication method.

DoD Response: Paragraph (c) of the contract clause specifically describes the communication and information requirements.

8. *Comment:* One respondent stated that the definition of ''replenishment part'' in 246.101 is satisfactory, but the phrase ''purchased after provisioning'' in the definition needs to be clarified or deleted. The phrase, as currently written, can cause confusion on whether initial provisioning orders are covered.

DoD Response: DoD has amended the rule to remove the references to provisioning. The rule applies to all repairable and consumable parts identified as critical safety items.

9. *Comment:* One respondent recommended limiting notification to truly significant threats to safety from malfunctioning systems or subsystems.

DoD Response: Defining ''truly significant threats to safety'' would be difficult and could result in inconsistent application. Also, ''build-to-print'' manufacturers produce many critical safety items and may not have knowledge of an item's ultimate application or failure consequences.

10. *Comment:* One respondent expressed concern that a contracting officer might not know whether an item was a critical safety item and might include the notification requirement when it is unnecessary.

DoD Response: The contract clause specifies that the notification requirement for parts applies to those items identified as critical safety items. The contracting officer will receive input from technical/requirements personnel as to which items fall into that category, and will identify those items in the contract.

11. *Comment:* One respondent was concerned that the contracting officer may not know whether a system, subsystem, assembly, or subassembly is ''integral to a system,'' as stated in DFARS 246.371, and may unnecessarily impose the notification requirement.

DoD Response: The pertinent aspect of the rule is that notification be provided when there is a nonconformance or deficiency that may result in a safety impact for a system or its constituent components. A contracting officer or contractor involved with systems, subsystems, assemblies, or subassemblies will know the application of the product and whether it is integral to a system. The phrase ''integral to a system'' is used in FAR Part 34 in conjunction with items of supply that may be replaced during the service life of a system.

12. *Comment:* One respondent expressed confusion as to whether the notification requirement applies to repair, maintenance, logistics support, or overhaul services contracts where a system, subsystem, assembly, or subassembly is integral to a system and failure or malfunction poses a safety risk; or only to repairs that are integral to the overall system regardless of effects on subsystems, assemblies, and subassemblies.

DoD Response: Within the context of the DFARS rule, ''integral to a system'' means items of supply within a system that may be replaced during the service life of a system.

13. *Comment:* One respondent suggested moving the definition of ''critical safety item'' from the contract clause to 246.101.

DoD Response: The definition is appropriately placed within the contract clause, where the term is used.

14. *Comment:* One respondent stated that the notification requirement in paragraph (b)(2) of the contract clause was more expansive than the definition in 246.101, because it included the phrase ''or parts.'' The respondent also questioned whether the notification requirement applied to parts or software bugs that had no effect on the safety of the item as a whole.

DoD Response: The final rule excludes the definition of ''replenishment part'' from 246.101, and clarifies, in 246.371(a), that the contract clause applies to the acquisition of repairable or consumable parts identified as critical safety items. Paragraph (b) of the contract clause specifies that the notification requirement applies to all nonconformances for parts identified as critical safety items; and all nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system.

15. *Comment:* One respondent expressed concern that the DFARS clause permitted subcontractors to bypass the prime or higher-tier subcontractor and directly notify the PCO and the ACO. The respondent was concerned that this did not allow the prime or higher-tier subcontractor to independently evaluate the information and assess its credibility, accuracy, or impact.

DoD Response: Paragraph (f)(2)(i) of the contract clause specifically requires the subcontractor to notify the prime or higher-tier subcontractor. Paragraph (f)(2)(ii) of the clause requires the subcontractor to also notify the ACO and the PCO if the subcontractor is aware of the ACO and the PCO for the contract. Nothing in the clause precludes the prime contractor or higher-tier subcontractor from independently evaluating the information provided by the subcontractor.

16. *Comment:* Two respondents expressed concern regarding the flow-down requirements of the contract clause. One respondent expressed concern about flow-down to commercial item subcontractors and to any subcontractors whose work does not involve critical safety items. Another respondent recommended that flow-down be limited to only the acquisition of replacement or replenishment spares.

DoD Response: The final rule clarifies that the clause applies to contracts and subcontracts for both commercial and non-commercial items. This includes contracts and subcontracts for parts identified as critical safety items; systems and subsystems, assemblies and subassemblies integral to a system; and repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

17. *Comment:* One respondent stated that the Government should supply and maintain a comprehensive list of critical safety items that is accessible to contractors.

