

shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States.

**DATES:** Effective date: February 14, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 15, 2003, to be considered in the formation of the final rule.

**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](mailto: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**

This interim rule relates to application of the Berry Amendment (10 U.S.C. 2533a), which requires the acquisition of certain items from domestic sources. The Berry Amendment restriction on food is implemented in the DFARS at 225.7002 and in the clause at 252.225–7012, Preference for Certain Domestic Commodities. DoD generally must buy foods grown or produced in the United States (DFARS 225.7002–1(a)(1)), but there is an exception for the acquisition of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced (10 U.S.C. 2533a(f); DFARS 225.7002–2(j)).

Section 8136 of the Defense Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248) makes the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. Section 8136 is also specifically applicable to contracts and subcontracts for the procurement of commercial items.

Therefore, this interim rule revises DFARS 225.7002–2(j) and 252.225–7012(c)(3) to require the application of

domestic source requirements to fish, shellfish, and seafood manufactured or processed in the United States, and fish, shellfish, and seafood contained in foods manufactured or processed in the United States.

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 rule may 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.* DOD has prepared an Initial Regulatory Flexibility Analysis, which is summarized as follows:

This interim rule amends the DFARS to implement section 8136 of the Defense Appropriations Act for Fiscal Year 2003. Section 8136 makes 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. 10 U.S.C. 2533a(f) is an exception to domestic source requirements for foods manufactured or processed in the United States. The objective of the rule is to prohibit DoD acquisition of foreign fish, shellfish, and seafood, even if processed or manufactured in the United States. The rule will apply to all suppliers, processors, and manufacturers of seafood products sold to DoD. The rule should have a beneficial impact on domestic suppliers of fish, shellfish, and seafood.

A copy of the IRFA 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 separately and should cite DFARS Case 2002–D034.

**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 8136 of the Defense Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248). 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. Section 8136 became effective upon enactment, on October 23, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Parts 225 and 252**

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

**PART 225—FOREIGN ACQUISITION**

2. Section 225.7002–2 is amended by revising paragraph (j) to read as follows:

**225.7002–2 Exceptions.**

\* \* \* \* \*

(j) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced, except that, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248), the following foods are subject to the restrictions in 225.7002–1: Fish, shellfish, or seafood manufactured or processed in the United States; and fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.212–7001 [Amended]**

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read “(FEB 2003)”; and

b. In paragraph (b), in entry “252.225–7012”, by removing “(APR 2002)” and adding in its place “(FEB 2003)”.

4. Section 252.225–7012 is amended by revising the clause date and paragraph (c)(3) to read as follows:

**252.225–7012 Preference for Certain Domestic Commodities.**

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