



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2016-0022]

RIN 0750-AI98

**Defense Federal Acquisition Regulation Supplement: New
Designated Country—Ukraine (DFARS Case 2016-D026)**

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add Ukraine as a new designated country under the World Trade Organization Government Procurement Agreement.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stiller, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

On November 11, 2015, the World Trade Organization (WTO) Committee on Government Procurement approved the accession of Ukraine to the WTO Government Procurement Agreement (GPA).

Ukraine submitted its instrument of accession to the Secretary General of the WTO on April 18, 2016. The GPA entered into force for Ukraine on May 18, 2016. The United States, which is also a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of Ukraine beginning on May 18, 2016. Therefore, this rule adds Ukraine to the list of WTO GPA countries wherever it appears in the DFARS, as part of the definition of "designated country".

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items.

This rule only updates the list of designated countries in the DFARS by adding the newly designated country of Ukraine. The definition of "designated country" is updated in each of the following clauses; however, this revision does not impact the clause prescriptions for use, or applicability at or below the simplified acquisition threshold, or applicability to commercial items. The clauses are: DFARS 252.225-7017, Photovoltaic Devices; DFARS 252.225-7021, Trade Agreements; and DFARS 252.225-7045, Balance of Payments Program-Construction Material Under Trade Agreements.

III. 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 entitled "Publication of Proposed Regulations." Paragraph (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 it is just updating the lists of designated countries in order to reflect that Ukraine is now a member of the WTO GPA. These requirements affect only the internal operating procedures of the Government.

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

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.

VI. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at DFARS 252.225-7020, Trade Agreements Certificate, and 252.225-7018, Photovoltaic Devices—Certificate, currently approved under OMB Control Number 0704-0229, entitled “Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses,” in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because the rule only affects the response of an offeror that is offering a product of Ukraine in an acquisition that exceeds \$191,000. In 252.225-7018, the offeror of a product from Ukraine must now check a box at (d)(6)(i) of the provision. However, the offeror no longer needs to list a product from Ukraine under “other end products”

at 252.225-7020(c)(2), because Ukraine is now a designated country.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer L. Hawes,

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.

252.225-7017 [Amended]

2. Amend section 252.225-7017 by—

a. Removing the clause date of “(JAN 2016)” and adding “(JUN 2016)” in its place; and

b. In paragraph (a), in the definition of “designated country” in paragraph (i), adding, in alphabetical order, the country of “Ukraine”.

252.225-7021 [Amended]

3. Amend section 252.225-7021 by—

a. Removing the basic clause date of “(OCT 2015)” and adding “(JUN 2016)” in its place;

b. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Ukraine"; and

c. In the Alternate II clause—

i. Removing the clause date of "(OCT 2015)" and adding "(JUN 2016)" in its place; and

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Ukraine".

252.225-7045 [Amended]

4. Amend section 252.225-7045 by—

a. Removing the basic clause date of "(OCT 2015)" and adding "(JUN 2016)" in its place;

b. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Ukraine";

c. In the Alternate I clause—

i. Removing the clause date of "(OCT 2015)" and adding "(JUN 2016)" in its place; and

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Ukraine";

d. In the Alternate II clause—

i. Removing the clause date of "(OCT 2015)" and adding "(JUN 2016)" in its place; and

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Ukraine"; and

e. In the Alternate III clause—

i. Removing the clause date of "(OCT 2015)" and adding "(JUN 2016)" in its place; and

ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Ukraine".

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