DoD Response: The parts that the Government has designated as critical safety items will be identified in the applicable contracts.

18. *Comment:* Two respondents recommended clarification of the term ''technical nonconformance''.

DoD Response: DoD agrees that the term ''technical nonconformance'' could cause confusion and, therefore, has replaced this term with ''nonconformance'' in paragraph (b)(1) of the contract clause.

19. *Comment:* Two respondents stated that the term ''safety impact'' in the contract clause is not tangible or properly defined.

DoD Response: The definition is consistent with MIL–STD–882D, Standard Practice for System Safety, Appendix A, for critical mishap severity categorization and mishap risk impact.

20. *Comment:* One respondent recommended clarification that contractor notification is required only for parts sold to the Government and does not include parts scrapped by the contractor.

DoD Response: Paragraph (b) of the contract clause specifies that the notification requirement applies to items acquired by or serviced for the Government under the contract.

21. *Comment:* Three respondents requested clarification of the term ''credible information'' as used in the contract clause.

DoD Response: DoD has added a definition of ''credible information'' to the contract clause, based upon a recommended definition provided by one of the respondents.

22. *Comment:* One respondent recommended that, instead of all critical safety items being subject to the reporting requirements of the contract clause, the reporting be limited to those situations resulting in safety impacts.

DoD Response: A significant percentage of critical safety items purchased by DoD are provided by small businesses that may not know the end item application of the components they are supplying, nor the failure modes and effects of the items. Many of these small businesses may be unaware of whether a nonconformance would have a safety impact. Therefore, the recommended change was not adopted.

23. *Comment:* One respondent stated that the definition of ''critical safety item'' does not indicate the level of damage sufficient to constitute ''serious'' damage, and that it is unclear what level of risk of personal injury would be ''unacceptable.'' The respondent recommended that the language established for ''safety impact'' be used in the definition of ''critical safety item'' to preclude ambiguity.

DoD Response: DoD has revised the definition of ''critical safety item'' in the contract clause to replace the potentially ambiguous language with a reference to the definition of ''safety impact'' within the contract clause.

24. *Comment:* Two respondents expressed concern with the definition of ''safety impact'' and associated dollar thresholds for property damage. One respondent stated that ''safety impact'' should focus on risk of injury or loss of life instead of property damage. The respondent suggested deleting ''loss of a weapon system; or property damage exceeding $200,000'' from the definition of ''safety impact'' or, alternatively, replacing ''$200,000'' with ''$1,000,000'' to reflect realistic thresholds. Another respondent recommended that the definition of ''safety impact'' be revised for consistency with the MIL–STD–882 Risk Hazard Matrix, rather than the arbitrary property damage value of $200,000.

DoD Response: DoD does not agree that notification requirements should apply only to risk of injury or loss of life situations. However, the monetary value specified in the rule has been revised to $1,000,000 for consistency with MIL–STD–882D, Appendix A, Table A–I.

25. *Comment:* One respondent stated that the assertion in paragraph (e) of the contract clause, that notification of safety issues will neither be an admission of responsibility nor a release of liability, would not adequately protect contractors from potential law suits. The respondent suggested that the clause include language that would reimburse the contractor for liabilities and expenses incidental to such liabilities to third persons not compensated by insurance or otherwise without regard to and as an exception to any limitation of cost or the limitation of funds clause in the contract.

DoD Response: DoD cannot establish a clause that grants Government indemnification for liabilities to third parties arising from compliance with the clause. Absent express statutory authority, the Government may not enter into an agreement to hold harmless or indemnify where the amount of the Government's liability is indefinite, indeterminable, or potentially unlimited.

26. *Comment:* One respondent stated that the rule does not adequately define ''critical safety items'' and suggests that the probability of failure be incorporated in the definition.

DoD Response: The definition of ''critical safety item'' is based on public law and existing DoD policies. Further, probability of failure assumes a part will be manufactured as specified. The DFARS rule addresses notification when a delivered item is nonconforming or defective; thus, probability of failure may not be meaningful.

27. *Comment:* One respondent recommended that the requirement for notification of safety defects be limited to aviation products.

DoD Response: DoD does not agree that the notification requirement should be limited to the aviation community. While the initial focus of critical safety items resulted from Section 802 of the National Defense Authorization Act for

Fiscal Year 2004 (Pub. L. 108–136), Section 8143 of the Fiscal Year 2004 DoD Appropriations Act (Public Law 108–87) required DoD to examine appropriate standards and procedures for timely notification regarding safety issues, including defective parts. It is essential that the Government be notified of all potential safety defects, regardless of product line.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule 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 the rule applies only in situations where nonconformances or deficiencies could impact item safety. The occurrence of such situations is expected to be limited.

