



May 31, 2017

Brad Botwin
Director
Industrial Studies, Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W., Room 1093
Washington, DC. 20230
By Email: Steel232@bis.doc.gov

PUBLIC VERSION

**Re: Section 232 National Security Investigation of Imports of Steel:
Comments and Request for Exclusion of Stainless Steel, Nickel-Alloy Steel,
and Alloy Steel (Including High Alloy Steel and High-Nickel Alloy Steel)**

Dear Mr. Botwin:

On behalf of Nippon Yakin Kogyo Co., Ltd. ("NYK"), we hereby submit NYK's comments on the Department's investigation initiated under section 232 of the Trade Expansion Act of 1962, as amended. *See* Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel, 82 Fed. Reg. 19,205 (April 26, 2017). Further, NYK requests that the Department exclude stainless steel, nickel-alloy steel, and alloy steel (including high alloy steel and high-nickel alloy steel) from its investigation for the reasons stated in the comments.

Pursuant to 15 C.F.R. § 705.6 (a), we hereby request that the Department exempt certain information, clearly identified in brackets in the comments under cover of this letter from public disclosure. The business confidential treatment is requested because the data include, *inter alia*, business trade secrets, names and identification of particular customers, commercial or financial information and certain other information, the release of which would cause competitive harm to NYK. Nevertheless, we have provided a non-confidential version of this submission which can be placed in the public file for inspection.

May 31, 2017
Page 2

Please direct any questions concerning this submission to the undersigned.

Respectfully submitted,

/s/ Daniel J. Cannistra

Daniel J. Cannistra

Counsel for Nippon Yakin Kogyo Co., Ltd.

Email: dcannistra@crowell.com

**Nippon Yakin Kogyo Co., Ltd.**

REQUEST TO EXCLUDE STAINLESS STEEL, NICKEL-ALLOY STEEL,
ALLOY STEEL (HIGH ALLOY STEEL AND HIGH NICKEL ALLOY STEEL)
FROM INVESTIGATION UNDER SECTION 232

May 31, 2017

Nippon Yakin Kogyo Co., Ltd. (“NYK”) is the leading stainless steel manufacturer in Japan. NYK is a Japanese corporation established in 1925 and is publicly traded on the Tokyo Stock Exchange. Its headquarters is located at San-ei Building, 1-5-8, Kyobashi, Chuo-ku, Tokyo, Japan. NYK also has Nippon Yakin America, Inc. (“NYA”) who is a Delaware corporation established on November 16, 2010. NYA’s principal place of business is located at 2800 River Road, Des Plaines, IL 60018. NYK’s principal lines of business are the production and sale of ferro nickel; stainless steel: plate, strip, bar and forged steel; specialty steel: structural alloy, alloys for electronic metals and others; processed stainless steel products: NAS coat (for roofs), checker plate, angle, flat bar, and other processed products. The company’s core technologies include: mass production equipment, smelting and refining, continuous casting, hot rolling and cold rolling, all conducted pursuant to a rigorous quality assurance system, as demonstrated by the company’s JIS certification, ISO 9001 and certifications from other organizations. NYK’s steel products are used in precision electronics, green technologies, marine structures, as protection for LNG, neutrons and overlays, in automotive applications, precision astronomical instruments, manufacturing and processing plants and high-temperature environments. For its most recent fiscal year, NYK had net sales of ¥121.04 billion (approximately U.S. \$1.11 billion) and approximately 2,000 employees on a consolidated basis. NYK engaged in the production and sale of stainless steel, nickel-alloy steel, and alloy steel, high alloy steel related processed products. NYK exports stainless steel and those alloy steels to the United States.

NYK hereby requests that the Department of Commerce (“DOC”) exclude stainless steel, nickel-alloy steel, and alloy steel (including high alloy steel and high-nickel alloy) from its investigation initiated under section 232 of the Trade Expansion Act of 1962, as amended.

A. Alloy steel of high-nickel alloy steel

The Harmonized Tariff Schedule, Statistical Notes to Chapter 72, Iron and Steel, distinguishes high-nickel alloy steel from other steels. The tariff classifications that cover



Nippon Yakin Kogyo Co., Ltd.

the high-nickel alloy steel for which NYK requests an exclusion – HTS 7225.40.3005 and 7225.30.3005 – describe the article as “Other, Of high-nickel alloy steel.” The description for high-nickel alloy steel set forth below is a direct quote from the HTS, Statistical Notes 1 to Chapter 72, Iron and Steel:

[T]he expression high-nickel alloy steel refers to alloy steel containing by weight 24 percent or more of nickel, with or without other elements.

The high-nickel alloy steel exported by NYK to the United States contains [] percent of nickel, designed particularly for commercial aircraft parts.

NYK requests that DOC exclude high-nickel alloy steel, specifically covered by HTS 7225.40.3005 and 7225.30.3005 from Section 232 investigation. NYK’s high-nickel alloy steel is not used in any national security concerned products. The intended end-usage and user of NYK’s product is limited. Export of NYK’s high-nickel alloy steel to the United States contributes to the U.S. aircraft industry. Particularly, NYK’s product is [] through the U.S. importers. As per Attachment 1, [] approves NYK’s product and appreciate their supply.

The demand and supply of high-nickel alloy steel is limited in the United States. It is estimated that the U.S. annual demand of high-nickel alloy steel is ranging from 3,000 metric tons to 4,000 metric tons in total and is mainly used by []. As far as NYK is aware, there are only two companies, Allegheny Technologies (ATI) and Special Metals Corporation, in the United States capable of producing high-nickel alloy steel used by []. [] uses a mix of domestic and foreign suppliers. NYK projects to export high-nickel alloy steel form [] per year to the United States. NYK competes with the U.S. domestic producers []. Thus, export of NYK’s high-nickel alloy steel to the United States does not pose national security concern. Any remedy imposes on NYK’s product simply interfere free competitions among companies.

B. High Alloy Steel is Treated as a Distinct Industry and Should be Excluded From This Investigation

High alloy steel is a specialty steel that is a segment of the overall steel market. In general, high alloy steel refers to a group of steels that are characterized by specific physical

**Nippon Yakin Kogyo Co., Ltd.**

chemical and physical properties. These specific properties are necessary because high alloy steels often have specialized end uses that require exacting specifications (*e.g.*, the production of machine parts). High alloy steel includes specialized subgroups of steel such as tool, high speed steel, mold steel and ball bearing steel. For the purposes of this comment, the term "high alloy steel" refers to the following:

Tool steel: Alloy steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum, or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

High speed steel: Alloy steel containing, with or without other elements, at least two of the three elements molybdenum, tungsten and vanadium with a combined content by weight of 7 percent or more, 0.6 percent or more of carbon and 3 to 6 percent of chromium.

Mold steel: Mold steels are specialty tool steels specifically formulated for use in making molds to form plastic, rubber and aluminum. These specialty tool steels contain as little as 0.1 % carbon and include either carbide forming elements or nickel, aluminum, chromium and copper as alloying elements.

Ball bearing steel: Alloy tool steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

For the past 35 years, the International Trade Commission has treated high alloy steels as a separate like product from other steel products. In 1976 and 1983, the



Nippon Yakin Kogyo Co., Ltd.

Commission conducted two Section 201 safeguard investigations of stainless steel and tool/high alloy steel, and from 1978 to 1989 the Commission conducted several Section 332 economic studies of stainless steel and high alloy steel, all of which treated stainless steel and alloy tool steel as separate products. In 1982-83, the Commission also investigated certain high alloy steels from Brazil and Germany, and found a single like product of high alloy steel bar and rod.

The facts that led the Commission to its prior conclusions have not changed, and they warrant the same conclusion in this case that high alloy steel is a separate like product and should be excluded from the Department's broad steel investigation. The Commission has made numerous factual findings in support of its conclusion that high alloy steel is a separate like product, and those factual findings remain true today.

Likewise, in all of the Department's previous investigations of cut-to-length, cold-rolled, and hot-rolled steel products, the Department has defined a single class or kind of merchandise that does not include high alloy steel. Specifically, the scope of the following investigations applied to only carbon products:

- Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine.¹
- Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela.²
- Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.³

The scope of the following investigations included micro-alloy steel products, but

¹ See, e.g., investigation numbers A-570-849, A-821-808, and A-823-808 (orders issued in 2000).

² See e.g., investigation numbers A-428-814, C-428-817, A-580-818, C-580-815, A-421-804, C-401-401, A-549-819 (2001-2002 investigations; orders never issued).

³ See investigation numbers A-423-806, C-423-806, A-351-817, C-351-818, A-405-802, A-428-816, A-475-826, A-475-827, A-588-847, A-201-809, C-201-810, A-455-802, A-485-803, A-469-803, C-469-804, A-401-805, C-401-804, and C-412-815 (orders issued in 1979, 1985, and 1993).



Nippon Yakin Kogyo Co., Ltd.

specifically excluded high alloy steel from the scope of the investigations:

- Cut-Length Carbon Steel Plate from the France, India, Indonesia, Italy, Japan, and Korea.⁴
- Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine.⁵
- Hot-Rolled Carbon-Quality Steel Flat Products from Brazil, Japan, and Russia.⁶
- Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, Slovakia, South Africa, Thailand, Turkey, and Venezuela.⁷

In the Department's most recent (2015-2016) investigations of certain cold-rolled steel and hot-rolled steel flat products, the scopes of the investigations included certain micro-alloy steel products, but again specifically excluded high alloy steel from the scope of the investigations.⁸ In all of these investigations, the Department defined subject merchandise as a single class or kind of merchandise, coextensive with the scope of the investigations and, thus, not including high alloy steel.

In the last Section 201 safeguard proceeding on virtually all steel products in 2001, the ITC found high alloy steel to be a distinct and separate product from other steel products. The ITC found the products included in the request from the U.S. Trade Representative's

⁴ See e.g., investigation numbers A-533-817, C-533-818, A-560-805, C-560-806, A-475-826, C-475-827, A-588-847, A-580-836, and C-580-837 (orders issued in 2000).

⁵ See investigation numbers A-357-814, C-357-815, A-570-865, A-533-820, A-533-821, A-560-812, C-560-813, A-834-806, A-421-807, A-485-806, A-791-809, C-791-810, A-583-835, A-549-817, C-549-818, A-791-809, C-791-810, and A-823-811 (order issued in 2001).

⁶ See investigation numbers A-351-828, C-351-829, A-588-846, and A-821-809 (orders issued in 1999).

⁷ See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, 64 Fe. Reg. 34194 (June 25, 1999).

⁸ See Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 Fed. Reg. 51198, 51200 (Aug. 2015); Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair Value Investigations, 80 Fed. Reg. 54261, 54263 (Sept. 2015).



Nippon Yakin Kogyo Co., Ltd.

request for the investigation constituted 33 separate domestic like products. One of those domestic like products was high alloy steel, which the ITC found was separate from all other carbon, alloy, and stainless steel flat products.⁹ The ITC included high alloy steel in the category of “stainless steel and high alloy steel products”—not carbon and alloy steel plate, cold-rolled steel, or hot-rolled steel—indicating more similarities between high alloy steel and stainless steel than between high alloy steel and other steel products.¹⁰ Within the stainless steel and alloy steel products category, the ITC found ten separate domestic like products, noting that most domestic producers and respondent parties agreed on these separate domestic like products, including high alloy steel as a separate product.¹¹

In finding high alloy steel to be a separate like product from the stainless steel products, the ITC noted that high alloy steel products are not “steel products at all, but are instead characterized by the addition of such raw materials as nickel, tungsten and molybdenum that cause them to have very high levels of hardness and strength at elevated temperatures.”¹² Accordingly, the ITC concluded that high alloy products do not share even this basic physical characteristic with the stainless steel products covered by the investigation. *Id.*

The ITC’s findings leading to its conclusion that high alloy steel is a separate domestic like product remain true today. For these reasons, NYK requests that the Department exclude high alloy steel including specialized subgroups of steel such as tool, high speed steel, mold steel and ball bearing steel from the 232 investigation.

C. Stainless Steel, Nickel-Alloy Steel and Alloy Steel

HTS Code for Stainless Steel:

7219.12.00: Flat-rolled products of stainless steel, of a width of 600 mm or more

7219.21.00: Of a thickness exceeding 10 mm

7219.22.00: Of a thickness of 4.75 mm or more but not exceeding 10 mm

7219.23.00: Of a thickness of 3 mm or more but less than 4.75 mm

7219.32.00: Of a thickness of 3 mm or more but less than 4.75 mm

7219.33.00: Of a thickness exceeding 1 mm but less than 3 mm

⁹ See Steel, Inv. No. TA-201-73, USITC Pub. 3479 (December 2001) (“Steel 201”) at 9-16 (excerpts included in Hitachi Metals’ Oct. 17, 2016 Rebuttal to Factual Information at Attachment 2).

¹⁰ See *id.*

¹¹ *Id.* at 190.

¹² *Id.* at 193, n.1186.



Nippon Yakin Kogyo Co., Ltd.

7219.34.00: Of a thickness of 0.5 mm or more but not exceeding 1 mm

7219.35.00: Of a thickness of less than 0.5 mm

HTS Code for Nickel-alloy steel:

7506.20.3000: Nickel Alloys Not Cold-formed

7506.20.1000: Nickel Alloys Cold-formed

7506.10.3000: Nickel Not Cold-formed

7506.10.1000: Nickel Cold-formed

HTS Code for Alloy steel:

7226.92.5000: Flat-rolled products of other alloy steel, of a width of less than 600mm, cold rolled, of a width of 300 mm or more

7226.91.7000: Flat-rolled products of other alloy steel, of a width of less than 600mm, of width of 300 mm or more

NYK further requests that DOC exclude stainless steel, nickel-alloys, and alloy steel, specifically covered by HTS mentioned above from section 232 investigation. NYK's those alloy steel is not used in any national security concerned products. The intended end-usage and user of NYK's product is limited. Export of NYK's those steel to the United States contributes to the U.S. various industries such as housing, appliances, automotive for niche application.

i. Stainless steel

Since 1998, stainless steel coil form of which thickness below 4.76 mm was subject antidumping duty and NYK could not export any stainless steel grade cold-rolled coil formed products to the U.S.. The demand of sheet and plate are limited. Moreover, NYK has been contributing the supply of niche demand, not commodity segment, even though neither demand are not related to any national security concerned products. Some of NYK's grades were certified product of [] in 2013 (Attachment 2 is the Engineering Specification by [] and NYK's product is appreciated by various industries. NYK exported about []).

ii. Nickel-alloy steel

With regards to the demand of Nickel-alloy steel for national security, the United



Nippon Yakin Kogyo Co., Ltd.

States has already had a Defense Acquisition Regulations Systems (DFARS) governed by the Department of Defense to restrict the use of foreign nation materials. In August 2016, the United States and Japan entered into an agreement (See Attachment 3, the Memorandum of Understanding signed by the U.S. and Japan government). Japan has been approved as a DFARS country. See Attachment 4, the Federal Register notice. Because Japan is the mutual alliance partner of the United States as well as a certified country of DFARS, Japanese material would not threat U.S. national security. In the meantime, NYK has been contributing the supply of niche demand of nickel-alloy steel which is not related to any national security concerned products. Some of NYK's nickel-alloy steel grades were certified product of [] in 2013 and NYK's product is appreciated by various industries. NYK exported nickel-alloy steel about [] MT in 2016 and projects to export Nickel-alloy steel form [] per year to the United States.

iii. Alloy steel

NYK has been contributing the supply of niche demand of alloy-steel which is not related to any national security concerned products. Our high quality material is widely appreciated for the demand of housing and appliance goods, and there is no U.S. mill who could supply this alloy with required quality. NYK exports alloy steel form []. Any remedy imposes on NYK's product simply interfere free competitions among U.S. companies.

* * * *

In conclusion, DOC should exclude high-nickel alloy steel, stainless steel, nickel-alloy steel and alloy steel from Section 232 investigation or any remedy recommendation to the President about action under section 232 of the section 232 of the Trade Expansion Act of 1962, as amended, with respect to imports of certain steel. High-nickel alloy steel is a critical component of the U.S. aircraft industry base. There is, however, limited U.S. production and supply of the high-nickel alloy steel in the U.S. market. Meanwhile, the Harmonized Tariff Schedule distinguishes high-nickel alloy steel from other steels. Also NYK exported stainless steel, nickel-alloy steel and alloy steel for niche demand in United States with very limited amount and there is not related to national security products. DOC thus can draw a bright line between an exclusion of those alloy steels and the remedy it recommends for certain steel imports. Therefore, given there is no threat to the national security from the importation of high-nickel alloy steel, stainless steel, Nickel-alloy steel and alloy steel, and given an exclusion for those alloy steel would be easy to administer, DOC



Nippon Yakin Kogyo Co., Ltd.

should exclude those alloy steel from its investigation or any remedy recommendation to the President.

Thank you for your consideration of NYK's request. If you have any questions, please contact us.

Respectfully submitted,



Daniel Cannistra
Counsel for Nippon Yakin Kogyo Co., Ltd.

