

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

[Docket DARS–2023–0026]

RIN 0750–AL78

Defense Federal Acquisition Regulation Supplement: Modification to the National Technology and Industrial Base (DFARS Case 2023–D005)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that adds New Zealand to the definition of the national technology and industrial base.

DATES: Effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is amending the DFARS to implement section 851 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263), which adds New Zealand to the definition of the national technology and industrial base at 10 U.S.C. 4801. The definition already includes the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada as the countries within which the activities of the national technology and industrial base are conducted. 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, requires that DoD only procure certain items if the manufacturer of the items is part of the national technology and industrial base.

This final rule modifies several sections in DFARS subpart 225.70, which implement the restrictions of 10 U.S.C. 4864, to add New Zealand to the list of countries from which certain items may be purchased. The rule also adds New Zealand to the countries listed in the solicitation provision at DFARS 252.225–7037, Evaluation of Offers for Air Circuit Breakers, and the contract clause at DFARS 252.225–7038, Restriction on Acquisition of Air Circuit Breakers.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule implements the section 851 changes to 10 U.S.C. 4801(1) by merely adding New Zealand to the list of countries that includes the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada as the countries within which the activities of the national technology and industrial base are conducted. This change does not have a significant effect beyond the internal operating procedures of the Government and does not have a significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This final rule modifies one existing solicitation provision (DFARS 252.225–7037) and one existing contract clause (DFARS 252.225–7038), which relate to implementation of the limitations of 10 U.S.C. 4864 with regard to acquisition of air circuit breakers. This rule does not implement any new requirements, but adds New Zealand as a country from which items restricted by 10 U.S.C. 4864 may be purchased. It does not modify the applicability of the provision and clause to the acquisition of commercial services, and commercial products, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The rule does not contain 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).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

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

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

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

PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7004–1 to read as follows:

225.7004–1 Restriction.

In accordance with 10 U.S.C. 4864, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured

in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom).

- 3. Amend section 225.7004–3—
- a. By revising paragraph (a);
- b. In paragraph (b) by removing “Canada,” and “Kingdom may” and adding “Canada, New Zealand,” and “Kingdom may” in their places, respectively; and
- c. In paragraph (c) by removing “Canada,” and adding “Canada, New Zealand,” in its place.

The revision reads as follows:

225.7004–3 Exceptions.

* * * * *

(a) Buses manufactured outside the United States, Australia, Canada, New Zealand, or the United Kingdom are needed for temporary use because buses manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States,

Australia, Canada, New Zealand, or the United Kingdom.

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225.7006–1 [Amended]

- 4. Amend section 225.7006–1 by removing “Canada” and adding “Canada, New Zealand,” in its place.

225.7008 [Amended]

- 5. Amend section 225.7008—
- a. In paragraphs (b)(2) and (3) by removing “or Canada,” and adding “Canada, New Zealand,” in its place; and
- b. In paragraph (c) by removing “Canadian,” wherever it appears and adding “Canadian, New Zealand,” in its place.

225.7010–1 [Amended]

- 6. Amend section 225.7010–1 introductory text by removing “Canada,” and adding “Canada, New Zealand,” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7037 [Amended]

- 7. Amend section 252.225–7037—

- a. By removing the clause date of “(DEC 2018)” and adding “(JUL 2023)” in its place;

- b. In paragraph (a) by removing “Canada, or the United Kingdom” and adding “Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom)” in its place; and

- c. In paragraph (b) by removing “its outlying areas, Australia, Canada,” and adding “its outlying areas, Australia, Canada, New Zealand,” in its place.

252.225–7038 [Amended]

- 8. Amend section 252.225–7038—
- a. By removing the clause date of “(DEC 2018)” and adding “(JUL 2023)” in its place; and

- b. In the clause text by removing “Canada, or the United Kingdom” and adding “Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland” in its place.

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