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**252.225-7012, Preference for Certain Domestic
Commodities**

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Agenda

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 - Textiles (including equipment and furnishings)
 - Clothing (and accessories)
 - Flags
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Background

- 1941: Congressman Ellis Berry (R-SD) added domestic source restrictions to DOD Authorization Act to products not “**wholly grown, reprocessed, reused, or produced**” in the U.S.
- Now codified at 10 U.S.C. § 4862 (formerly 10 U.S.C. § 2533a)
- Applies **only** to purchases using **DOD funds**
- Over time, Berry Amendment grew to include:
 - Food
 - Clothing (including materials and components normally associated with clothing)
 - Cotton and other natural fiber products
 - Wool (including wool in manufactured articles)
 - Woven silk or woven silk blends
 - Spun silk yarn for cartridge cloth
 - Synthetic fabric or coated synthetic fabric
 - Protective clothing
 - Tents (including structural components), tarpaulins, and covers
 - Canvas products
 - Individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials
 - Hand or measuring tools
 - *Specialty metals (moved to a separate statute in 2006)*
 - Stainless steel flatware
 - Dinnerware
 - Flags



Berry Amendment = Frankenstein's Monster?



252.225-7006, Acquisition of the American Flag

- American flags, “including the materials and components thereof, shall be **manufactured in the United States...**”
- “This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles or accessories).”



252.225-7012, Preference for Certain Domestic Commodities

“(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States.”

252.225-7015, Restriction on Hand or Measuring Tools

- “Hand or measuring tools delivered under this contract shall be **produced in the United States** or its outlying areas.”



General Exceptions

1. Acquisitions **below \$150,000**
 - **Athletic footwear** is exempt from this exception
 - **Flags** are covered between \$10,001 and \$150,000
2. Unavailability
 - Looks to the needed quality/quantity and U.S. market prices
 - Nonavailability determinations rest with the secretary of the military department (e.g., Secretary of the Navy), routed through the Director, Defense Pricing & Contracting
3. Combat operations **outside the U.S.**
4. Emergency acquisitions **outside the U.S.**
5. Perishable foods purchased **outside the U.S.**
6. Vessels in **foreign waters**
7. Commissary/resale
8. Acquisitions made by DOD but for the benefit of a civilian agency or state/local government

Covered Products

1. Hand or Measuring Tools
2. ~~Dinnerware/flatware~~
3. Food
4. Fibers (natural and synthetic)
5. Textiles (including equipment and furnishings)
6. Clothing/apparel
7. American Flags



1. Hand or Measuring Tools

- Applies to products listed under **Federal Supply Classification (FSC) Categories 51 and 52**

- ✓ Hand tools, edged, nonpowered
- ✓ Hand tools, nonedged, nonpowered
- ✓ Hand tools, power driven
- ✓ Drill bits, counterbores, and countersinks (hand and machine)
- ✓ Taps, dies, and collets (hand and machine)
- ✓ Tool and hardware boxes
- ✓ Sets, kits, and outfits of hand tools
- ✓ Measuring tools, craftsmen's
- ✓ Inspection gages and precision layout tools
- ✓ Sets, kits, and outfits of measuring tools

- The **National Stock Number (NSN)** for a product will tell you whether the product falls within any of these classification categories

- NSN **51**xx-xx-xxx-xxxx
- NSN **52**xx-xx-xxx-xxxx



1. Hand or Measuring Tools (cont'd)

- End-product must be “produced” in the U.S.
 - “Produced” = “assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.”
 - Disassembly followed by reassembly does not qualify
 - Country of origin of component parts is irrelevant
 - Note: This is different than clothing/textiles/fibers, which **do** look at the component materials
- Products that are “substantially transformed” in the U.S. under the **Trade Agreements Act (TAA)** will typically meet the “produced” requirement
- If the **Buy American Act (BAA)** also applies to a procurement, then the BAA requirement may supersede this clause
 1. End-product = Manufactured in the U.S.; **and**
 2. Cost of components = > 65% U.S. content
 - Exception to content requirement for COTS products not made wholly or predominantly from iron or steel

1. Hand or Measuring Tools (cont'd)

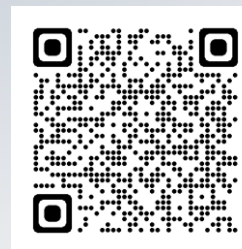
- Additional exceptions:

- Acquisitions In support of **contingency operations**
- Non-competitive/**sole-source awards** based on unusual and compelling circumstances



2. Dinnerware/Flatware

- Added in December 2019; **expired** September 2023
 - *But has DOD gotten the message that this has been repealed?*
- Required that dinnerware or stainless steel flatware be “produced in the United States”
 - ✓ Cutlery
 - ✓ Knives
 - ✓ Forks
 - ✓ Spoons
 - ? Plates/bowls
 - ? Glasses/cups
 - ? Platters/serving dishes
 - ? Other kitchen equipment...?
- Likely covered products under **FSC 7340** (Cutlery and Flatware); **7350** (Tableware); and possibly **7360** (Sets, kits, outfits and modules for food)
- Requirement not in the DFARS; implemented via DFARS 252.225-7969 via [Class Deviation 2020-00017](#) (which has now expired by its terms)



3. Food

- Applies to **perishable and processed** foods listed under **FSC Category 89** (Subsistence)

- | | |
|-------------------------|---|
| ✓ Meat/poultry | ✓ Jams/jellies/preserves |
| ✓ Seafood | ✓ Soups and bouillon |
| ✓ Dairy foods | ✓ Infant formula |
| ✓ Eggs | ✓ Potato chips |
| ✓ Fruits & vegetables | ✓ Oils and fats |
| ✓ Baked goods/fillings | ✓ Condiments and related products |
| ✓ Cereal products/pasta | ✓ Coffee/tea/cocoa |
| ✓ Sugar/candy/gum | ✓ Beverages (juice; soda; ice; alcohol) |
| ✓ Honey/syrup | ✓ Tobacco products |
| ✓ Nuts | ✓ Composite food packages/rations |

- The NSN for a product will tell you whether the product is covered
 - NSN **89**xx-xx-xxx-xxxx
- Does **not** apply to equipment used to prepare/serve food

3. Food (cont'd)

- Additional exceptions:

- Acquisitions In support of **contingency operations**
- Non-competitive/**sole-source awards** based on unusual and compelling circumstances
- **Foods manufactured or processed in the U.S.**, without regard to where the underlying foods originated
 - NOTE: This exception does not apply to fish, shellfish, seafood; those foods must still be U.S. origin or processed on a U.S. ship unless another exception applies

4. Fibers (Natural and Synthetic)

- End-product and component fibers must be “grown, reprocessed, reused, or produced” in the U.S.
 - ✓ Cotton
 - ✓ Wool
 - ✓ Silk (woven silk and spun silk yarn for cartridge cloth)
 - ✓ Other natural fibers
 - ✓ Synthetic fabrics
 - ✓ Coated synthetic fabrics
 - ✓ Synthetic fibers and yarns (e.g., para-aramid)
- Source of component fibers is **relevant!**



4. Fibers (Natural and Synthetic) (cont'd)

- Additional exceptions

- **Waste and byproducts** of cotton or wool fiber used to produce propellants and explosives
- **De Minimis amounts** of cotton, wool, or other **natural** fibers incorporated in an end-product where the value of the fibers
 - Is not more than 10% of the total price of the end-product; **and**
 - Is < \$150,000
- **Fibers and yarns in synthetic fabrics or coated synthetic fabrics**, provided:
 - The end-product is not a “textile”; or
 - The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a “qualifying country”

4. Fibers (Natural and Synthetic) (cont'd)

- “Qualifying Country”

- Australia
- Austria
- Belgium
- Canada
- Czech Republic
- Denmark
- Egypt
- Estonia
- Finland
- France
- Germany
- Greece
- Israel
- Italy
- Japan
- Latvia
- Lithuania
- Luxembourg
- Netherlands
- Norway
- Poland
- Portugal
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom

5. Textiles/Equipment/Furnishings

- “Textile” is not a defined term, but it is a concept that is used to capture a broad category of products

