

# 225.7008 Waiver of restrictions of 10 U.S.C. 4864.

When specifically authorized by reference elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 4864(a) may be waived as follows:

(a) (1) The Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under [225.872](#) , and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of the determination to exercise the waiver authority shall be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) The effective period of the waiver shall not exceed 1 year.

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to—

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(b) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) Satisfactory quality items manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom are not available.

(3) Application of the restriction would result in the existence of only one source for the item in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(4) Application of the restriction is not in the national security interests of the United States.

(5) Application of the restriction would adversely affect a U.S. company.

(c) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S., Australian, Canadian, New Zealand, or United Kingdom origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S., Australian, Canadian, New Zealand, or United Kingdom origin.

**Parent topic:** Subpart 225.70 - AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION