

the Government official specified in the contract for the purposes of conducting a background check; and

(B) Deny access or immediately remove any individual(s) from the vessel deemed unsuitable for any reason by Military Sealift Command Force Protection personnel. The Contractor agrees to replace any such individual promptly and require such replacements to fully comply with all screening requirements.

(ii) The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AH21

#### Defense Federal Acquisition Regulation Supplement; Definition of "Qualifying Country End Product" (DFARS Case 2011-D028)

**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 revise the definition of "qualifying country end product." This final rule eliminates the component test for qualifying country end products that are commercially available off-the-shelf items.

**DATES:** *Effective date:* October 4, 2011.

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the *Federal Register* at 76 FR 32845 on June 6, 2011, to amend the definition of qualifying country end product. One comment was received in response to the proposed rule.

##### II. Discussion and Analysis of Public Comment

*Comment:* The respondent stated that we need to define "commercially

available off-the-shelf item" or reference the definition in the FAR, because there is nothing that says that the definitions in the FAR necessarily apply to the DFARS.

*Response:* The DFARS implements and supplements the FAR (see FAR subpart 1.3). Unless the DFARS specifically makes a statement to the contrary, everything in the FAR is the basis upon which the DFARS is built. No change to the rule is necessary on the basis of this comment.

##### III. Other Changes

As a technical update, the more recent definition of "qualifying country" in 225.003 is incorporated in two of the clauses changed by the final rule, rather than citing to the list of qualifying countries at 225.872-1. This has no practical impact, because the two lists contain the same countries. The definition was added to DFARS 225.003 to reduce confusion, because the list at DFARS 225.872-1 is split into two paragraphs, (a) and (b), which sometimes leads to misinterpretation of the status of countries that are listed in paragraph (b).

##### 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. This rule is not a major rule under 5 U.S.C. 804.

##### V. Regulatory Flexibility Act

DoD certifies that this rule will not 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 only affects manufacturers of COTS items in qualifying countries, removing an administrative burden for the qualifying country manufacturer and the Government personnel acquiring the items. No domestic entities will be impacted by this rule. For the definition of "small business," the Regulatory Flexibility Act refers to the Small

Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."

The comparable change has already been enacted for the benefit of U.S. manufacturers of COTS items.

##### VI. Paperwork Reduction Act

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. (chapter 35).

##### List of Subjects in 48 CFR Part 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 252 is amended as follows:

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

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

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

##### 252.212-7001 [Amended]

■ 2. Amend section 252.212-7001 as follows:

■ a. Remove the clause date "(SEP 2011)" and add in its place "(OCT 2011)";

■ b. In paragraph (b)(6)(i), remove the clause date "(JAN 2009)" and add in its place "(OCT 2011)" and in paragraph (b)(6)(ii), remove the clause date "(DEC 2010)" and add in its place "(OCT 2011)";

■ c. In paragraph (b)(12)(i), remove the clause date "(JUN 2011)" and add in its place "(OCT 2011)", in paragraph (b)(12)(ii), remove the clause date "(SEP 2008)" and add in its place "(OCT 2011)", and in paragraph (b)(12)(iii), remove the clause date "(DEC 2010)" and add in its place "(OCT 2011)"; and

■ d. In paragraph (b)(15)(i), remove the clause date "(DEC 2010)" and add in its

place “(OCT 2011)”, in paragraph (b)(15)(ii), remove the clause date “(JUL 2009)” and add in its place “(OCT 2011)”, and in paragraphs (b)(15)(iii) and (b)(15)(iv), remove the clause date “(DEC 2010)” and add in its place “(OCT 2011)”.

■ 3. Amend section 252.225–7001 as follows:

■ a. Remove the clause date “(SEP 2011)” and add in its place “(OCT 2011)”;

■ b. In paragraph (a), remove the number preceding each definition and revise the definitions for “Qualifying country” and “Qualifying country end product”;

■ c. In Alternate I, remove the clause date “(DEC 2010)” and add in its place “(OCT 2011)” and in paragraph (a), remove the numbers preceding each definition.

**252.225–7001 Buy American Act and Balance of Payments Program.**

\* \* \* \* \*

(a) \* \* \*

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

\* \* \* \* \*

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial

quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

\* \* \* \* \*

■ 4. Amend section 252.225–7021 as follows:

■ a. Remove the clause date “(JUN 2011)” and add in its place “(OCT 2011)”;

■ b. In paragraph (a), remove the number preceding each definition, add in alphabetical order the definition for “Commercially available off-the-shelf (COTS) item”, and revise the definitions for “Qualifying country” and “Qualifying country end product”;

■ c. In Alternate I, revise the clause date, revise the introductory text, and, in paragraph (a), remove the number preceding the definition;

d. In Alternate II, remove the clause date “(DEC 2010)” and add in its place “(OCT 2011)” and, in paragraph (a), remove the numbers preceding the definitions.

