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LEGAL STATUS

Federal Acquisition Regulation: List of Domestically Nonavailable Articles

A Rule by the Federal Procurement Policy Office, the Defense Department, the General Services Administration, the Energy Department, and the National Aeronautics and Space Administration on 05/12/2025

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Office of Federal Procurement PolicyDepartment of DefenseGeneral Services Administration
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48 CFR Part 25
[FAC 2025-04, FAR Case 2020-009, Item I; Docket No. FAR-2020-0009, Sequence No. 1]
RIN 9000-AO07

AGENCY:

Office of Federal Procurement Policy (OFPP), Office of Management and Budget; Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION:

Final rule.

SUMMARY:

OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to (🗋 printed page 20221) revise the list of domestically nonavailable articles under the Buy American statute.

DATES:

Effective June 11, 2025.

FOR FURTHER INFORMATION CONTACT:

For clarification of content, contact *FARPolicy@gsa.gov (mailto:FARPolicy@gsa.gov)* or call 202-969-4075. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov (mailto:GSARegSec@gsa.gov).* Please cite FAC 2025-04, FAR Case 2020-009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 89 FR 84505 (/citation/89-FR-84505) on October 23, 2024, to revise the list of domestically nonavailable articles at FAR 25.104(a) and implement requirements related to making future changes to the list consistent with section 9 of Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475 (/citation/86-FR-7475), January 28, 2021). The removal of articles from the list at FAR 25.104(a) supports the Administration's America First Trade Policy, by encouraging a more dynamic, secure, and competitive domestic industrial base.

As published in the proposed rule, this final rule removes the following articles from the list at FAR 25.104(a): acetylene, black; agar, bulk; anise; asbestos, amosite, chrysotile, and crocidolite; bauxite; beef, corned, canned; beef extract; bephenium hydroxynaphthoate; cadmium, ores and flue dust; calcium cyanamide; castor beans and castor oil; chalk, English; chicle; cinchona bark; cobalt, in cathodes, rondelles, or other primary ore and metal forms; colchicine alkaloid, raw; copra; crane rail (85-pound per foot); cryolite, natural; dammar gum; diamonds, industrial, stones and abrasives; emetine, bulk; ergot, crude; erythrityl tetranitrate; goat hair canvas; goat and kidskins; graphite, natural, crystalline, crucible grade; hand file sets (Swiss pattern); handsewing needles; ipecac, root; iodine, crude; kaurigum; lac; lavender oil; leather, sheepskin, hair type; manganese; menthol, natural bulk; mica; microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property); nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts; nux vomica, crude; oiticica oil; olive oil; olives (green), pitted or unpitted, or stuffed, in bulk; opium, crude; petroleum, crude oil, unfinished oils, and finished products; pine needle oil; platinum and related group metals, refined, as sponge, powder, ingots, or cast bars; pyrethrum flowers; quebracho; quinidine; quinine; rabbit fur felt; radium salts, source and special nuclear materials; rosettes; santonin, crude; secretin; shellac; sugars, raw; talc, block, steatite; tantalum; thread, metallic (gold); thyme oil; triprolidine hydrochloride; tungsten; wax, carnauba; wire glass; woods, logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak; yarn, 50 Denier rayon; and yeast, active dry and instant active dry.

For further details please see the proposed rule. Thirteen respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

The proposed paragraph (b) at FAR 25.104 has been removed from the final rule. While the Federal Acquisition Regulatory Council intends to follow the procedures proposed at paragraph (b), these procedures are not required to be included in the FAR. The procedures include an economic analysis of relevant markets and available market research to be performed by the Director of the Office of Management and Budget (OMB), through the Administrator of the Office of Federal Procurement Policy, in consultation with the Secretary of Commerce and the Director of OMB's Made in America Office (MIAO), prior to any changes to the list at FAR 25.104(a).

B. Analysis of Public Comments

1. *Support removal of certain articles from the list at FAR 25.104(a).*

Comment: Some respondents expressed their support in removing the following articles from the list: manganese; olives (green), pitted or unpitted, or stuffed, in bulk; and tungsten. A respondent stated, “This change is a pivotal move toward fostering long-term market stability and enhancing supply chain resilience.” Some respondents expressed that the rule will “strengthen collaboration between Government agencies and industry stakeholders”.

Response: The respondents' input is appreciated.

2. *Oppose removal of certain articles from the list at FAR 25.104(a).*

Comment: Some respondents recommended revising the proposed rule to retain nitrile butadiene rubber (“NBR”) on the list at FAR 25.104(a). They considered removal would be premature due to limited domestic capacity that is unable to meet the Government

demand. Others contended that retention on the list will ensure the availability of personal protective equipment, specifically nitrile gloves.

Further, some respondents recommended retaining “yarn, 50 Denier rayon” on the list because of limited or non-existent domestic availability. The respondents stated that removing yarn from the list creates a conflict or inconsistency with the Berry Amendment (10 U.S.C. 4862 (https://www.govinfo.gov/link/uscode/10/4862)), and although the Buy American Act and the Berry Amendment “represent different procurement models,” application of the two statutes “should be premised on the same fact patterns”.

Response: The policy reasons articulated in the preamble to the proposed rule remain valid, although the respondents' comments are acknowledged. The rule is intended to be a general reset of the list, which is updated every 5 years. Agencies may provide relevant information during forthcoming reviews of the list at FAR 25.104(a).

The rule's change of “Rubber, crude and latex” to “Rubber, crude and latex (natural)” clarifies that synthetic rubber is excluded from the list. Accordingly, using individualized waivers, which are coordinated centrally and posted for public awareness, should encourage the type of ongoing, proactive engagement with industry that is vital to allowing the Government to understand supply chains and market trends, strengthening domestic manufacturing, and reducing the need for regulatory waivers over time. Agencies have already begun utilizing the individual waiver process for nitrile gloves and this process has not prevented the acquisition of nitrile gloves, and other personal protective equipment, to meet agency needs.

Regarding an apparent conflict with the Berry Amendment, the Buy American statute and the Berry Amendment are two separate laws implemented by two different regulations. They differ regarding their scope, threshold, exceptions, and waiver authority.

3. *Support and opposition to removal of certain articles from the list at FAR 25.104(a).* (🗋 printed page 20222)

Comment: Some respondents provided arguments for removing, and another respondent provided similar arguments for retaining, the following articles from the list: cobalt, in cathodes, rondelles, or other primary ore and metal forms; nickel, primary, in ingots, pigs, shots, cathodes, or similar forms, nickel oxide and nickel salts; and tantalum.

Response: As explained in the proposed rule, there is no substantial evidence that there is a major increase in the availability of the articles being removed. The respondents highlighted the critical nature of these articles. The Government expects that more limited duration waivers with centralized management would provide important insight into Government supply chains, including critical supply chains with national or economic security implications. Agencies may pursue multi-procurement waivers for repetitive needs where market research indicates that domestic capability may be lacking for a period, provided the waiver is time limited. FAR 25.103(b)(1)(ii) already requires that "before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources." This rule encourages further market research and a proactive engagement with industry to understand supply chains and market trends vital to strengthening domestic manufacturing.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Expected Impact of the Rule

The final rule reduces the number of articles on the list at FAR 25.104(a) that are presumed by regulation to be nonavailable in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Over time, decreased reliance on regulatory waivers and greater use of individual waivers that are reviewed centrally and posted publicly should contribute to a more dynamic, secure, and competitive domestic industrial base. There are a number of strategic advantages to central review and posting of waivers, including: the ability for MIAO and agencies to share market research information and insight that might lead to the identification of domestic sources in future acquisitions; the ability for agencies to send a clear demand signal to industry of the Federal Government's desire to reduce reliance on foreign-made items; the ability for potential sources to see opportunities for new domestic providers, and for existing domestic providers that may have been overlooked to see if agencies may have missed market capabilities in their market research; and the opportunity for MIAO to bring greater consistency in use of waivers across the Government through its feedback to

agencies. The heightened transparency provided on individual waivers can be especially beneficial in furthering contractor resilience by reducing transaction costs for potential sellers, which encourages new entrants by lowering a barrier to entry for businesses into the Federal market. These benefits of the individual waivers align with the America First Trade Policy which puts the American economy, the American worker, and American national security first.

The final rule provides these benefits at minimal cost to Federal contractors or the Government. There should be no cost to Federal contractors from the reduction of articles on the regulatory waiver list, as the transition to individual waivers should increase transparency and reduce transactions costs associated with finding domestic opportunities. The rule is expected to create only minimal additional procurement costs to the Government due to the low amount of spend and the low number of contract actions for the articles removed from the list.

V. Executive Orders 12866, 13563, and 14192

Executive Order (E.O.) 12866, Regulatory Planning and Review, dated September 30, 1993, directs agencies to assess the 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 (/executive-order/13563), Improving Regulation and Regulatory Review, dated January 18, 2011, emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action under E.O. 12866 (/executive-order/12866) and, therefore, was subject to review under section 6(b) of E.O. 12866 (/executive-order/12866).

This rule is not subject to E.O. 14192 (/executive-order/14192), Unleashing Prosperity Through Deregulation, because this rule has a de minimis impact on the public. See discussion in the

“Expected Impact of the Rule” section of this preamble.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, the FAR Council will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (https://www.govinfo.gov/link/uscode/5/804).

VII. Regulatory Flexibility Act

The Federal Acquisition Regulatory Council has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612 (https://www.govinfo.gov/link/uscode/5/601).

1. *Statement of the need for, and the objectives of, the rule.* The objective of this rule is to revise the list of domestically nonavailable articles under the Buy American statute at FAR 25.104(a).

2. *Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rules as a result of such comments.* There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

3. *Description of and an estimate of the number of small entities to which the rule will apply.* The rule impacts all entities that do business with the Federal Government, including the over 405,972 small business registrants in the System for Award Management. However, the Federal Acquisition Regulatory Council does not expect this rule to have a significant economic impact on a substantial number of small entities because the rule is not implementing any requirements with which small entities must comply. It is expected that this rule will encourage small businesses to take an interest in building domestic manufacturing capabilities and capacity; this would be a positive impact though not a substantial impact.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the rule.* The rule does not include additional, or change any existing, reporting or recordkeeping requirements.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.*

There are no available alternatives to the rule to accomplish the desired objective.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. (🗋 printed page 20223)

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501-3521 (https://www.govinfo.gov/link/uscode/44/3501)).

List of Subjects in 48 CFR Part 25 (https://www.ecfr.gov/current/title-48/part-25)

- Government procurement

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, OFPP, DoD, GSA, and NASA are amending 48 CFR part 25 (https://www.ecfr.gov/current/title-48/part-25) as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 (https://www.ecfr.gov/current/title-48/part-25) is revised to read as follows:

> **Authority:** 41 U.S.C. 1121(b) (https://www.govinfo.gov/link/uscode/41/1121); 40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137

(https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113).

2. Amend section 25.104 by revising paragraph (a) to read as follows:

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b)(1)(i):

(1) Antimony, as metal or oxide.

(2) Bamboo shoots.

(3) Bananas.

(4) Bismuth.

(5) Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

(6) Brazil nuts, unroasted.

(7) Capers.

(8) Cashew nuts.

(9) Chestnuts.

(10) Chrome ore or chromite.

(11) Cocoa beans.

(12) Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.

(13) Coffee, raw or green bean.

(14) Cork, wood or bark and waste.

(15) Cover glass, microscope slide.

(16) Fair linen, altar.

(17) Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

(18) Grapefruit sections, canned.

(19) Hemp yarn.

(20) Hog bristles for brushes.

(21) Hyoscine, bulk.

(22) Modacrylic fiber.

(23) Nitroguanidine (also known as picrite).

(24) Oranges, mandarin, canned.

(25) Pineapple, canned.

(26) Quartz crystals.

(27) Rubber, crude and latex (natural).

(28) Rutile.

(29) Silk, raw and unmanufactured.

(30) Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

(31) Spices and herbs, in bulk.

(32) Swords and scabbards.

(33) Tapioca flour and cassava.

(34) Tartar, crude; tartaric acid and cream of tartar in bulk.

(35) Tea in bulk.

(36) Tin in bars, blocks, and pigs.

(37) Vanilla beans.

(38) Venom, cobra.

(39) Water chestnuts.

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