ATTACHMENT 1

Confidential Information Deleted

ATTACHMENT 2

Confidential Information Deleted

ATTACHMENT 3

書簡をもって啓上いたします。本大臣は、相互の防衛調達に関し日本国政府の代表者とアメリカ合衆国政府の代表者との間で行われた最近の討議に言及する光榮を有します。

日本国政府及びアメリカ合衆国政府は、防衛システムの取得における協力を促進してきました。特に、千九百五十四年三月八日に東京で署名された日本国とアメリカ合衆国との間の相互防衛援助協定に基づき、アメリカ合衆国は、各種の防衛分野における物品及び技術の日本国に対する供与を承認してきており、また、日本国政府は、日米安全保障体制の効果的運用を確保するために、防衛分野における物品及び技術の供与を促進してきました。

本大臣は、更に、相互の防衛調達に関する協力の分野において両政府の間に引き続いて存在する相互に有益な關係を考慮して、日本国政府に代わって次のとおり提案する光榮を有します。

1 日本国政府及びアメリカ合衆国政府は、特に、それぞれの国の産業界が日本国防衛省及びアメリカ合衆国防省による相互の防衛調達に参加する公正かつ衡平な機会を達成し、及び維持することによって、防衛協力を強化するために、3の規定に基づいて行われる細目取極に従って、それぞれ、当該防衛調達のための健全な手続を確保する。

2 日本国政府及びアメリカ合衆国政府は、国内産品でないものの調達の禁止の免除に関するそれぞれの国の適用可能な法令に従って相互の防衛調達を行う。

3 この取極を実施するため、相互の防衛調達のための細目取極が両政府の権限のある当局の間で行われる。日本国政府の権限のある当局は、防衛省とする。アメリカ合衆国政府の権限のある当局は、国防省とする。日本国防衛省とアメリカ合衆国防省との間の全ての防衛調達は、当該細目取極及びこの取極の条件に従って行われる。

4 両政府の権限のある当局は、日本国防衛省又はアメリカ合衆国防省による相互の防衛調達から又は当該防衛調達に関連して生ずることのあるいかなる問題についても、相互に受け入れることのできる解決を図るために協議する。そのような協議を通じて問題を解決することができない場合には、相互に受け入れることのできる解決を図るために外交上の経路を通じて両政府間の協議が行われる。

5 日本国防衛省及びアメリカ合衆国防省による防衛調達は、それぞれの国の法令及び利用可能な予算に従って実施される。

6 この取極は、五年間効力を有する。もつとも、いずれの一方の政府も、他方の政府に対しこの取極を終

了させる意思を少なくとも六箇月の事前の書面による通告をもって外交上の経路を通じて表明することにより、いつでもこの取極を終了させることができる。この取極は、両政府間の相互の書面による合意により改正することができる。

本大臣は、更に、前記の提案がアメリカ合衆国政府にとって受諾し得るものであるときは、この書簡及び閣下の返簡が両政府間の合意を構成し、その合意が閣下の返簡の日付の日に効力を生ずるものとすることを提案する光榮を有します。

本大臣は、以上を申し進めるに際し、ここに重ねて閣下に向かって敬意を表します。

二千十六年六月三日に東京で

日本国外務大臣

岸田文雄

アメリカ合衆国特命全権大使

キャロライン・B・ケネディ閣下

· Tokyo, June 3, 2016

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

“Excellency:

I have the honor to refer to the recent discussions between representatives of the Government of Japan and representatives of the Government of the United States of America concerning reciprocal defense procurement.

The Government of Japan and the Government of the United States of America have increased their cooperation in the acquisition of defense systems. In particular, under the Mutual Defense Assistance Agreement between Japan and the United States of America, signed at Tokyo on March 8, 1954, the Government of the United States of America has approved the transfer of various defense-related goods and technologies to Japan, and the Government of Japan has promoted the transfer of defense-related goods and technologies in order to ensure the effective operation of the Japan-United States security arrangements.

In consideration of the continuing mutually beneficial relationship between the two Governments in the field of cooperation on reciprocal defense procurement, I have further the honor to propose on behalf of the Government of Japan the following:

His Excellency
Fumio Kishida,
Minister for Foreign Affairs of Japan

1. The Government of Japan and the Government of the United States of America shall ensure sound processes for reciprocal defense procurement by the Ministry of Defense of Japan and by the Department of Defense of the United States of America, respectively, in accordance with detailed arrangements to be made under paragraph 3, in order to enhance defense cooperation, inter alia, by achieving and maintaining fair and equitable opportunities for the industry of each country to participate in such defense procurement.

2. The Government of Japan and the Government of the United States of America shall conduct reciprocal defense procurement in accordance with the applicable laws and regulations of their respective countries regarding the waiver of the prohibition to procure non-domestic products.

3. The detailed arrangements for reciprocal defense procurement shall be made between the competent authorities of the two Governments in order to implement the present agreement. The competent authority of the Government of Japan shall be the Ministry of Defense. The competent authority of the Government of the United States of America shall be the Department of Defense. All defense procurement between the Ministry of Defense of Japan and the Department of Defense of the United States of America shall be conducted in accordance with those detailed arrangements and subject to the terms of the present agreement.

4. The competent authorities of the two Governments shall consult with each other on any matter that may arise from or in connection with reciprocal defense procurement by the Ministry of Defense of Japan or by the Department of Defense of the United States of America with a view to finding a mutually acceptable solution. If the matter cannot be resolved through such consultations, consultations between the Government of Japan and the Government of the United States of America shall be held through diplomatic channels with a view to finding a mutually acceptable solution.

5. Defense procurement by the Ministry of Defense of Japan and by the Department of Defense of the United States of America shall be conducted in accordance with their respective laws and

regulations and subject to the availability of appropriated funds in each country.

6. The present agreement shall remain in force for five years. However, either Government may terminate the present agreement at any time by giving to the other Government at least six months' written advance notice through diplomatic channels of its intention to terminate it. The present agreement may be amended by mutual written agreement of the two Governments.

