

I. National Technology Transfer Advancement Act

As noted in the notice of reconsideration and request for public comment, CAA section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

This notice of final action on reconsideration does not involve technical standards. EPA's compliance with CAA section 12(d) of the NTTAA has been addressed in the preamble of the underlying final OSWI rules (70 FR 74891, December 16, 2005).

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing the final rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rules in the **Federal Register** on December 16, 2005. The final rules are not "major rules" as defined by 5 U.S.C. 804(2). The final emission guidelines were effective on February 14, 2006. The final NSPS were effective on June 16, 2006. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: January 16, 2007.

Stephen L. Johnson,
Administrator.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

RIN 0750-AF56

Defense Federal Acquisition Regulation Supplement; Emergency Acquisitions (DFARS Case 2006-D036)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide a single reference to DoD-unique acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.

DATES: *Effective date:* January 22, 2007.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 23, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D036, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2006-D036 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations System, Attn: Mr. Gary Delaney, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Item II of Federal Acquisition Circular 2005-11, published at 71 FR 38247 on July 5, 2006, added Part 18 to the Federal Acquisition Regulation (FAR). FAR Part 18 provides a single reference to Governmentwide acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations. This interim DFARS rule adds a new Part 218 to provide a single reference to the additional acquisition flexibilities available to DoD.

Consistent with the FAR, the flexibilities in DFARS Part 218 are divided into two subparts. The first subpart, entitled "Available Acquisition Flexibilities" identifies the DoD flexibilities that may be used anytime and do not require an emergency declaration. The second subpart, entitled "Emergency Acquisition Flexibilities" identifies the DoD flexibilities that may be used only after an emergency declaration or designation has been made by the appropriate official. The second subpart is further divided into three sections: Contingency operation; Defense or recovery from certain attacks; and Incidents of national significance, emergency declaration, or major disaster declaration.

DoD would like to hear the views of interested parties on the sufficiency of these provisions. In particular, DoD is interested in receiving input as to whether the provisions sufficiently clarify the existing DFARS flexibilities that can be used in emergency situations or whether more detailed, comprehensive coverage is needed.

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

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a compilation of existing authorities, and makes no change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D036.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary to improve DoD's ability to expedite acquisitions of supplies and services during emergency situations. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Chapter 2 is amended as follows:

■ 1. The authority citation for 48 CFR Chapter 2 continues to read as follows:

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

■ 2. 48 CFR part 218 is added to read as follows:

PART 218—EMERGENCY ACQUISITIONS

Subpart 218.1—Available Acquisition Flexibilities

Sec.

218.170 Additional acquisition flexibilities.

Subpart 218.2—Emergency Acquisition Flexibilities

218.201 Contingency operation.

218.202 Defense or recovery from certain attacks.

218.203 Incidents of national significance, emergency declaration, or major disaster declaration.

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

Subpart 218.1—Available Acquisition Flexibilities

218.170 Additional acquisition flexibilities.

Additional acquisition flexibilities available to DoD are as follows:

(a) *Circumstances permitting other than full and open competition.* Use of the authority at FAR 6.302–2, Unusual and compelling urgency, may be appropriate under certain circumstances. See PGI 206.302–2.

(b) *Use of advance Military Interdepartmental Purchase Request (MIPR).* For urgent requirements, the advance MIPR may be transmitted electronically. See PGI 208.7004–3.

(c) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the place of performance is entirely outside the United States. See 213.270(c)(1).

(d) *Master agreement for repair and alteration of vessels.* The contracting officer, without soliciting offers, may issue a written job order for emergency work to a contractor that has previously executed a master agreement, when delay would endanger a vessel, its cargo or stores, or when military necessity requires immediate work on a vessel. See 217.7103–4, 252.217–7010, and PGI 217.7103–4.

(e) *Spare parts breakout program.* An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date. See PGI 217.7506, paragraph 1–105(e).

(f) *Storage and disposal of toxic and hazardous materials.* Under certain emergency situations, exceptions apply with regard to the prohibition on storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations. See 223.7102(a)(3) and (7).

(g) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302–2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002–2.

(h) *Rights in technical data.* The agency head may notify a person asserting a restriction that urgent or compelling circumstances (e.g.,

emergency repair or overhaul) do not permit the Government to continue to respect the asserted restriction. See 227.7102–2; 227.7103–5; 227.7103–13; 227.7104; 227.7203–13; 252.227–7013; 252.227–7014; 252.227–7015; 252.227–7018; and 252.227–7037.

(i) *Tax exemption in Spain.* If copies of a contract are not available and duty-free import of equipment or materials is urgent, the contracting officer may send the Joint United States Military Group copies of the Letter of Intent or a similar document indicating the pending award. See PGI 229.7001.

(j) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for awards made to foreign vendors for work performed outside the United States or for purchases to support unusual or compelling needs of the type described in FAR 6.302–2. See 232.7002(a)(2) and (5).

(k) *Mortuary services.* In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the contractor's facilities from other sources. See 237.7003(b) and 252.237–7003.

Subpart 218.2—Emergency Acquisition Flexibilities

218.201 Contingency operation.

(1) *Selection, appointment, and termination of appointment.* Contracting officer qualification requirements pertaining to a baccalaureate degree and 24 semester credit hours of business related courses do not apply to DoD employees or members of the armed forces who are in a contingency contracting force. See 201.603–2(2).

(2) *Policy for unique item identification.* Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, are to be used to support a contingency operation. See 211.274–2(b).

(3) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the purchase or payment is for an overseas transaction by a contracting officer in support of a contingency operation, or for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations. See 213.270(c)(3) and (5).

(4) *Governmentwide commercial purchase card.* A contracting office supporting a contingency operation or a humanitarian or peacekeeping operation

may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold if certain conditions are met. See 213.301(3).

(5) *Imprest funds and third party drafts.* Imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.305–3(d)(iii)(A).

(6) *Standard Form (SF) 44, Purchase Order-Invoice-Voucher.* SF 44s may be used for purchases not exceeding the simplified acquisition threshold for overseas transactions by contracting officers in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.306(a)(1)(B).

(7) *Unfinalized contract actions.* The head of the agency may waive certain limitations for unfinalized contract actions if the head of the agency determines that the waiver is necessary to support a contingency operation or a humanitarian or peacekeeping operation. See 217.7404–5(b).

(8) *Prohibited sources.* DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control. See 225.701–70.

(9) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302–2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities;

and (6) Acquisitions by vessels in foreign waters. See 225.7002–2.

(10) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by deployed contracting officers in the course of military operations, including contingency operations or humanitarian or peacekeeping operations. See 232.7002(a)(4).

218.202 Defense or recovery from certain attacks.

Policy for unique item identification. Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. See 211.274–2(b).

218.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(1) *Establishing or maintaining alternative sources.* PGI contains a sample format for Determination and Findings citing the authority of FAR 6.202(a), regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI 206.202.

(2) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies. See 232.7002(a)(4).

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 244, 246, and 252

RIN 0750–AF12

Defense Federal Acquisition Regulation Supplement; Notification Requirements for Critical Safety Items (DFARS Case 2004–D008)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding notification of potential safety issues under DoD contracts. The rule contains a contract clause requiring contractors to promptly notify the Government of any nonconformance or deficiency that could impact item safety.

DATES: *Effective Date:* January 22, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0302; facsimile (703) 602–0350. Please cite DFARS Case 2004–D008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains a new contract clause requiring contractors to notify the Government of any nonconformance or deficiency that could impact the safety of items acquired by or serviced for the Government. The rule is a result of Section 8143 of the Fiscal Year 2004 DoD Appropriations Act (Pub. L. 108–87), which required examination of appropriate standards and procedures to ensure timely notification to the Government and contractors regarding safety issues, including defective parts.

DoD published a proposed rule at 70 FR 44077 on August 1, 2005. Thirteen respondents submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent recommended amending the clause prescription at DFARS 246.371(a)(2) and (3) to change the term “system” to “critical safety system.”

DoD Response: The term “system” relates to an assemblage of subsystems, assemblies, and components that comprise an end item. Adding “critical safety” to the term “system” is unnecessary and would be confusing where major or less-than-major systems are not described in terms such as “critical safety.”

2. *Comment:* Five respondents suggested requiring the use of the Government-Industry Data Exchange Program (GIDEP) as the method for notification of safety issues and for reporting all types of technical data and reliability information.

DoD Response: The primary objective of this DFARS rule is to ensure that contractors who have delivered defective products with potential safety implications notify affected contracting offices quickly, using whatever method