

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 828 of the National Defense Authorization Act for Fiscal Year 2008.

**DATES:** *Effective Date:* March 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, 703-602-0328.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published an interim rule at 75 FR 34942 on June 21, 2010, to amend DFARS parts 217 and 241 to authorize the Department of Defense to enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)). Section 828 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110-181) authorizes DoD to enter into a contract for a period in excess of five years only if the head of the contracting activity determined, on the basis of a business case analysis prepared by DoD, that—

(1) The proposed purchase of electricity under such contract is cost effective; and

(2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

**II. Executive Order 12866**

This rule 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.

**III. Executive Order 13563**

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public, and is consistent with DoD's intent to purchase electricity from sources of renewable energy in the most cost-effective manner.

**IV. Regulatory Flexibility Act**

This final 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 a very limited number of small businesses engaged in the sale of energy-related services, to include the sale of renewable energy. The market for renewable fuels is highly volatile and is

less predictable than other fuel markets. Renewable-energy and alternative-fuel projects are capital-intensive investments and involve the construction of production facilities, which limits small-entity participation.

Although no significant economic impact on small business is anticipated, DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis is summarized below and may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to implement section 828 of the NDAA for FY 2008. Section 828 authorized the Department of Defense (DoD) to enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)). This final rule establishes the conditions under which the head of the contracting activity may enter into a contract for the purchase of renewable energy not to exceed 10 years. Section 828 allows DoD to award a contract for a period in excess of five years: (1) Only after a determination of the cost effectiveness of the proposed purchase has been made based upon a business case analysis, and (2) if it would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

This final rule will apply to DoD contractors engaged in the sale of energy-related services to include the sale of renewable energy.

This rule does not duplicate, overlap, or conflict with any other Federal rules. DoD considers the approach described in the interim rule published at 75 FR 34942 on June 21, 2010, to be the most practical and beneficial for both Government and industry.

DoD invited comments from small business concerns and other interested parties on the expected impact of this rule on small entities. No comments were received.

**V. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 217 and 241**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

**Interim Rule Adopted as Final Without Change**

Accordingly, the interim rule amending 48 CFR parts 217 and 241, which was published at 75 FR 34942 on June 21, 2010, is adopted as a final rule without change.

[FR Doc. 2011-6233 Filed 3-16-11; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 225**

**RIN 0750-AH17**

**Defense Federal Acquisition Regulation Supplement; Nonavailability Exception for Procurement of Hand or Measuring Tools (DFARS Case 2011-D025)**

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

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule to implement section 847 of the National Defense Authorization Act for Fiscal Year 2011. Section 847 provides a nonavailability exception to the requirement at 10 U.S.C. 2533a (Berry Amendment) to acquire only domestic hand or measuring tools.

**DATES:** *Effective date:* March 17, 2011.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before May 16, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2011-D025, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2011-D025" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011-D025." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011-D025" on your attached document.

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2011–D025 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:**

Ms. Amy Williams, 703–602–0328.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This interim rule amends DFARS 225.7002–2 to implement section 847 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 847 provides a nonavailability exception to the requirement at 10 U.S.C. 2533a (Berry Amendment) to acquire only domestic hand or measuring tools. The nonavailability exception was previously limited to the items covered in 10 U.S.C. 2533(b)(1).

**II. Executive Order 12866**

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Executive Order 13563**

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public and is consistent with DoD's requirement to acquire domestic hand or measuring tools unless an authorized exception applies.

**IV. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant 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 allows purchase of hand or measuring tools from foreign sources only when such tools are not available from domestic sources. If no domestic sources produce the tools, then allowing purchase from a foreign source will not impact any U.S. small business. Therefore, an initial regulatory

flexibility analysis has not been performed.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D025) in correspondence.

**V. Paperwork Reduction Act**

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

**VI. 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 847 of the National Defense Authorization Act for Fiscal Year 2011. This requirement became effective upon enactment, January 7, 2011. This action is necessary in order to enable contracting officers to acquire hand or measuring tools that are not available from domestic sources. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 225**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 225 is amended as follows:

**PART 225—FOREIGN ACQUISITION**

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

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

■ 2. In section 225.7002–2, the introductory text of paragraph (b) is revised to read as follows:

**225.7002–2 Exceptions.**

\* \* \* \* \*

(b) Acquisitions of any of the items in 225.7002–1, if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and

when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 252**

**RIN 0750–AH18**

**Defense Federal Acquisition Regulation Supplement; Repeal of Restriction on Ballistic Missile Defense Research, Development, Test, and Evaluation (DFARS Case 2011–D026)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to implement section 222 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 222 repeals the restriction on purchase of Ballistic Missile Defense research, development, test, and evaluation from foreign sources.

**DATES:** *Effective date:* March 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This final rule amends DFARS subpart 225.70 by deleting section 225.7016 and the associated clause at DFARS 252.225–7018, because section 222 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) repealed the restriction from foreign sources of acquisition of Ballistic Missile Defense research, development, test, and evaluation that was required by section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989.

**II. Executive Order 12866**

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not considered a major rule under 5 U.S.C. 804.