C. Paperwork Reduction Act

This final rule contains a new information collection requirement. The Office of Management and Budget has approved the information collection for use through December 31, 2009, under Control Number 0704–0441.

List of Subjects in 48 CFR Parts 212, 244, 246, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 212, 244, 246, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 244, 246, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by adding paragraph (f)(xii) to read as follows:

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

(f) * * *

(xii) Use the clause at 252.246–7003, Notification of Potential Safety Issues, as prescribed in 246.371.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 3. Section 244.403 is revised to read as follows:

244.403 Contract clause.

Use the clause at 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts), in solicitations and contracts for supplies or services other than commercial items, that contain any of the following clauses:

(1) 252.225–7014 Preference for Domestic Specialty Metals, Alternate I.

(2) 252.246–7003 Notification of Potential Safety Issues.

(3) 252.247–7023 Transportation of Supplies by Sea.

(4) 252.247–7024 Notification of Transportation of Supplies by Sea.

PART 246—QUALITY ASSURANCE

■ 4. Section 246.371 is added to read as follows:

246.371 Notification of potential safety issues.

(a) Use the clause at 252.246–7003, Notification of Potential Safety Issues, in solicitations and contracts for the acquisition of—

(1) Repairable or consumable parts identified as critical safety items;

(2) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(3) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(b) Follow the procedures at PGI 246.371 for the handling of notifications received under the clause at 252.246–7003.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Section 252.244–7000 is revised to read as follows:

252.244–7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (JAN 2007)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items clause of this contract (Federal Acquisition Regulation 52.244–6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(a) 252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(b) 252.246–7003 Notification of Potential Safety Issues.

(c) 252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

(d) 252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

■ 6. Section 252.246–7003 is added to read as follows:

252.246–7003 Notification of Potential Safety Issues.

As prescribed in 246.371(a), use the following clause:

Notification of Potential Safety Issues (JAN 2007)

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

Credible information means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

Critical safety item means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

Safety impact means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding $1,000,000.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

(1) All nonconformances for parts identified as critical safety items acquired by the Government under this contract; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

(c) The Contractor—

(1) Shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and

(2) Shall provide a written notification to the ACO and the PCO within 5 working days that includes—

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(d) The Contractor—

(1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and

(2) Shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f)(1) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for—

(i) Parts identified as critical safety items;

(ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

(i) The Contractor or higher-tier subcontractor; and

(ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.

(End of clause)

[FR Doc. E7–733 Filed 1–19–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AF54

Defense Federal Acquisition Regulation Supplement; Berry Amendment Restrictions—Clothing Materials and Components Covered (DFARS Case 2006–D031)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006. Section 833(b) expands the foreign source restrictions applicable to the acquisition of clothing to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof.

DATES: *Effective date:* January 22, 2007.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 23, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D031, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2006–D031 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 225.7002–1 and the corresponding contract clause at 252.225–7012 to implement Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 833(b) amended 10 U.S.C. 2533a (the Berry Amendment) to expand the foreign source restrictions applicable to the acquisition of clothing to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. The rule also includes examples of items subject to the restrictions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to provide for the acquisition of clothing, and clothing materials and components, from domestic sources in accordance with statutory requirements. The legal basis for the rule is 10 U.S.C. 2533a (the Berry Amendment), as amended by Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). The rule will apply to entities interested in receiving DoD contracts or subcontracts for the acquisition of clothing. Based on data generated from the DD Form 350, Individual Contracting Action Report, DoD awarded 6,072 contract actions relating to the acquisition of clothing items during fiscal year 2005. These actions had a total dollar value of $1.868 billion and involved 1,110 contractors. Of these actions, 4,087 totaling $.81 billion involved 906 contractors that were small business concerns. This rule may have a positive impact on small businesses that manufacture clothing materials and components, by reducing foreign competition. However, the rule could have a negative impact on small businesses that have been using foreign components in the manufacture of clothing products.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D031.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 833(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163). Section 833(b) expands the foreign source restrictions applicable to the acquisition of clothing, to also include clothing materials and components, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Section 833(b) became effective upon enactment on January 6, 2006. Comments received in response to this interim rule will be considered in the formation of the final rule.