

Department of Defense

225.401-70

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 Products subject to trade agreements.**

Acquisitions of end products in the following Federal supply groups (FSG) are subject to 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.

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

FSG	Category/Description
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
63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies, and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment

**225.402****48 CFR Ch. 2 (10-1-04 Edition)**

FSG	Category/Description
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging and packing supplies (except 8140)
84	Luggage (only 8460)—See FAR 25.003 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, oils, and waxes
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

[65 FR 19852, Apr. 13, 2000, as amended at 68 FR 15619, Mar. 31, 2003; 69 FR 1927, Jan. 13, 2004]

**225.402 General.**

To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (*see* 225.401-70).

[67 FR 77938, Dec. 20, 2002]

**225.403 Trade Agreements Act.**

(c) For acquisitions subject to the Trade Agreements Act, acquire only U.S.-made, qualifying country, or eligible end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Director of Defense Procurement and Acquisition Policy in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas

purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

[68 FR 15619, Mar. 31, 2003]

**225.408 Procedures.**

(a)(4) The requirements of FAR 25.408(a)(4) do not apply to offshore acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

**Subpart 225.5—Evaluating Foreign Offers—Supply Contracts**

SOURCE: 68 FR 15620, Mar. 31, 2003, unless otherwise noted.

**225.502 Application.**

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.-made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American Act or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to a Free Trade Agreement, then end products of the applicable Free Trade Agreement country are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(ii) If price is the determining factor, use the following procedures: