

PART 8—NATIONAL IMAGERY AND MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

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NMA501 National Imagery and Mapping Agency, Acquisition Technology, 45479 Holiday Drive, Sterling, VA 20166-9411 (ZM51)

[FR Doc. 03-7530 Filed 3-28-03; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 226

[DFARS Case 2002-D038]

Defense Federal Acquisition Regulation Supplement; Extension of Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2003. Section 816 provides for a 3-year extension of the percentage goal for contract awards to small disadvantaged businesses and certain institutions of higher education.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-1302; facsimile (703) 602-0350. Please cite DFARS Case 2002-D038.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.000 and 226.7000 to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 816 amends 10 U.S.C. 2323, which establishes a goal for DoD to award 5 percent of contract and subcontract dollars to small disadvantaged business concerns, historically black colleges and universities, and minority institutions. 10 U.S.C. 2323(k) previously contained a termination date of September 30, 2003. Section 816 extends the termination date to September 30, 2006.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002-D038.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 219 and 226 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 219 and 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.000 [Amended]

■ 2. Section 219.000 is amended in the introductory text by removing “2003” and adding in its place “2006”.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7000 [Amended]

■ 3. Section 226.7000 is amended in paragraphs (a) and (b) by removing “2003” and adding in its place “2006”.

[FR Doc. 03-7529 Filed 3-28-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

RIN 2126-AA81

Civil Penalties

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This document specifies the civil penalties for violating the FMCSA regulations, as adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The inflation adjustments are reflected in this rulemaking. The Federal Civil Penalties Inflation Adjustment Act authorizes these amendments to the FMCSA penalty regulations.

DATES: The effective date is March 31, 2003.

FOR FURTHER INFORMATION CONTACT:

David M. Lehrman, Office of Policy, Plans and Regulation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-0994. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

The Debt Collection Improvement Act of 1996

In order to preserve the remedial impact of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104-134, 110 Stat. 1321-1373), requires Federal agencies to regularly adjust certain civil penalties for inflation. These Acts are now codified at 28 U.S.C. 2461 note. The law requires each agency to make an initial inflationary adjustment for all applicable civil penalties, and to make further adjustments to these penalty amounts at least once every four years.

The law further stipulates that any resulting increases in a civil penalty due to the calculated inflation adjustments: (i) Should apply only to violations which occur after the date the increase takes effect; and (ii) the first adjustment of a civil monetary penalty pursuant to the Act may not exceed 10 percent of such penalty.

The FMCSA previously adjusted civil penalties for inflation by regulation on March 13, 1998 (63 FR 12413). Subsequent to these adjustments, Congress passed the Transportation Equity Act for the 21st Century (TEA-21) on June 9, 1998 (Pub. L. 105-178, 112 Stat. 107). TEA-21 re-set several penalties at the amounts required prior to adjustment for inflation and created several new categories of penalties. The current penalties are found in 49 CFR part 386, Appendix A and B, except for

those found in paragraph (f) to Appendix B.

Paragraph (f) was amended on October 2, 2002, by removing "\$27,500" and adding in its place "\$10,000" (67 FR 61818) as mandated by TEA-21. The October 2002 notice failed to remove the listed minimum penalty of \$250. Paragraph (f) to Appendix B is re-written today to reflect that there are no minimum penalties for these violations and to correctly reflect the prohibitions mandated by 49 U.S.C. 31144 (as amended by TEA-21), which prohibits all unfit motor carriers from operating in interstate commerce. Any unsatisfactory safety rating, given to motor carriers by FMCSA, is treated by the agency as a determination of unfitness (65 FR 50919, August 22, 2000).

This notice addresses penalties considered to be initial adjustments, which are therefore subject to the statutory 10 percent maximum. The notice also addresses the previously adjusted penalties, amended on March 13, 1998 (63 FR 12413), which are therefore not subject to the statutory 10 percent maximum.

Under 5 U.S.C. 553(b), the FMCSA finds good cause that prior notice and opportunity for comment are unnecessary because these inflation adjustments required by the Act are ministerial acts over which the agency has no discretion. The adjustment simply recognizes that as inflation occurs, penalties should keep pace so that the impact of the penalty is not diminished with the passage of time.

Method of Calculation

Under the Act (28 U.S.C. 2461 note) the inflation adjustment for each applicable civil penalty is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law (section 5(b), 28 U.S.C. 2461 note). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act (section 5(a), 28 U.S.C. 2461 note).

Under 49 U.S.C. 5123, the FMCSA may assess a fine for violations of the Federal Hazardous Materials Regulations (HMR) (49 CFR parts 171-180). The driver, motor carrier, or shipper who violates the HMR is subject to a civil penalty of not less than \$250 and not more than \$25,000 for each

violation. The maximum penalty was adjusted for inflation on March 13, 1998 (63 FR 12413), resulting in an adjusted penalty of \$27,500 (see 49 CFR part 386, Appendix B, paragraph (e)). But the minimum penalty was not previously adjusted for inflation. This minimum statutory penalty was last set in 1990. The Consumer Price Index was 180 in June 2002, and was approximately 130 in June of 1990 (see U.S. Department of Labor CPI index at <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>). Thus the inflation factor is 180/130 or 1.38. The new minimum penalty amount after the increase and statutory rounding would thus be the result of multiplying $\$250 \times 1.38 = \345 . However, after applying the 10 percent limit on an initial increase, the new minimum penalty amount per violation is \$275.

