

public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as a domestic end product; or

(ii) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in 225.872-4(b), process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value great-

er than the simplified acquisition threshold but less than \$1,000,000; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at \$1,000,000 or more.

(iii) A separate determination as to whether an article is reasonably available is not required for the following articles. DoD has already determined that these articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

[68 FR 15618, Mar. 31, 2003, as amended at 70 FR 2362, Jan. 13, 2005]

#### **225.104 Nonavailable articles.**

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

- (i) Aluminum clad steel wire.
- (ii) Sperm oil.

#### **225.105 Determining reasonableness of cost.**

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

#### **225.170 Acquisition from or through other Government agencies.**

Contracting activities must apply the evaluation procedures in Subpart 225.5 when using Federal supply schedules.

**Subpart 225.2—Buy American Act—Construction Materials**

**225.202 Exceptions.**

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a) or in 225.104(a). For other materials, a non-availability determination shall be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level.

[65 FR 19851, Apr. 13, 2000, as amended at 68 FR 15619, Mar. 31, 2003]

**225.206 Noncompliance.**

(c)(4) Prepare any report of non-compliance in accordance with the procedures at 209.406-3 or 209.407-3.

[64 FR 62986, Nov. 18, 1999]

**Subpart 225.4—Trade Agreements**

SOURCE: 65 FR 19852, Apr. 13, 2000, unless otherwise noted.

**225.401 Exceptions.**

(a)(2) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(A) Purchase from foreign sources is restricted by statute (see Subpart 225.70);

(B) Another exception in FAR 25.401 applies to the acquisition; or

(C) Competition from foreign sources is restricted under Subpart 225.71.

[68 FR 15619, Mar. 31, 2003]

**225.401-70 End products subject to trade agreements.**

Acquisitions of end products in the following Federal supply groups (FSG) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies. If an end

product is not in one of the listed groups, the trade agreements do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). Therefore certain watches, watch parts, and luggage from certain Caribbean Basin countries are not eligible products. However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Piping, tubing, hose, and fitting
48	Valves
49	Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960)
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps