

(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisitions Regulations System

48 CFR Parts 225 and 252

RIN 0750-AH70

Defense Federal Acquisition Regulation Supplement; Defense Trade Cooperation Treaty with the United Kingdom (DFARS 2012-D034)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement requirements of the Defense Trade Cooperation Treaty with the United Kingdom (the Treaty) and the Security Cooperation Act of 2010 regarding export control regulations between the United States and the United Kingdom. The Treaty and statute establish an Approved Community of the U.S. Government and the government of the United Kingdom.

DATES: Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before

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[Insert date 60 days after date of publication in the FEDERAL REGISTER], to be considered in the formation of the final rule.

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

ADDRESSES: Submit comments identified by DFARS Case 2012-D034, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D034" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D034." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D034" on your attached document.

- o Email: dfars@osd.mil. Include DFARS Case 2012-D034 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: (Insert case manager's name), OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change

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to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106; facsimile 571-372-6101.

SUPPLEMENTARY INFORMATION:

I. Background

This rule streamlines the export control regulations between the United States and the United Kingdom under specified circumstances.

The U.S. Government controls exports of defense articles, technical data, and defense services. The governing law is the Arms Export Control Act (AECA) (27 U.S.C. 2751 *et seq.*) and its implementing regulation, the International Traffic in Arms Regulation (ITAR) (22 CFR 120-130).

Under the ITAR, the Department of State manages an export licensing system in which numerous government approvals are

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often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware, or transfer know-how to one another, and even sometimes to transfer engineers and other company employees from one country to another. This process can be challenging and time consuming for U.S. exporters and for foreign firms in their supply chains.

The U.S. concluded a Treaty with the United Kingdom to enable their militaries, security authorities, and their industries to exchange defense articles, technical information, and defense services more freely. The Treaty establishes permissions for export if an export meets the Treaty requirements. Other exports remain under the AECA and the ITAR.

The Treaty and implementing arrangements with the United Kingdom may be accessed at

<http://www.state.gov/t/pm/rls/othr/misc/92770.htm>.

The implementing legislation is in Title I of Pub. L. 111-266, the Security Cooperation Act of 2010.

The Senate conditions upon ratification are at

<http://www.govtrack.us/congress/billtext.xpd?bill=s111-3847>.

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The Department of State regulations implementing the Treaties are at 22 CFR 110 for the Treaty with the United Kingdom.

The Treaty establishes an Approved Community of the U.S. Government and the government of the United Kingdom, including various Ministries, Departments, and Agencies, as well as selected defense and security companies and facilities in the three countries. Exports of most U.S. defense articles, technical data, and defense services are permitted to go into and to move freely within this community, without the need for government approvals and export licenses, when in support of the following:

- Combined U.S.-U.K. military or counterterrorism operations.
- Joint U.S.-U.K. cooperative security and defense research, development, production, and support programs.
- Specific security and defense projects that are for U.K. Government use only.
- U.S. Government end use.

Under the Treaty, instead of a U.S. exporter preparing and

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requesting U.S. Department of State approval of an export license or Technical Assistance Agreement for a project, which would normally take around 45-60 days, the exporter will check the Department of State website or other appropriate reference and verify that—

- The U.K. industry partner is on the list of approved companies/facilities (i.e., a member of the Approved Community;
- The project is on the list of approved projects and items are for U.S. Government end use; and
- The technology is not on the excluded list.

If the partner, the project, and the technology are verified, then the U.S. exporter and the U.K. partner may cooperate freely without export licenses.

In addition to checking the three lists, an exporter using the Treaty also must comply with requirements in the Treaty and the Implementing Arrangement, and 22 CFR 110 (United Kingdom). These requirements include marking and recordkeeping to ensure that export-controlled items are recognized as such and treated accordingly. For example, 22 CFR 110 establishes the requirements that apply instead of normal ITAR requirements.

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Similarly, DFARS 225.7X02 implements requirements that relate to exports that a prospective contractor may make under a DoD solicitation or that a contractor may make in performance of a DoD contract.

II. 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.

III. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities

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within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose burdens on small businesses. Small businesses that are exporters will benefit from being able to use the streamlined treaty process to make exports that are associated with responding to DoD solicitations and performance of DoD contracts. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of the rule is to streamline the export control regulations between the United States and the United Kingdom under specified circumstances. The legal basis for the rule is the Security Cooperation Act of 2010 (Pub. L. 111-266), enacted October 8, 2010.

Although this rule adds a representation that requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, the net effect will be to significantly streamline and reduce paperwork requirements between the United States and the United Kingdom under the system set forth in the Defense Trade Cooperation Treaty between and regulated by the ITAR by no longer requiring individual export control licenses within the Approved Community. In short, one representation

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per offeror will replace multiple requirements under the present system.

The great majority of industry members of the Approved Community are not small businesses due to the specialized knowledge of export control regulations and the cost involved in compliance. Therefore, the cost is anticipated to be less than five million dollars, but will accrue a net cost savings by streamlining the requirements of industry compared to the present export control licensing procedures.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule implements Treaty and statute and DoD is not aware of any alternative methods of achieving the objectives of the rule. Furthermore, the net impact of the rule is expected to be beneficial to small businesses.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties

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must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012-D034), in correspondence.”

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 0704-XXXX, titled:

_____.

A. Public reporting burden for this collection of information is estimated to average 0.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 110

Responses per respondent: 1

Total annual responses: 110

Preparation hours per response: 0.1

Total response burden hours: 11

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Although this rule adds a representation, the net effect will be to significantly streamline and reduce paperwork requirements between the United States and the United Kingdom under the system set forth in the Defense Trade Cooperation Treaty between and regulated by the ITAR by no longer requiring individual export control licenses within the Approved Community. In short, one representation per offeror will replace multiple requirements under the present system.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent not later than **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email Jasmeet_K._Seehra@omb.eop.gov, with a copy to the Defense Acquisition Regulations System, Attn: (Ms. Amy Williams), OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 to 60 days after the date of this notice, but

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comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: (Ms. Amy Williams), OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060, or email dfars@osd.mil. Include DFARS Case 2012-D034 in the subject line of the message.

Requesters may obtain a copy of the supporting statement from

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the point of contact specified herein. Please cite OMB Control Number 0704-XXXX, Title, in all correspondence.

VI. 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 promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Department of State has received expedited OIRA review handling of the final ITAR rule and the Department of State is projecting a mid-March publication. The request for expedited implementation of an interim DFARS rule is based upon the DFARS' integral ties with the ITAR and the National Industrial Security Program Operating Manual (NISPOM). The NISPOM and DFARS regulations operationalize the ITAR guidance for industry partners in the Approved Community who are responsible for most of the operational functions.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

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