The current maximum penalty of \$27,500 was adjusted for inflation in 1998. The Consumer Price Index was 180 in June 2002, and 163 in June 1998. Thus the inflation factor is 108/163 or 1.10. The new maximum penalty amount after the increase and statutory rounding would thus be the result of multiplying $\$27,500 \times 1.10 = \$30,250$. The Act is instructive as to the rounding method to be employed. The increase is to be rounded to the nearest multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000. The amount of the increase was \$2,750, rounded to the nearest multiple of \$5,000 equals a \$5,000 adjustment to the current maximum penalty, or a new penalty of \$32,500. The rounding adjustment is also consistent with a General Accounting Office (GAO) clarifying letter issued on July 15, 2002 (see GAO #B-290021).

The following inflation factors were used to adjust penalties in this final rule: 180/163 or 1.10 for penalties previously adjusted in 1998, and new TEA-21 penalties enacted by Congress that same year; 180/130 or 1.38 for the hazardous materials minimum penalty not previously adjusted since 1990; 180/152 or 1.18 for commercial penalties established in the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 809) (all commercial penalties are being adjusted for the first time and are subject to the 10 percent maximum increase); and 180/166 or 1.08 for penalties enacted in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748 (December 9, 1999). Appendix A, to 49 CFR part 386, paragraph (h) includes MCSIA penalties for operating during a period of suspension for failure to pay penalties as outlined in 49 CFR 386.83 and 386.84. The FMCSA adjusts these penalties for inflation, even

though they are only three years old, to place all penalties on the same adjustment schedule. The Act allows for more frequent adjustments, so long as agencies adjust at least every four years. These penalties are subject to the 10 percent maximum adjustment because this is the first adjustment for inflation.

Appendices A and B are now adjusted for inflation.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. These inflation adjustments are ministerial acts in compliance with the statute over which FMCSA has no discretion. The FMCSA finds good cause to adopt the rule without prior notice or opportunity for public comment. The agency believes that this rule will not result in a major increase in costs or prices for State or local governments. The law is simply designed to preserve the remedial impact of civil penalties. Consequently, the economic impact of this final rule will be minimal because it will not substantially change the applicable civil penalty amount, but merely adjust the penalty to reflect inflation.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and it has been determined this action does not have sufficient federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The FMCSA is a new Administration within the Department of

Transportation (DOT). The FMCSA analyzed this rule under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500–1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts. This rule would be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement since this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environment risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

■ In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 386 as set forth below:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 stat. 1748, 1767; and 49 CFR 1.73.

APPENDIX A TO PART 386—[AMENDED]

■ 2. Appendix A to part 386 is amended by revising the figure “\$550” to read as “\$650”, the figure “\$1,100” to read as “\$2,100”, the figure “\$10,000” to read as “\$11,000”, and the figure “\$11,000” to read as “\$16,000”, whenever they appear throughout the appendix.

APPENDIX B TO PART 386—[AMENDED]

■ 3. In Appendix B to part 386 the introductory text is amended by revising the second sentence to read as follows:

* * * Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (g) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code. * * *

■ Appendix B to part 386 is further amended as follows:

a. Paragraph (a)(1) is amended by revising the figure “\$500” to read as “\$550”, and the figure “\$5,000” to read as “\$5,500”.

■ b. Paragraph (a)(2) is amended by revising the figure “\$5,000” to read as “\$5,500”.

■ c. Paragraph (a)(3) is amended by revising the figure “\$10,000” to read as “\$11,000”.

■ d. Paragraph (a)(4) is amended by revising the figure “\$2,500” to read as “\$2,750”.

■ e. Paragraph (a)(5) is amended by revising the figure “\$2,750” to read as “\$3,750”.

■ f. Paragraph (b) is amended by revising the figure “\$2,750” to read as “\$3,750”.

■ g. Paragraph (c) is amended by revising the figure “\$1,100” to read as “\$2,100”, the figure “\$2,750” to read as “\$3,750”, and the figure “\$11,000” to read as “\$16,000” whenever they appear throughout paragraph (c).

■ h. Paragraph (d) is amended by revising the figure “\$11,000” to read as “\$16,000”.

■ i. Paragraph (e) is amended by revising the figure “\$250” to read as “\$275”, and the figure “\$27,500” to read as “\$32,500”, wherever they appear

throughout paragraphs (e)(1) through (e)(3).

■ j. Paragraph (f) is revised to read as follows:

(f) *Operating after being declared unfit by assignment of a final unsatisfactory safety rating.* A motor carrier operating a commercial motor vehicle in interstate commerce after receiving a final unsatisfactory safety rating is subject to a civil penalty of not more than \$11,000 (49 CFR 385.13). Each day the transportation continues constitutes a separate offense.

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■ k. Paragraph (g) is amended by revising the figure “\$200” to read as “\$220” the figure “\$250” to read as “\$275”, the figure “\$500” to read as “\$550”, the figure “\$1,000” to read as “\$1,100”, the figure “\$2,000” to read as “\$2,200”, the figure “\$5,000” to read as “\$5,500”, the figure “\$10,000” to read as “\$11,000”, the figure “\$20,000” to read as “\$22,000”, the figure “\$25,000” to read as “\$27,500”, and the figure “\$100,000” to read as “\$110,000”, whenever they appear throughout paragraph (g).

Issued on: March 20, 2003.

Annette M. Sandberg,
Acting Administrator.

[FR Doc. 03–7378 Filed 3–28–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 032503D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific Cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using jig or