

other authorized individual, and the individual or entity furnishing the items or services was not in a position to determine medical necessity or to refuse to comply with the order of the physician or other authorized individual.

* * * * *

Dated: May 22, 2003.

Lewis Morris,

Acting Principal Deputy Inspector General.

Approved: June 5, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03-23351 Filed 9-12-03; 8:45 am]

BILLING CODE 4152-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002-D034]

Defense Federal Acquisition Regulation Supplement; Fish, Shellfish, and Seafood Products

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement Section 8136 of the Defense Appropriations Act for Fiscal Year 2003. Section 8136 requires the acquisition of domestic fish, shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States. This proposed rule contains clarifications to the interim rule published on February 14, 2003.

DATES: DoD will consider all comments received by November 14, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002-D034 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D034.

At the end of the comment period, interested parties may view public comments on the World Wide Web at

<http://emissary.acq.osd.mil/dar/dfars.nsf>.

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

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 7441 on February 14, 2003, to implement Section 8136 of the Defense Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248). Section 8136 relates to application of 10 U.S.C. 2533a (the Berry Amendment), which prohibits DoD from acquiring certain items unless they are grown, reprocessed, reused, or produced in the United States. 10 U.S.C. 2533a(f) provides an exception from this prohibition for foods manufactured or processed in the United States. Section 8136 of Public Law 107-248 makes the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. The interim rule published on February 14, 2003, amended DFARS 225.7002-2 and the clause at DFARS 252.225-7012 to add requirements for the acquisition of domestic fish, shellfish, and seafood in accordance with Section 8136 of Public Law 107-248.

Eight respondents submitted comments on the interim rule. Four respondents concurred with the rule. A discussion of comments received from the other respondents is provided below. As a result of the comments, DoD has made changes to the rule and is requesting additional public comments on those changes.

1. *Comment:* The rule does not provide a definition or other guidance for determining which items qualify as "domestic" fish, shellfish, and seafood products and thus are deemed to have been grown, reprocessed, reused, or produced in the United States. Nor is there a discussion whether domestic fish, shellfish, and seafood would include those caught by U.S.-flag or U.S.-owned vessels, or whether the domestic restriction is intended to focus on the place where the fish, shellfish, and seafood may be caught.

DoD Response: To clarify this issue, the proposed rule includes a new paragraph (d) in the clause at 252.225-7012 to address domestic requirements for fish, shellfish, and seafood. These requirements are based on the definition of "A good wholly obtained or produced" found in United States Customs Service regulations at 19 CFR 102.1(g).

2. *Comment:* The rule does not define the intended geographic limit of "United States" in which the fish, shellfish, and seafood must be

manufactured or processed to qualify as domestic. Neither DFARS 225.003 nor DFARS 225.7001 defines "United States." FAR 25.003 defines "United States" to include "the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction," while DFARS 252.225-7012(b) refers to products from the "United States, its possessions, or Puerto Rico."

DoD Response: After issuance of the interim rule, the FAR was amended to clarify use of the term "United States" (FAC 2001-14; 68 FR 28079, May 22, 2003). This proposed rule amends the clause at 252.225-7012 to add a definition of "United States" that is consistent with the definition presently found in FAR 25.003.

Note: DoD assumes that the respondent meant "produced" rather than "manufactured or processed," because the point of this rule is that manufacturing or processing fish, shellfish, or seafood in the United States is not sufficient to meet the domestic source requirements of the law.

3. *Comment:* The rule makes the new prohibition applicable to all purchases of fish or seafood products and, therefore, makes the other statutory exceptions (at 225.7002-2(a), (b), (d), (e), (f), (g), and (h)) inapplicable to such purchases.

DoD Response: The rule was not intended to make all other Berry Amendment exceptions inapplicable to fish, shellfish, and seafood products. Therefore, the proposed rule revises the text at 225.7002-2(j) and 252.225-7012(c) to clarify this point.

4. *Comment:* The Berry Amendment should be revised or repealed.

DoD Response: This comment is outside the scope of the case. DoD has drafted this DFARS rule in accordance with existing statutory requirements.

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

B. Regulatory Flexibility Act

This proposed rule is a clarification of the changes contained in the interim DFARS rule published at 68 FR 7441 on February 14, 2003. The initial regulatory flexibility analysis prepared for that rule still applies. A copy of the analysis may be obtained from the address specified herein. 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