

§ 758.2 Automated Export System (AES).

The Census Bureau's Foreign Trade Statistics Regulations (FTSR) (15 CFR Part 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (*see* 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Three AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other two options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63); Option 4 is available only for approved filers (approval by Census Bureau, Bureau of Customs and Border Protection, BIS and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(b) and 30.62).

(a) Census' Option 4 Application Process.

* * * If the Census Bureau receives neither notification of denial, nor a request for an extension from the agency within 30 days of the date of referral of the letter of intent to the agency, the applicant is deemed to be approved by that agency. * * *

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(c) BIS Option 4 evaluation criteria.

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(3) Exports are destined to a country in Country Group E:1 (Supplement No. 1 to part 740 of the EAR).

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■ 21. Section 758.7 is amended by revising the first sentence of paragraph (b)(1)(i) and the third sentence of paragraph (b)(6) to read as follows:

§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs Offices and postmasters in clearing shipments.

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(b) * * ***(1) * * ***

(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations.

* * * * *

(6) * * * In addition to the authority of Customs officers to seize and detain

items, both Customs officials and officials to the Office of Export Enforcement are authorized to detain any shipment held for review of the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

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■ 22. Section 758.9 is revised to read as follows:

§ 758.9 Other applicable laws and regulations.

The provisions of this part 758 apply only to exports regulated by BIS. Nothing contained in this part 758 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing SEDs, AES records, and manifests, or any applicable rules and regulations of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement.

PART 770—[AMENDED]

■ 23. The authority citation for part 770 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 24. Section 770.2 is amended by revising the first sentences in paragraphs (e)(2)(ii) and (f) to read as follows:

§ 770.2 Item interpretations.

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(e) * * ***(2) * * ***

(ii) When preparing the Shipper's Export Declaration (SED) or Automated Export System (AES) record, a system being shipped complete (*i.e.*, machine and control unit), should be reported under the Schedule B number for each machine. * * *

(f) *Interpretation 6: Parts, accessories, and equipment exported as scrap.* Parts, accessories, or equipment that are being shipped as scrap should be described on the SED or AES record in sufficient detail to be identified under the proper ECCN. * * *

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PART 772—[AMENDED]

■ 25. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 26. Section 772.1 is amended by revising the definition of NLR to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

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NLR. NLR ("no license required") is a symbol entered on the Shipper's Export Declaration or an Automated Export System record certifying that no license is required.

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Dated: August 15, 2003.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

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DEPARTMENT OF DEFENSE**48 CFR Part 217****[DFARS Case 2002-D041]****Defense Federal Acquisition Regulation Supplement; Multiyear Contracting Authority Revisions**

AGENCY: 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 820 of the National Defense Authorization Act for Fiscal Year 2003. Section 820 restricts the use of multiyear contracts for supplies to only those for complete and usable end items, and restricts the use of advance procurement to only those long-lead items necessary in order to meet a planned delivery schedule for complete major end items.

DATES: Effective date: August 21, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before October 20, 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@osd.mil. Please cite DFARS Case 2002-D041 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. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D041.

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. Teresa Brooks, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 217.1 to implement Section 820 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314). Section 820 amends the multiyear contracting authority at 10 U.S.C. 2306b(i) to specify that DoD may obligate funds for procurement of an end item under a multiyear contract only if the item is a complete and usable end item; and that DoD may obligate funds for advance procurement of property only for those long-lead items necessary to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

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 does not expect this 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 rule primarily pertains to DoD planning and budget considerations with regard to multiyear contracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D041.

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 820 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), which restricts the use of multiyear contracts for supplies to only those for complete and usable end items, and restricts the use of advance procurement to only those long-lead items necessary in order to meet a planned delivery schedule for complete major end items. Section 820 became effective upon enactment on December 2, 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 Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 217 is amended as follows:

■ 1. The authority citation for 48 CFR Part 217 continues to read as follows:

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

PART 217—MULTIYEAR CONTRACTING

■ 2. Section 217.172 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b) by adding, before the period, the parenthetical “(10 U.S.C. 2306b(a)(6))”; and

■ c. In paragraph (d)(1), in the parenthetical, by removing “10 U.S.C. 2306b(l)(1)” and adding in its place “10 U.S.C. 2306b(l)(1)(B)(i)(II)”. The revised text reads as follows:

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law. For additional policies that apply only to multiyear contracts for weapon systems and other multiyear acquisitions specifically authorized by law, see 217.173.

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■ 3. Section 217.173 is amended as follows:

■ a. By revising the heading and paragraph (b) introductory text;

■ b. By redesignating paragraph (b)(5) as paragraph (b)(7); and

■ c. By adding new paragraphs (b)(5) and (b)(6). The revised and added text reads as follows:

217.173 Multiyear contracts for weapon systems and other multiyear acquisitions specifically authorized by law.

* * * * *

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section or for other multiyear acquisitions specifically authorized by law:

* * * * *

(5) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(6) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(B)).

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■ 4. Section 217.174 is amended by revising paragraphs (a)(1) and (a)(2) and by adding paragraph (c) to read as follows:

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) * * *

(1) A multiyear contract providing for economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(l)(1)(B)(i)(I)); or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(l)(1)(B)(ii); Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts).

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(c) See 217.173(b)(6) for additional provisions regarding procurement of economic order quantities of long-lead items.

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