- ✓ Tents (including structural components, e.g., poles, frames, flooring, ropes, pegs)
- ✓ Tarps/tarpaulins
- ✓ Covers
- ✓ Canvas products
- ✓ Parachutes
- ✓ Flags/pennants
- ✓ Individual equipment
- ✓ Yarn/thread
- ✓ Textile fabrics
- ✓ Tablecloths
- ✓ Towels
- ✓ Draperies/curtains
- ✓ Floor coverings
- ✓ Furnishings
- ✓ Bedding/blankets
- ✓ Upholstered products/chairs

- Generally applies to products made from natural and synthetic fibers listed under **FSC Category 72** (Household and Commercial Furnishings and Appliances), **Category 83** (Textiles, Leather, Furs, Apparel and Shoe Findings, Tents, and Flags), and **Category 8465** (Individual Equipment)

- NSN **72**xx-xx-xxx-xxxx
- NSN **83**xx-xx-xxx-xxxx
- NSN **8465**-xx-xxx-xxxx

- Not every product in these FSC Categories are covered by the Berry Amendment

6. Clothing (and Accessories)

- Applies to **clothing** and **accessories** normally associated with clothing:

- ✓ Outerwear
- ✓ Headwear
- ✓ Underwear
- ✓ Nightwear
- ✓ Footwear (shoes; boots)
- ✓ Hosiery
- ✓ Handwear
- ✓ Belts/suspenders
- ✓ Badges/insignia
- ✓ Specialized fight clothing
- ✓ Children & infant apparel
- ✓ Zippers
- ✓ Buttons
- ✓ Snaps
- ✓ Rivets
- ✓ Waterproofing layers

- Generally applies to products made from natural and synthetic fibers listed under FSC **Category 83** (Textiles, Leather, Furs, Apparel and Shoe Findings, Tents, and Flags) and **Category 84** (Clothing, Individual Equipment and Insignia)

- NSN **83**xx-xx-xxx-xxxx

- NSN **84**xx-xx-xxx-xxxx

6. Clothing (and Accessories) (cont'd)

- Applies to flags and components of flags (including fibers and materials)
 - Does not apply to certain products/accessories that are **not considered “clothing”**
 - Sensors, electronics, or other items that are added to, but not normally associated, with clothing
 - For example, Small Arms Protective Inserts (SAPI plates) are not normally associated with clothing, so they are not treated as clothing accessories and can be manufactured outside the U.S. But the **fibers** may still need to be domestically procured, unless another exception is available.
 - Non-fabric materials, luggage, equipment, and personal armor/ballistics protection
 - Visors, Kevlar helmets, handbags, and plastic ID tags
 - Acquisitions of **chemical warfare clothing** produced in a qualifying country



7. American Flags

- Applies to U.S. **flags** and **components of flags** (including fibers and materials)
- Exception for micro-purchases under \$10,000
 - But buyers are prohibited from breaking up orders to fall below the micro-purchase threshold
 - Purchases between \$10,001 and \$150,000 are still covered by Berry
- Waiver authority for larger purchases, if approved by DOD
- Restriction does not apply to flag **accessories** (such as flag poles, clips, etc.)

- Generally applies to flags under FSC **Category 8345** (Flags and Pennants)
 - NSN **8345**-xx-xxx-xxxx
 - Other, non-"stars and stripes" flags are covered under other existing Berry requirements

Questions to Consider

- Is the product covered by the Berry Amendment?
 - Helpful to inventory your product offering/catalog to identify products that must comply
 - Use NSNs to identify products that are likely to be covered
- What is the value of the contract?
 - Acquisitions < \$150,000 do not need to comply with the Berry Amendment (except for U.S. flags and athletic shoes)
- Where are the products being used/purchased?
 - Acquisitions outside the U.S. in support of combat operations are exempt
 - Acquisitions by vessels in foreign waters are exempt
 - Acquisitions intended for resale (e.g., commissary) are exempt
- Is the product even available from U.S. sources?
 - If a product is not available in the U.S., then a “**Domestic Non-Availability Determination**” (DNAD) can be requested
 - Time intensive and public process; very seldom granted
- What is the amount of non-conforming foreign fibers?
 - Berry Amendment does not apply to *de minimis* amounts of **natural** fibers (less than 10% of end-product value and less than \$150,000)
 - Does not apply to **synthetic** fibers if: (1) the end product is not a textile; or (2) fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a “qualifying country”

Questions?



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