final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This action making a finding of failure to submit SIPs related to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS is "nationally applicable" within the meaning of section 307(b)(1).

For the same reasons, the Administrator also is determining that the requirements related to these finding of failure to submit SIPs related to the section 110(a)(2)(D)(i)(I) requirement is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the findings of failure to submit SIPs apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history call for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the District of Columbia Circuit.

Thus, any petitions for review of this action related to a findings of failure to submit SIPs related to the requirements of section 110(a)(2)(D)(i)(I) of the CAA must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register.**

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 28, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–13457 Filed 6–8–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3025 and 3052

[Docket No. DHS–2009–0081]

RIN 1601–AA57

Revision of Department of Homeland Security Acquisition Regulation; Restrictions on Foreign Acquisition (HSAR Case 2009–004)

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Homeland Security is adopting the amendments to its Homeland Security Acquisition Regulation that were issued under an interim rule on August 17, 2009, as final, without change, to implement a statute limiting the acquisition of products containing textiles from sources outside the United States.

DATES: *Effective Date:* June 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, (202) 447–5197.

SUPPLEMENTARY INFORMATION:

I. Background
II. Disposition of Public Comments on the Interim Rule
III. Regulatory Requirements
A. Small Entity Analysis
B. Executive Order 12866 (Regulatory Planning and Review)
C. Assistance for Small Entities
D. Collection of Information

I. Background

The American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Public Law 111–5, 123 Stat. 115, 165–166 (Feb. 17, 2009), contains restrictions on the Department of Homeland Security's (DHS) acquisition of certain foreign textile products. Specifically, the Recovery Act at section 604, codified as 6 U.S.C. 453b, limits the Department's acquisition of foreign textile products under DHS contract actions entered into on or after August 16, 2009, using funds appropriated or otherwise made available to DHS on or before February 17, 2009, the date of the Act. Section 604 is sometimes referred to as the "Kissell Amendment." DHS may not use those funds for the procurement of certain clothing and other textile items directly related to the national security interests of the United States if such items are not domestically grown, reprocessed, reused, or produced in the United States.

Section 604 does, however, contain exceptions. The law requires DHS to apply these restrictions in a manner consistent with United States obligations under international agreements (such as free trade agreements and the World Trade Organization Agreement on Government Procurement). Moreover, restrictions on some of the covered textile items do not apply to commercial item acquisitions. Also, the Recovery Act's restriction on the Department's acquisition of covered foreign textiles does not apply to: purchases for amounts not greater than the simplified acquisition threshold (SAT) (currently $100,000); when covered items of satisfactory quality and sufficient quantity cannot be procured as needed at United States market prices; when a covered item contains less than 10% non-compliant fibers; when the procurement is made by vessels in foreign waters; or for emergency procurements outside of the United States.

On August 17, 2009, DHS published an interim rule with request for comments discussing the agency's implementation of the Kissell Amendment and providing specific amendments to the Homeland Security Acquisition Regulation (HSAR) at parts 3025 and 3052. 74 FR 41346, Aug. 17, 2009. This final rule adopts that interim rule as final without change, revising the HSAR to add solicitation provisions, contract clauses and related policy statements implementing these requirements and exceptions for certain DHS contracts, option exercises and orders.

II. Disposition of Public Comments

In response to the request for comments on the interim rule, DHS received comments from 26 commenters, consisting of trade associations, individuals, companies and a Member of Congress. The majority of the commenters expressed their favorable views of section 604 and suggested that DHS consider several technical changes to improve that implementation.

The changes to the interim rule that were most commonly recommended by commenters fall into four categories:

- Make the "de minimis" exception a post-award forbearance decision; do not make the "de minimis" exception an advance regulatory exemption in the HSAR;
- Eliminate the HSAR definition of "national security interests"; cover all DHS acquisitions as being related to "national security interests" of the United States;

• Do not list Mexico, Canada or Chile in the HSAR; let individual contracting officers determine for themselves which countries have international agreements that impact individual procurements;

• Mirror the Department of Defense implementation of the Berry Amendment.

These comments and others are described below along with discussion of DHS's consideration and disposition of all comments to the interim rule.

Comment on Post-award De Minimis Authority—Commenters suggested that the interim rule's de minimis exception in section 604(d) should be interpreted as post-procurement authority. These commenters observed that the manner in which this section was developed suggests that the Secretary has latitude to override section 604's fiber sourcing requirement when non-compliant fibers have been incorporated in a product in an otherwise compliant, completed procurement. Commenters observed that Congress is silent on this issue and that such silence provides the Secretary of Homeland Security the option to accept delivery of an item produced with fiber out of compliance with the Act's U.S. domestic procurement mandate, in instances where the non-compliant fiber in question does not exceed 10% of the value of the delivered product.

DHS response to the comment. Do not concur. The statute addresses delivery of noncompliant items as follows: (d) *De Minimis Exception—Notwithstanding subsection (a), the Secretary of Homeland Security may accept delivery of an item covered by subsection (b) that contains non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item.* This subsection of section 604 provides authority to the Department that can be implemented either pre-award (as addressed in the interim rule) or post-award (as the commenters recommended). DHS determined that it would be highly impractical to implement a post-award exception for homeland security procurements. Items containing de minimis amounts of non-compliant materials could be rejected after they were delivered. A contractor would not know in advance if such an exception would or would not be granted. Facing this risk, planning flexibility available to DHS contractors would be substantially reduced. DHS determined that the best way to communicate its intentions under this authority was to grant the approval for all de minimis content items in advance within the regulation. By following this path, DHS gives its potential contractors the advantage of certainty and the information necessary for them to make the most advantageous offer possible to the government, without the risk that delivery might be rejected for inclusion of de minimis amounts after the contractor's proposal was accepted and the resulting contract was awarded. Further, given the authority in subsection (d), and its characterization as a de minimis exception, DHS finds it hard to envision a circumstance in which a delivery containing de minimis amounts of non-compliant materials could be rejected in a principled way. Accordingly, advance approval of such deliveries is the best approach for compliance with section 604, subsection (d), under the regulation.

Comment on National Security Interests—Commenters argued that DHS has adopted an unnecessarily restrictive definition of items "directly related to national security interests" for purposes of applying the Kissell Amendment. The commenters further suggested that it appears that the interim rule intends to unnecessarily exclude certain textile products from operation of the Kissell Amendment. According to the commenters, the Kissell Amendment was intended to be an extension of the Berry Amendment to DHS. By creating a new definition for purposes of applying this amendment, the commenters argued that DHS is undermining the intent of Congress and creating unnecessary complications in the procurement process. The current rules governing the Berry Amendment apply to all goods at the Department of Defense (DoD), except in certain limited instances. Within that spirit, the commenters believe that the final rule should not deviate in any manner from the original intent of Congress.

DHS response to the comment. Do not concur. Section 604 has certain language in common with the Berry Amendment (10 U.S.C. 2533a), but its language is by no means identical, nor even varied solely to import the requirements of the Berry Amendment to a non-DoD agency. As such, section 604 is not "an extension" of the Berry Amendment to DHS. Section 604 is an independent statutory requirement. If the requirements of section 604 were meant to apply to all DHS acquisitions, the qualifying and limiting language of section 604 (i.e. that the covered item be "directly related to national security interests") would be unnecessary. Given that these limits in scope are included in the plain language of section 604, DHS has no choice but to honor them. DHS considered, but rejected, an interpretation under which all DHS acquisitions of covered textile items would be considered to be "directly related to the national security interests of the United States" because it would have rendered those words a nullity. DHS cannot interpret the presence of these limiting words as having no meaning or effect. Because section 604 did not define this expression, DHS was obliged to define it reasonably, which is explained in the preamble to the interim rule.

Comment on NAFTA and U.S.-Chile Free Trade Agreement—Commenters observed that the interim rule specifically identifies items from Free Trade Agreement (FTA) partners Mexico, Canada, and Chile as eligible for procurement benefits, notwithstanding the basic provisions of the Kissell Amendment. The commenters also said that after the enactment of the Kissell Amendment, it was learned that the U.S. Trade Representative did not properly notify FTA partners Mexico, Canada, and Chile that DHS agencies could fall under stricter procurement rules for national security purposes. The commenters pointed out that under the rules of the FTAs and international procurement agreements, proper notification is required. The commenters objected to the specific mention in the interim rule of these countries by name. In the event that the Office of the United States Trade Representative (USTR) were to establish a new understanding with these three countries, the commenters argued that DHS will have to issue new regulations, complete with a public comment period in order to properly remove the countries from the rule. The commenters observed that this will cause further delay and negatively impact the ability to seek the full benefit of the Kissell Amendment.

DHS response to the comment. Do not concur. The regulation, which among other purposes functions as guidance for DHS contracting officers, must convey what requirements apply to items that may or may not be covered by the requirements of section 604. Deletion of the named countries would complicate understanding of the rule under legal requirements that exist today, and would further require each individual contracting officer to determine the applicability of section 604 in the event items are offered that originate in any of the three listed countries. The agreements with these countries were identified specifically only because they exist as exceptions to the Transportation Security Administration's (TSA) exclusion from coverage under international agreements. If, in the future, TSA were excluded from these

agreements, the Department will amend these rules, as appropriate.

Comment on Adoption of the Defense Federal Acquisition Regulation Supplement (DFARS)—Commenters stated they are concerned with the interim rule unnecessarily plowing new ground with its definition of "Item directly related to national security interests" in Subpart 3025.7001(e)(5) and the inclusion of that phrase as an exception in Subpart 3025.7002–2(b). The commenters argue that this language will greatly complicate the ability of contractors and government procurement officers to implement and comply with the new rule due to its uncertainty of meaning and the lack of precedent in administering the language at issue. A simpler and more reasonable approach, the commenters argue, would be for DHS to eliminate Subpart 3025.7001(e) and to replace Subpart 3025.7002–2(b) with regulatory language contained in 48 CFR 225.7002.2(m) and (n), and adhere to its accompanying guidance and precedents.

DHS response to the comment. Do not concur. The commenters suggest that the DHS regulation adopt regulatory language developed and promulgated by the DoD to comply with the "Berry Amendment." DHS cannot do so credibly. The statutory requirements applicable to DoD do not include any requirement that covered items must be "directly related to the national security interests of the United States." If there were such a statutory requirement applicable to DoD, DHS might be able to look to DoD regulatory requirements as a guide in that area, but no such requirement exists.

Comment on Possible Modifications of International Agreements—Commenters noted that the Office of the U.S. Trade Representative is actively seeking to make technical corrections to the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement with respect to the coverage of the government procurement provisions of those agreements to TSA. The commenters object to the language of Subpart 3025.7002–3(a)(3) affecting TSA as drafted. Specifically, the commenters object to the inclusion of the following language, "* * * except those from Mexico, Canada or Chile because TSA is listed as a covered governmental entity in the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement * * *"

DHS response to the comment. Do not concur. This guidance is necessary in order to ensure complete coverage of the statute and timely guidance to DHS contracting officers and the public. If in the future, TSA were excluded from these agreements, DHS will amend these rules, as appropriate.

Comment on Individual Contracts verses HSAR Coverage Regarding International Agreements—Commenters suggested that the interim rule at HSAR 3025.7002–3(a)(3) not list Mexico, Canada and Chile as countries from which items offered under TSA solicitations and contracts would be exempt from the procurement restrictions because of U.S. obligations under NAFTA and the U.S.-Chile FTA. In place of listing these countries in the HSAR, the commenters suggest that individual solicitations and contracts list these countries. They say that Mexico, Canada, and Chile should be listed in individual contract solicitations as countries with whom the United States has a trade agreement where TSA is listed as covered governmental entity and thus (HSAR) 48 CFR 3025.7002 will not apply.

DHS response to the comment. Do not concur. The commenter suggests that individual solicitations list these countries rather than listing the countries in the HSAR clause. Such an individual listing in each covered solicitation would be impractical. For individual contracting officers to list each covered country in each solicitation, each contracting officer would need to know they are required to include such a list, and it would require each contracting officer to know which countries to list. Further, the public would not be given the opportunity to review or comment on these contract terms that would appear in multiple solicitations and contracts. The only practical way to disseminate such knowledge to the public and to contracting officers is to include it in the HSAR, which DHS has done.

Comment Regarding International Agreements—Commenters urge DHS to write a final rule in a way that it will not need to be rewritten if in the future, TSA were to be excluded from trade agreements covering Mexico, Canada, and Chile.

DHS response to the comment. Do not concur. This regulation is written in this way to give complete and current coverage of the statute to the public and guidance to DHS contracting officers. If in the future, TSA were to be excluded from these international agreements, DHS will amend these rules, as appropriate.

Comment on Mirroring DFARS—Commenters contend that this rule needs to mirror the DoD Berry Amendment regulations as closely as possible and that they certainly do not need to refer to two different sets of regulations.

DHS response to the comment. Generally concur. However, the rule must comply with, and independently implement, its own statutory language and requirements, which are not the same as the DoD Berry Amendment.