I have further the honor to propose that, if the foregoing proposals are acceptable to the Government of the United States of America, this Note and Your Excellency's Note in reply shall constitute an agreement between the two Governments, which shall enter into force on the date of Your Excellency's Note in reply.

Accept, Excellency, the renewed assurances of my highest consideration."

I have further the honor to confirm on behalf of the Government of the United States of America that the foregoing proposals are acceptable to the Government of the United States of America and to agree that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force on the date of this Note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.



Caroline Kennedy
Ambassador Extraordinary and Plenipotentiary
of the United States of America



Memorandum of Understanding

Between

**The Department of Defense of the
United States of America**

and

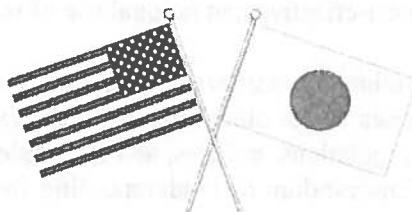
The Ministry of Defense of Japan

Concerning

Reciprocal Defense Procurement

SHORT TITLE:

**U.S. DOD-JAPAN MOD RECIPROCAL DEFENSE
PROCUREMENT MOU**



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA
AND
THE MINISTRY OF DEFENSE OF JAPAN
CONCERNING
RECIPROCAL DEFENSE PROCUREMENT**

**(SHORT TITLE: U.S. DOD-JAPAN MOD RECIPROCAL DEFENSE
PROCUREMENT MOU)**

INTRODUCTION

The Department of Defense of the United States of America and the Ministry of Defense of Japan, hereinafter referred to as "the Participants"; BEARING in mind a 70-year history of peace and cooperation between the United States of America and Japan;

BEARING in mind their partnership in the Treaty of Mutual Cooperation and Security between the United States of America and Japan, signed at Washington on January 19, 1960;

DESIRING to promote the objectives of rationalization, standardization, interoperability, and mutual logistics support throughout their defense relationship;

DESIRING to develop and strengthen the friendly relations existing between them;

SEEKING to achieve and maintain fair and equitable opportunities for the industry of each country to participate in the defense procurements of the other;

DESIRING to enhance and strengthen each country's industrial base;

DESIRING to promote the exchange of defense technology consistent with the policies of their respective national governments;

DESIRING to make the most cost-effective and rational use of resources allocated to defense;

**DESIRING to remove discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations; and
RECOGNIZING that this Memorandum of Understanding (MOU) does not constitute an**

international agreement; however, its provisions are made binding on the Participants under international law by the Exchange of Notes concerning Reciprocal Defense Procurement dated June 3, 2016 (the "Exchange of Notes"), which requires both Participants to conduct all reciprocal defense procurement in accordance with the provisions of this MOU;

HAVE mutually determined as follows:

SECTION 1 **Applicability**

1. This MOU covers the acquisition of defense capability by the Department of Defense of the United States of America and the Ministry of Defense of Japan through:

- a. Research and development;
- b. Procurements of supplies, including defense articles; and
- c. Procurements of services, in support of defense articles.

2. This MOU does not cover either:

- a. Construction; or
- b. Construction material supplied under construction contracts.

SECTION 2 **Principles Governing Mutual Defense Procurement Cooperation**

1. Each Participant recognizes and expects that the other uses sound processes for requirements definition, acquisition, and procurement and contracting, and that these processes both facilitate and depend on transparency and integrity in the conduct of procurements. Each Participant will ensure that its processes are consistent with the procurement procedures in Section 5 (Procurement Procedures) of this MOU.
2. Each Participant discharges the responsibilities stated in this MOU with the understanding that it will obtain reciprocal treatment from the other Participant.
3. Each Participant will, consistent with its national laws, regulations, policies, and international obligations, give favorable consideration to all requests from the other

Participant for cooperation in defense capability, research and development, production, procurement, and logistics support.

4. Consistent with its national laws, regulations, policies, and international obligations, each Participant will:

- 4.1. Facilitate defense procurement while aiming at a long-term equitable balance in their purchases, taking into consideration the capabilities of its defense industrial and research and development bases.
- 4.2. Remove barriers both to procurement and to co-production of supplies produced in the other country or services performed by sources (hereinafter referred to as "industrial enterprises") established in the other country. This includes providing to industrial enterprises of the other country treatment no less favorable than that accorded to domestic industrial enterprises. When an industrial enterprise of the other country submits an offer that would be the low responsive and responsible offer but for the application of any buy-national requirements, both Participants will waive the buy-national requirement.
- 4.3. Utilize contracting procedures that allow all responsible industrial enterprises of both countries to compete for procurements covered by this MOU.
- 4.4. Give full consideration to all responsible industrial enterprises in both the United States of America and Japan, in accordance with the policies and criteria of the procuring agency. Offers must satisfy requirements for performance, quality, delivery, and cost. Where potential offerors or their products must satisfy qualification requirements in order to be eligible for award of a contract, the procuring Participant will give full consideration to all applications for qualification by industrial enterprises of the other country, in accordance with the national laws, regulations, policies, procedures, and international obligations of the procuring Participant.
- 4.5. Provide information regarding requirements and proposed procurements in accordance with Section 5 (Procurement Procedures) of this MOU to ensure adequate time for industrial enterprises of the other country to qualify for eligibility, if required, and to submit an offer.
- 4.6. Inform industrial enterprises choosing to participate in procurements covered by this MOU of the restrictions on technical data and defense items (defense articles and services) made available for use by the procuring Participant. These restrictions include the requirement that such technical data and defense items made available by the procuring Participant not be used for any purpose other than for bidding on, or performing, defense contracts covered by this

MOU, except as authorized, in writing, by those owning or controlling proprietary rights, or furnishing the technical data or defense items.