**252.225–7021 Trade Agreements.**

\* \* \* \* \*

(a) \* \* \*

*Commercially available off-the-shelf (COTS) item.* (i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 4 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

\* \* \* \* \*

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France,

Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

*Qualifying country end product*

means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

\* \* \* \* \*

**ALTERNATE I (OCT 2011)**

As prescribed in 225.1101(6)(ii), add the following definition to paragraph (a) of the basic clause and substitute the following paragraph (c) for paragraph (c) of the basic clause:

\* \* \* \* \*

■ 5. Amend section 252.225–7036 as follows:

■ a. Remove the clause date “(DEC 2010)” and add in its place “(OCT 2011)”;

■ b. In paragraph (a), remove the numbers preceding the definitions and revise the definition for “Qualifying country end product”;

■ c. In Alternate I, revise the clause date, revise the introductory text, and, in paragraph (a), remove the number preceding the definition; and

■ d. In Alternates II and III, remove the clause date “(DEC 2010)” and add in its place “(OCT 2011)” and in paragraph (a), remove the numbers preceding the definitions.

**252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.**

\* \* \* \* \*

(a) \* \* \*

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

\* \* \* \* \*

**ALTERNATE I (OCT 2011)**

As prescribed in 225.1101(11)(i)(B), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 0907271173-0629-03]

RIN 0648-XA701

**Accountability Measures and Reduced Season for the South Atlantic Recreational Sector of Golden Tilefish for the 2011 Fishing Year**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS implements accountability measures (AMs) for the recreational sector of golden tilefish in the South Atlantic for the 2011 fishing year through this temporary final rule. This rule reduces the length of the 2011 recreational fishing season for golden tilefish based on the 2010 recreational annual catch limit (ACL) overage, and as a result closes the recreational sector. This action is necessary to reduce overfishing of the South Atlantic golden tilefish resource.

**DATES:** This rule is effective October 6, 2011 until 12:01 a.m., local time on January 1, 2012.

**ADDRESSES:** Copies of the final rule for Amendment 17B, the Environmental Assessment for Amendment 17B, and

other supporting documentation may be obtained from Catherine Bruger, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bruger, telephone: 727-824-5305, fax: 727-824-5308, e-mail: *Catherine.Bruger@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). Golden tilefish are managed under this FMP. The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

On December 30, 2010, NMFS issued a final rule (75 FR 82280) to implement Amendment 17B to the FMP (Amendment 17B). Amendment 17B established ACLs for eight snapper-grouper species in the FMP that are undergoing overfishing, including golden tilefish, and AMs to be implemented if these ACLs are reached or exceeded.

The recreational ACL for golden tilefish, implemented through Amendment 17B, is 1,578 fish. In accordance with regulations at 50 CFR 622.49(b)(1)(ii), if the ACL is exceeded, the Regional Administrator (RA) will publish a notice to reduce the length of the following fishing season by the amount necessary to ensure landings do not exceed the recreational sector ACL in the following fishing year. Additionally, in accordance with these regulations, the recreational landings are evaluated relative to the ACL as follows: For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL. Therefore this temporary final rule is being implemented based

on an evaluation of golden tilefish recreational landings for the 2010 fishing year.

Finalized landings data from the NMFS Southeast Fisheries Science Center indicate that the recreational golden tilefish ACL was exceeded by 2,805 fish in 2010. Therefore, this temporary rule implements an AM to reduce the fishing season for the recreational golden tilefish component of the snapper-grouper fishery from October 6, 2011 until January 1, 2012. As a result of this reduced season, the recreational sector for golden tilefish will be closed effective 12:01 a.m., local time October 6, 2011.

The 2012 recreational fishing season for golden tilefish will begin on January 1, 2012, through December 31, 2012, unless AMs are implemented due to an ACL overage and a reduced fishing season is specified through notification in the **Federal Register**.

Commencing 12:01 a.m., local time on October 6, 2011, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(ii) and (d)(2), respectively, are zero and apply to all recreational harvest or possession of golden tilefish in or from the South Atlantic exclusive economic zone.

**Classification**

The Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the South Atlantic golden tilefish snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Amendment 17B and located at 50 CFR 622.49(b)(1)(ii) have already been subject to notice and comment and authorize the AA to file a notification with the Office of the Federal Register to reduce the duration of the recreational fishing season the following fishing year if an overage occurs in the prior fishing year. All that remains is to notify the public of the reduced recreational fishing season for golden tilefish for the 2011 fishing year.