Comment on Mirroring Berry Amendment—Commenters observed that in pursuing the enactment of the Recovery Act the Administration and Congress distinguished that the express purpose of this legislation was to stimulate the U.S. economy by creating jobs and encouraging investment. Specifically, they observe that the Kissell Amendment and the accompanying floor debate clearly outline that the intent of this Amendment is to bring the procurement practices of DHS in line with those of the Berry Amendment as applied to the DoD. As a major supplier of inputs for DoD textile and apparel products, a commenter believes it is essential that, subject to its respective statutory language, the Kissell Amendment implementing regulations mirror the DoD rules governing the Berry Amendment to ensure the ability of contractors and government procurement officers to implement and comply with the new rule. As currently drafted, commenters advise that they are concerned that the interim rule creates unnecessary uncertainty with its definition of "Item directly related to national security interests" in Subpart 3025.7001(e) and the inclusion of that term as an exception in Subpart 3025.7002–2(b).

DHS response to the comment. Concur in part. Section 604 has language in common with the Berry Amendment, but its language is by no means identical, nor even varied solely to import the requirements of the Berry Amendment to a non-DOD agency. As such, section 604 is not "an extension" of the Berry Amendment to DHS per se. The limitation of section 604's application to items "directly related to national security" is pursuant to express statutory language. Section 604 is an independent statutory requirement. If the requirements of section 604 were meant to apply to all DHS acquisitions, the qualifying and limiting language of section 604 (i.e., that the covered item be "directly related to national security interests") would be unnecessary. Given that these limits in scope are included in the plain language of section 604, DHS has no choice but to honor them. DHS considered, but rejected, an interpretation under which all DHS acquisitions of covered textile items would be considered to be "directly

related to the national security interests of the United States" because it would have rendered those words a nullity. DHS cannot interpret the presence of these limiting words as having no meaning or effect. Because section 604 did not define this expression, DHS was obliged to define it reasonably, which was explained in the preamble to the interim rule. The first and best evidence of both Congressional intent and Executive assent is the plain language of the statute. DHS has endeavored to use the legislative history, where appropriate, to inform a definition that is consistent with both the plain meaning of the expression and its usage in this statute.

Comment on "Component" Definition—Section 3025.7001(b) defines "component" as "any item supplied to the Government as part of an end product or of another component." A commenter argues that, in a global supply chain, this is an overly burdensome requirement, as it potentially requires suppliers to reestablish content down many layers of components. The commenter recommends that this definition be modified as follows: *(b) "Component" means any article, material or supply incorporated directly into an end product.*

The commenter explained that this definition establishes a component as an item "one off" from the finished good, and is a practicable and feasible requirement both for the supplier to meet and DHS to administer. The commenter understands that the definition in the interim rule is consistent with Federal procurement regulations and 41 U.S.C. 403, but because this term is not defined in the Act, the commenter requests DHS flexibility in changing this definition.

DHS response to the comment. Do not concur. The definition of "Component" also appears in DFARS clause 252.225–7012 (Preference for certain domestic commodities) and other clauses concerning restrictions of procurements to domestic products. Where consistent with the statutory language of section 604 and otherwise feasible, DHS has attempted to harmonize the treatment of textile items under section 604, the Berry Amendment, and more generally articulated procurement definitions.

Comment on Definition of "produced"—A commenter notes that in section 3025.7002–1, DHS will not acquire any national security product or component that "has not been grown, reprocessed, reused or produced in the United States." The commenter requests that DHS provide clear, plain English definitions of the terms "reprocessed," "reused," and "produced" as they relate to the interim rule.

DHS response to the comment. Do not concur. This phrase is straight from section 604, paragraph (a). Additionally, these terms are the same terms used in the DFARS implementation of the Berry Amendment restrictions on clothing and fabrics. Neither section 604 nor the DFARS define these terms; their meaning is plain enough to support application of the statute.

Comment on Definition of "protective equipment"—A commenter noted that in section 3025.7002–1(a)(2), there is a reference to "protective equipment (such as body armor)." The commenter contends that there are numerous types of protective equipment that may be subject to this regulation and requests that DHS clarify its intent with a definition of "protective equipment," as this term relates to the interim rule.

DHS response to the comment. Do not concur. This term is used in the statute and the Federal Acquisition Regulation without definition and is a readily understood term that does not require a definition.

Comment on Intent of "individual equipment"—A commenter points out in section 3025–7002–1(b)(7), there is a reference to "individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (b)." While the commenter recognizes that this language is taken from the Kissell Amendment, it is unclear to the commenter what type of equipment, other than those categories enumerated in paragraph (a), would be categorized as "individual equipment." For example, the commenter observes that the DoD Federal Supply Classification 8465 for "individual equipment" lists many of the same items listed in paragraph (a). The commenter requests that DHS clarify its intent with a definition of "individual equipment," as this term relates to the interim rule.

DHS response to the comment. Do not concur. The term "individual equipment" is not a category of specific items as listed in the Federal Supply Classes (FSC's), but, rather, it is a descriptive phrase. The phrase "individual equipment" could have been defined in section 604 to be limited to the FSC category 8465, Individual Equipment, but there is no indication in the section or its history that this category of covered items was intended to be limited only to FSC 8465. Accordingly, DHS intends to rely on the plain meaning of the phrase and will not limit it or define it further in this final rule.

Comment on Dual Use Safety Equipment—A commenter asks DHS to clarify whether the interim rule covers items acquired by the Department to protect DHS employees from exposure to recognized occupational health and safety hazards while these individuals are engaged in protecting the nation's borders, transportation system, maritime domain or critical infrastructure. The commenter suggests that one example might be high visibility safety apparel worn by those DHS employees in TSA or U.S. Customs and Border Protection (CBP), who work near moving vehicles and need to be highly visible to avoid being struck. Even though the workers are engaged in activities crucial to national security, the commenter states its belief that the Department does not intend that such dual-use protective equipment would fall under the "national security interests" definition of the rule.

DHS response to the comment. Do not concur. The HSAR definition of "directly related to the national security interests of the United States" is intended to be interpreted by DHS officials knowledgeable of individual items and individual acquisitions in a multitude of circumstances. DHS declines the invitation to determine in advance, divorced from context, and in a more detailed fashion than it has already, which items and which acquisitions are or are not likely to be covered.

Comment on Applicability to Grants—A commenter asks that DHS clarify that the interim rule does not apply to grant programs, such as the Assistance to Firefighters Grant Program, the Urban Area Security Initiative or the State Homeland Security Grant Program. The commenter believes the interim rule does not apply to DHS grant programs because it regulates Departmental acquisitions. The commenter also points out that DHS also notes that congressional floor remarks indicate this provision "as principally pertaining to border and transportation security * * *," while grant programs provide funds for state and local emergency response. Moreover, neither the HSAR nor the Homeland Security Acquisition Manual refers to grantees.

DHS response to the comment. To the extent that the commenter requests the HSAR implementation to affirmatively state that the section only applies to procurements, DHS declines the invitation. The HSAR applies only to contracts and does not apply to grants. There is no need to repeat in this rule that the HSAR is applicable only to contracts, nor is the HSAR an

appropriate place to determine grant policy or regulation.

Comment on Transition Period—Safe Harbor/Domestic Non-Availability Determination Request Period—Related to Section 3025.7002–2(c). A commenter asks DHS to establish a period during which DHS vendors may come into compliance with the interim rule and/or submit Domestic Non-Availability Determination (DNAD) requests.

DHS response to the comment. Do not concur. There is no authority in section 604 to extend or delay the period during which section 604 is effective.

Comment on Posting Training Material—A commenter urges DHS to make publicly available any guidance and training documents provided to contracting officers who will implement this interim rule. The commenter suggests that making such guidance and training documents publicly available will allow vendors and contracting officers to communicate with each other clearly and effectively about DHS procurements covered by this interim rule. Public availability is also argued to allow the vendor community to know what is expected of them and their products in advance of proposal submissions and final procurement decisions. The commenter states that clear, plain English guidance would be especially helpful for compliance with section 3025.7002–3 "Specific application of trade agreements."

DHS response to the comment. Concur. Training slides will be posted, as permitted by law and DHS policy, on a publicly available Web site for viewing and use by the public.

Comment on National Security—A commenter observes that DHS has adopted an unnecessarily restrictive definition of items "directly related to national security interests" for purposes of applying the Kissell Amendment. The commenter states that, furthermore, it appears that the interim rule intends to unnecessarily exclude certain textile products from operation of the Kissell Amendment. The commenter argues that the Kissell Amendment was intended to be an extension of the Berry Amendment to DHS and that, by creating a new definition for purposes of applying this amendment, DHS is undermining the intent of Congress and creating unnecessary complications in the procurement process. The commenter observes that the current rules governing the Berry Amendment apply to all goods at the DoD, except in certain limited instances. Within that spirit, the commenter believes that the final rule should not deviate in any manner from what the commenter argues is the original intent of Congress.

DHS response to the comment. Do not concur. The current Berry Amendment is not restricted in application to textile "items directly related to national security." DHS is not at liberty to ignore the plain language of a statute, which is the best evidence of congressional intent and, in this case, of the language to which the President assented. The Department believes that it came to the most accurate interpretation of this language in relation to the intent of Congress given the legislative record.

Comment on Normally Associated Components—A commenter argued that DHS should amend the HSAR so that components and materials normally associated with items listed in section 604(b)(1)(B)–(D) are not covered under section 604 unless the components and materials are otherwise specifically enumerated as a covered item in section 604. The commenter stated that, presumably, like the Berry Amendment, when an item is covered under section 604, it will only be compliant when the manufacturing of that item occurs in the United States, regardless of whether the non-covered components or materials are of domestic origin, *e.g.,* plastics. The commenter continues to state that, consequently, material and components that are normally associated with covered items should not be required to be compliant with section 604, except when they are specifically enumerated as a covered item under section 604.

DHS response to the comment. Concur in part. With respect to clothing covered by paragraph (b)(1)(A), section 604 exempts "other items not normally associated with" clothing. However, there is no such exemption for the other covered items addressed in other paragraphs of the section. DHS believes it is impractical to list all items that might not be normally associated with clothing in the regulation. DHS believes a better solution is to leave decisions to individual officials based on the facts of the situation.

Comment on Examples of Normally Associated Components—A commenter urged DHS to amend the HSAR to add examples of material and components that are normally associated with covered items, but which are not themselves covered. The commenter contends this will serve to eliminate confusion and assist industry to comply with section 604.

DHS response to the comment. Do not concur. Such a list would serve no purpose other than to deprive contracting officers of discretion, where a position may or may not be borne out by the facts of an individual acquisition. DHS believes a better solution is to leave decisions to individual officials based on the facts of the individual acquisition.

Comment on Para-aramid Fibers—A commenter suggested that DHS reach out to DoD in order to address the non-availability of fibers and yarns that are para-aramid fibers and yarns manufactured in qualifying countries, in a manner similar to exceptions granted by DoD. The commenter suggests DHS should determine if para-aramid fibers that are part of non-commercial items should be exempt (per a non-availability determination) (commercial para-aramid fibers are exempt under the interim rule).

DHS response to the comment. Concur in part. To the extent items are procured by DHS that include para-aramid fibers and are covered by section 604, cognizant programs will have to address availability of para-aramid fibers and this will undoubtedly involve contacting appropriate DoD officials.

Comment on Fire retardant thread non-availability—After stating a belief that this rule is an extension (to DHS) of the Berry Amendment, a commenter recounts a 2008 purchase of flame resistant uniforms for the U.S. Army at Ft. Belvoir in which the commenter worked within the boundaries of the Berry Amendment. However, the commenter found no domestic source for the thread needed to meet the fire resistant standards and had an exemption to have the uniform makers purchase the thread from Lenzing (Austria). The commenter believes DHS will need a way to likewise allow for exceptions not explicitly listed in the proposed rule, and should plan for that inevitable situation by indicating how exemption requests would need to be documented and approved (*e.g.,* by the Agency Head).

DHS response to the comment. Concur. The published rule describes who must approve the nonavailability exception (the DHS Chief Procurement Officer) and what information the request for approval must include. *See* 3025.7002–2(c) for details.

III. Regulatory Requirements

A. Small Entity Analysis

Because this rule was initiated as an interim rule, the Regulatory Flexibility Act requires neither an Initial nor a Final Regulatory Flexibility analysis. Nonetheless, we considered whether the interim rule would have a significant economic impact on a substantial number of small entities at 74 FR 41348–41349. We received no comments on our analysis and continue to believe that this rule would not have

a significant economic impact on a substantial number of small entities.

B. Executive Order 12866 (Regulatory Planning and Review)

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and the Office of Management and Budget has not reviewed it under that Order.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by DHS employees, call 1–888–REG–FAIR (1–888–734–3247). The DHS will not retaliate against small entities that question or complain about this interim rule or any DHS policy.

D. Collection of Information

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the rule contains no information collection requirements. Accordingly, the Department will not submit a change request for any burdens concerning this rule to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 3025 and 3052

Government procurement.

■ Accordingly, the interim rule amending 48 CFR Parts 3025 and 3052 which was published at 74 FR 41346, on August 17, 2009, is adopted as a final rule without change.

Richard K. Gunderson,

Acting Chief Procurement Officer, Department of Homeland Security.

[FR Doc. 2010–13804 Filed 6–8–10; 8:45 am]

BILLING CODE 9110–9B–P