- 4.7. Give full protection to proprietary rights and to any privileged, protected, export-controlled, or classified data and information provided by the other Participant. In no event will such data, supplies, or services be transferred to a third country or any other transferee without the prior written consent of the originating Participant.
 - 4.8. Exchange information on pertinent laws, implementing regulations, policy guidance, and administrative procedures.
 - 4.9. Annually exchange statistics demonstrating the total monetary value of defense procurements awarded to industrial enterprises of the other country during the prior year. An annual summary will be prepared on a basis to be jointly decided.
 - 4.10. Provide appropriate policy guidance and administrative procedures within its respective defense organizations to implement this MOU.
5. This MOU is not intended to and does not create any authority to authorize the export of defense items (defense articles or defense services), including technical data, controlled by the government of one or the other Participant under its applicable export control laws and regulations. Further, any export subject to the national export control laws and regulations of the government of one of the Participants is to be compliant with such laws and regulations.
6. Nothing in this MOU may be cited to prevent the implementation of necessary export control provisions in individual cooperative project agreements or arrangements.

SECTION 3

Offsets

This MOU does not regulate offsets. The Participants commit to discuss measures to limit any adverse effects that offset agreements have on the defense industrial base of each country.

SECTION 4

Customs, Taxes and Duties

When allowed under national laws, regulations, and international obligations applicable to the Participants, the Participants commit that, on a reciprocal basis, they will not

include customs, taxes, and duties in the evaluation of offers, and will waive their charges for customs and duties for procurements to which this MOU applies.

SECTION 5

Procurement Procedures

- 1. Each Participant will proceed with its defense procurements in accordance with its national laws and regulations and international obligations.**
- 2. To the extent practicable, each Participant will publish, or have published, in a generally available communication medium a notice of proposed procurements in accordance with its national laws, regulations, policies, procedures, and international obligations. Any conditions for participation in procurements will be published in adequate time to enable interested industrial enterprises to complete the bidding process. Each notice of proposed procurement will contain, at a minimum:**
 - a. The subject matter of the contract;**
 - b. Time limits set for requesting the solicitation and for submission of offers; and**
 - c. An address from which solicitation documents and related information may be requested.**
- 3. Upon request, and in accordance with its national laws, regulations, policies, procedures, and international obligations, the procuring Participant will provide industrial enterprises of the other country copies of solicitations for proposed procurements. A solicitation will constitute an invitation to participate in the competition and will include the following information:**
 - a. The nature and quantity of the supplies or services to be procured;**
 - b. Whether the procurement is by sealed bidding, negotiation, or some other procedure;**
 - c. The basis upon which the award is to be made, such as by lowest price or otherwise;**
 - d. Delivery schedule;**
 - e. The address, time, and date for submitting offers as well as the language in which**

they must be submitted;

- f. The address of the agency that will be awarding the contract and will be responsible for providing any information requested by offerors;
 - g. Any economic requirements, financial guarantees, and related information required from suppliers;
 - h. Any technical requirements, warranties, and related information required from suppliers;
 - i. The amount and terms of payment, if any, required to be paid for solicitation documentation;
 - j. Any other conditions for participation in the competition; and
 - k. The point of contact for any complaints about the procurement process.
4. Consistent with its national laws, regulations, policies, and international obligations, the procuring Participant will, upon request, inform an industrial enterprise that is not allowed to participate in the procurement process of the reasons why.
5. Consistent with its national laws, regulations, policies, and international obligations, the procuring Participant will:
- 5.1. Upon award of a contract, promptly provide notification to each unsuccessful offeror that includes, at a minimum:
 - a. The name and address of the successful offeror;
 - b. The price of each contract award; and
 - c. The number of offers received.
 - 5.2. Upon request, promptly provide unsuccessful offerors pertinent information concerning the reasons why they were not awarded a contract.
6. Each Participant will have published procedures for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the greatest extent possible, complaints arising under procurements covered by this MOU will be equitably and expeditiously resolved.

SECTION 6

Industry Participation

- 1. Successful implementation of this MOU involves both Participants. To ensure that the MOU benefits industrial enterprises within the country of the Participant choosing to participate in the procurements covered by this MOU each Participant will provide information concerning this MOU to industrial enterprises within its country.**
- 2. Each Participant will be responsible for informing the relevant industrial enterprises within its country of the existence of this MOU.**
- 3. The Participants understand that primary responsibility for finding business opportunities rests with the industrial enterprises of each country.**
- 4. The Participants will arrange for their respective procurement and requirements offices to be familiar with the principles and objectives of this MOU so that, consistent with their normal practices and procedures, those offices may assist industrial enterprises in the country of the other Participant to obtain information concerning proposed procurements, necessary qualifications, and appropriate documentation.**

SECTION 7

Security, Release of Information, and Visits

- 1. All classified military information or material provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the Agreement between the Government of the United States of America and the Government of Japan concerning Security Measures for the Protection of Classified Military Information, signed at Tokyo on August 10, 2007.**
- 2. Both Participants will take all necessary steps to ensure that industrial enterprises within each Participant's respective country comply with the applicable regulations pertaining to security and safeguarding of classified information.**
- 3. Each Participant will take all lawful steps available to it to prevent the disclosure to a third party of unclassified information exchanged in confidence between the Participants pursuant to this MOU unless the Participant that provided the information consents in writing to such disclosure.**
- 4. Each Participant will permit visits to its establishments, agencies and laboratories, and contractor industrial facilities by employees of the other Participant or by employees of the**

other Participant's contractors, provided that such visits are authorized by both Participants and the employees have appropriate security clearances and a need-to-know.

5. Requests for visits under the preceding subparagraph will be coordinated through official channels and will conform to the established visit procedures of the host Participant. All visiting personnel will comply with security and export control regulations of the host country. Any information disclosed or made available to authorized visiting personnel will be treated as if supplied to the Participant sponsoring the visiting personnel and will be subject to the provisions of this MOU.

SECTION 8

Implementation and Administration

1. The Under Secretary of Defense (Acquisition, Technology, and Logistics) will be the responsible authority in the Department of Defense of the United States of America for implementation of this MOU. The Commissioner of the Acquisition, Technology, and Logistics Agency will be the responsible authority in the Ministry of Defense of Japan for implementation of this MOU.

2. Each Participant will designate points of contact to represent its responsible authority.

3. The representatives of each Participant's responsible authority will meet on a regular basis to review progress in implementing this MOU. The representatives will discuss procurement methods used to support effective co-operation in the acquisition of defense capability; annually review the procurement statistics exchanged as decided under paragraph 4.9. of Section 2 (Principles Governing Mutual Defense Procurement Cooperation) of this MOU; identify any prospective or actual changes in national laws, regulations, policies, procedures, or international obligations that might affect the applicability of any terms in this MOU; and consider any other matters relevant to this MOU.

4. Each Participant will, as required, review the principles and obligations reflected in this MOU in light of any subsequent changes to its national laws, regulations, policies, and international obligations, and will consult with the other Participant to decide jointly whether this MOU should be modified.

5. Each Participant will avoid commitments that could conflict with this MOU. If either Participant believes that such a conflict has occurred, the Participants commit to consult to seek resolution.

SECTION 9
Annexes and Modifications

1. Annexes may be added to this MOU by written determination of the Participants. In the event of a conflict between a Section of this MOU and any of its Annexes, the language in the MOU will govern.
2. This MOU, including its Annexes (if any), may be modified by written determination of the Participants.

SECTION 10
Effective Date, Duration, and Discontinuance

1. This MOU will become effective upon signature by both Participants and will remain effective for so long as the Exchange of Notes remains in force.
2. Discontinuance of this MOU will not affect contracts entered into during the term of this MOU.

The duly authorized representatives of the Participant have signed this MOU.

Signed, in duplicate, in the English language.

Ash Carter

FOR THE DEPARTMENT OF
DEFENSE OF THE UNITED
STATES OF AMERICA:

Name

SINGAPORE
City

JUNE 4, 2016
Date

FOR THE MINISTRY OF
DEFENSE OF JAPAN:

Gen Nakatani
Name

Singapore
City

JUNE 4, 2016
Date

ATTACHMENT 4

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

(b) *Selecting suppliers.* In accordance with section 818(c)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), the Contractor shall—

(1) First obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

- (i) The original manufacturers of the parts;
- (ii) Their authorized suppliers; or
- (iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers;

(2) If electronic parts are not available as provided in paragraph (b)(1) of this clause, obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (b)(1) of this clause, from suppliers identified by the Contractor as contractor-approved suppliers, provided that—

(i) For identifying and approving such contractor-approved suppliers, the Contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at <https://assist.dla.mil/>;

(ii) The Contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers; and

(iii) The Contractor's selection of such contractor-approved suppliers is subject to review and audit by the contracting officer; or

(3)(i) Take the actions in paragraphs (b)(3)(ii) through (b)(3)(iv) of this clause if the Contractor—

(A) Obtains an electronic part from—

(1) A source other than any of the sources identified in paragraph (b)(1) or (b)(2) of this clause, due to nonavailability from such sources; or

(2) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(B) Cannot confirm that an electronic part is new or previously unused and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(ii) If the contractor obtains an electronic part pursuant to paragraph (b)(3)(i) of this clause—

(A) Promptly notify the Contracting Officer in writing. If such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts (e.g., serial numbers);

(B) Be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(C) Make documentation of inspection, testing, and authentication of such electronic parts available to the Government upon request.

(c) *Traceability.* If the Contractor is not the original manufacturer of, or authorized supplier for, an electronic part, the Contractor shall—

(1) Have risk-based processes (taking into consideration the consequences of failure of an electronic part) that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly;

(2) If the Contractor cannot establish this traceability from the original manufacturer for a specific electronic part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(3)(i) Maintain documentation of traceability (paragraph (c)(1) of this clause) or the inspection, testing, and authentication required when traceability cannot be established (paragraph (c)(2) of this clause) in accordance with FAR subpart 4.7; and

(ii) Make such documentation available to the Government upon request.

(d) *Government sources.* Contractors and subcontractors are still required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if—

(1) Authorized to purchase electronic parts from the Federal Supply Schedule;

(2) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or

(3) Requisitioning electronic parts from Government inventory/stock under the authority of 252.251–7000, Ordering from Government Supply Sources.

(i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.

(ii) The Government is responsible for the authenticity of the requisitioned parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will—

(A) Promptly replace such part at no charge; and

(B) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

(End of clause)

[FR Doc. 2016–17956 Filed 8–1–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2016–0021]

RIN 0750–AI97

Defense Federal Acquisition Regulation Supplement: New Qualifying Countries—Japan and Slovenia (DFARS Case 2016–D023)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Japan and Slovenia as qualifying countries.

DATES: Effective August 2, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann Reilly, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to add Japan and Slovenia as qualifying countries. The Secretary of Defense recently signed reciprocal defense procurement agreements with these countries. These agreements were placed into force on June 4, 2016, for Japan and June 21, 2016, for Slovenia. The agreements remove discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. These agreements do not cover construction or construction material. Japan and Slovenia are already designated countries under the World Trade Organization Government Procurement Agreement.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items.

This rule only updates the list of qualifying countries in the DFARS by adding the newly qualifying countries of Japan and Slovenia. The definition of “qualifying country” is updated in each of the following clauses; however, this revision does not impact the clause prescriptions for use, or applicability at or below the simplified acquisition threshold, or applicability to commercial items. The clauses are:

DFARS 252.225–7001, Buy American and Balance of Payments Program; DFARS 252.225–7002, Qualifying Country Sources as Subcontractors; DFARS 252.225–7012, Preference for Certain Domestic Commodities; DFARS 252.225–7017, Photovoltaic Devices; DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled “Publication of Proposed Regulations.” Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and does not have a significant cost or administrative impact on contractors or offerors. Japan and Slovenia are added to the list of 23 other countries that have similar reciprocal defense procurement agreements with DoD. These requirements affect only the internal operating procedures of the Government.

IV. 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.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The rule affects the certification and information collection requirements in the clause 252.225–7021, Trade Agreements, currently approved under OMB Control Number 0704–229, entitled “DFARS Part 225, Foreign Acquisition, and related clauses,” in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it merely shifts the category under which items from Japan and Slovenia must be listed.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

■ 2. Section 225.003 is amended in paragraph (10), the definition of “qualifying country”, by adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

225.872–1 [Amended]

■ 3. Section 225.872–1 is amended in paragraph (a) by adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7001 [Amended]

■ 4. Section 252.225–7001 is amended by—

- a. In the clause heading, removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place;
- b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively; and

- c. In the Alternate I clause heading—
- i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and
- ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

252.225–7002 [Amended]

■ 5. Section 252.225–7002 is amended by—

- a. In the clause heading, removing the date “(DEC 2012)” and adding “(AUG 2016)” in its place; and
- b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

252.225–7012 [Amended]

■ 6. Section 252.225–7012 is amended by—

- a. In the clause heading, removing the date “(FEB 2013)” and adding “(JUL 2016)” in its place; and
- b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

252.225–7017 [Amended]

■ 7. Section 252.225–7017 is amended by—

- a. In the clause heading, removing the date “(JUN 2016)” and adding “(AUG 2016)” in its place; and
- b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

252.225–7021 [Amended]

■ 8. Section 252.225–7021 is amended by—

- a. In the clause heading, removing the date “(JUN 2015)” and adding “(AUG 2016)” in its place; and
- b. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively; and

■ c. In the Alternate II clause heading—

- i. Removing the date “(JUN 2015)” and adding “(AUG 2016)” in its place; and

- ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

252.225–7036 [Amended]

■ 9. Section 252.225–7036 is amended by—

- a. In the clause heading, removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and
- b. In paragraph (a), the definition of “qualifying country”, adding, in

alphabetical order, the countries of “Japan” and “Slovenia”, respectively; and

■ c. In the Alternate I clause heading—
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a) definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ d. In the Alternate II clause heading—
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ e. In the Alternate III clause heading—
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ f. In the Alternate IV clause heading—
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

■ g. In the Alternate V clause heading—
■ i. Removing the date “(NOV 2014)” and adding “(AUG 2016)” in its place; and

■ ii. In paragraph (a), the definition of “qualifying country”, adding, in alphabetical order, the countries of “Japan” and “Slovenia”, respectively.

[FR Doc. 2016–17958 Filed 8–1–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 245 and 252

[Docket DARS–2016–0023]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective August 2, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows—

1. Updates the direction to contracting officers at DFARS 245.402–70 to review the guidance in DFARS Procedures, Guidance, and Information (PGI) for oversight and surveillance of contractor-acquired property; and

2. In DFARS clause 252.225–7021, Trade Agreements-Alternate II, corrects paragraph (a) definition of “designated country” to include the country of Croatia. DFARS final rule 2013–D005, Clauses with Alternates—Foreign Acquisition, published at 79 FR 65816 on November 5, 2014, created separate prescriptions for each foreign-related basic clause and provision, as well as each of its alternate clauses and provisions. In addition, the rule stated the full text of each clause or provision alternate. In the restatement of the full text of DFARS 252.225–7021-Alternate II, the country of Croatia was inadvertently omitted.

List of Subjects in 48 CFR 245 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 245 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 245 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 245—GOVERNMENT PROPERTY

■ 2. Revise section 245.402–70 to read as follows:

245.402–70 Policy.

Review the guidance at PGI 245.402–70 with regard to oversight and surveillance of contractor-acquired property.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7021 [Amended]

■ 3. Amend section 252.225–7021 by, in the Alternate II clause—

a. Removing the clause date “(JUN 2016)” and adding “(AUG 2016)” in its place; and

b. In paragraph (a) definition of “designated country” in paragraph (i), adding, in alphabetical order, the country of “Croatia”.

[FR Doc. 2016–17959 Filed 8–1–16; 8:45 am]

BILLING CODE 5001–06–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 24)]

Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2016 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board updates for 2016 the fees that the public must pay to file certain cases and pleadings with the Board. In this update, the following results are obtained: 18 fees increased by \$50 or less, 15 fees increased by \$100 to \$199, 23 fees increased by \$200 to \$300, 19 fees increased by more than \$300, and the remaining 58 fees will be maintained at their current level.

DATES: These rules are effective September 1, 2016.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 245–0327, or Andrea Pope-Matheson (202) 245–0363. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board’s regulations at 49 CFR 1002.3 provide for an annual update of the Board’s entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d). As compared with the 2015 fee update, the 2016 fee changes adopted here reflect a combination of a 1.46% across-the-board increase to salary costs; no change in publication cost levels; increases to two of the three Board Overhead cost factors; and a slight decrease to the third Board Overhead cost factor from its comparable 2015 level, resulting from the mechanical application of the update formula in 49 CFR 1002.3(d). Results from the formula application indicate that justified fee amounts in this 2016 update decision either remain unchanged (58 fee items), increase by \$50 or less (18 fee items), increase by \$300 or less (38 fee items) or increase over \$300 (19 fee items) from their respective 2015 update levels. No new fee items are proposed in this proceeding. However, there is an expansion of existing fee item 98 to now include monthly and quarterly Waybill