

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Carbon monoxide, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

##### 40 CFR Part 96

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 29, 2009.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*  
[FR Doc. E9-18999 Filed 8-6-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 25

[FAR Case 2009-013; Docket 2009-0026;  
Sequence 1]

RIN 9000-AL40

#### Federal Acquisition Regulation; FAR Case 2009-013, Nonavailable Articles

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the list of nonavailable articles at FAR 25.104(a). The Councils also request public comment as to whether some articles on the list of nonavailable articles are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality and should therefore be removed from the list.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before October 6, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2009-013 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR case 2009-013" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case FAR case 2009-013. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR case 2009-013" on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case FAR case 2009-013 in all correspondence related to this case. All comments received will be

posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case FAR case 2009-013.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

A nonavailability determination has been made for the articles listed in FAR 25.104(a). As stated at FAR 25.103, this determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

Before acquisition of an article on the list, the procuring agency is responsible for conducting market research appropriate to the circumstances, including seeking domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

The class determination for articles on the list does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation.

The head of the contracting activity may make an individual determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting

documentation to the appropriate council identified in FAR 1.201–1, in accordance with agency procedures, for possible addition to the list in FAR 25.104.

### 1. Proposed Additions to List

Accordingly, the Defense Supply Center Philadelphia (DSCP), a field activity of the Defense Logistics Agency (DLA), has requested addition of yeast (active dry and instant active dry) and canned pineapple. The results of DSCP market research are summarized as follows:

a. *Active Dry Yeast and Instant Active Dry Yeasts.* Through contacts with industry, reviews of customer requirements and an analysis of market availability, DSCP has determined that there are no domestic sources for active dry yeast and instant active dry yeast. All production domestically of active dry yeast and instant active dry yeast has ceased with processing shifted to production facilities in Mexico and Canada. Active dry yeast and instant active dry yeast are key ingredients in the baking of fresh bread and yeast-raised products. Contact was made with DSCP's customers, and all have stated that there are no acceptable alternatives to the active dry yeast and instant active dry yeast, items that are fundamental in the preparation of quick breads, white breads, rolls, variety grain breads, specialty breads, and yeast-raised products such as donuts and sweet rolls.

b. *Pineapple, Solid Pack, Canned.* There are no longer any domestic sources for canned pineapple in its various solid pack forms, including rings, chunks, tidbits, and crushed. The last domestic source closed its only plant in June 2007. Domestic canned pineapple has been supplanted by cheaper, imported products. Canned pineapple is used on the menus of the U.S. Military Services and as an ingredient in certain recipes. While it has been used by the military worldwide, it is especially important to customers, such as Navy ships, that need a longer shelf life item because they have limited access to fresh fruits.

### 2. Proposed Revision of List

A previous FAR Case, 2003–007, added to the list at FAR 25.104(a) an article titled “modacrylic fur ruff” (69 FR 34241, June 18, 2004). This addition was based upon a domestic nonavailability determination approved by the Under Secretary of Defense (Acquisition, Technology and Logistics) dated December 11, 2002, for modacrylic fiber. Therefore, this rule proposes to correct the listing to read

“modacrylic fiber” in lieu of “modacrylic fur ruff.”

### 3. Publication of List for Comment

In addition, FAR 25.104(b) requires publication of the list of nonavailable articles for public comment in the **Federal Register** no less frequently than once every five years. The list was last published for comment on May 18, 2004 (69 FR 28104) (FAR Case 2004–024). The Councils are seeking comment on whether some articles on the list should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Specific information with regard to domestic production capacity in relation to U.S. Government and nongovernment demand and the quality of domestically produced items would be most helpful in determining whether articles should remain on or be removed from the list. A sources-sought notice will also be published in FedBizOpps in an effort to increase the awareness of this request.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Councils do not expect that there are domestic small businesses that can fulfill the Government's requirements for the proposed added items. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2009–013), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 25

Government procurement.

Dated: July 22, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

### PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### 25.104 [Amended]

2. Amend section 25.104 by removing from paragraph (a) “Modacrylic fur ruff” and adding “Modacrylic fiber” in its place, and by adding, in alphabetical order, “Pineapple, canned” and “Yeast, active dry and instant active dry”.

[FR Doc. E9–18992 Filed 8–6–09; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[Docket No. FWS–R9–MB–2009–0003; 91200–1231–9BPP]

RIN 1018–AW46

### Migratory Bird Hunting; Approval of Tungsten-Iron-Fluoropolymer Shot Alloys as Nontoxic for Hunting Waterfowl and Coots; Availability of Draft Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; availability of draft environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service propose to approve tungsten-iron-fluoropolymer shot alloys for hunting waterfowl and coots. We published an advance notice of proposed rulemaking for this group of alloys in the **Federal Register** on March 3, 2009, under RIN 1018–AW46 (74 FR 9207). Having completed our review of the application materials, we have concluded that these alloys are very unlikely to adversely affect fish, wildlife, or their habitats.

**DATES:** Send comments on this proposal and/or the associated Draft Environmental Assessment by September 8, 2009.

**ADDRESSES:** *Draft Environmental Assessment:* You may obtain a copy of the draft environmental assessment