

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 18, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 212 and 225

RIN 0750-AF74

#### Defense Federal Acquisition Regulation Supplement; Waiver of Specialty Metals Restriction for Acquisition of Commercially Available Off-the-Shelf Items (DFARS Case 2007-D013)

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to waive application of 10 U.S.C. 2533b for acquisitions of commercially available off-the-shelf (COTS) items. 10 U.S.C. 2533b, established by section 842 of the National Defense Authorization Act for Fiscal Year 2007, places restrictions on the acquisition of specialty metals not melted or produced in the United States.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 1, 2007, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2007-D013, using any of the following methods:

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

E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2007-D013 in the subject line of the message.

Fax: (703) 602-7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, 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:** Ms. Amy Williams, (703) 602-0328.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 842(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) establishes a new specialty metals domestic source restriction, which is codified at 10 U.S.C. 2533b. A proposed rule is being developed to comprehensively implement 10 U.S.C. 2533b in the DFARS. However, this proposed rule is being published separately in order to expedite the exercise of a statutory exception to the requirements of 10 U.S.C. 2533b for COTS items.

As defined in subsection (c) of 41 U.S.C. 431 (Section 35 of the Office of Federal Procurement Policy Act), "COTS item"—

- (i) Means any item of supply that is—
  - (A) A commercial item;
  - (B) Sold in substantial quantities in the commercial marketplace; and
  - (C) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and
- (ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

41 U.S.C. 431(a) requires that the acquisition regulations list the provisions of law that are inapplicable to contracts and subcontracts for COTS items. Covered provisions of law must be included on that list unless the Administrator of the Office of Federal Procurement Policy (OFPP) makes a written determination that it would not be in the best interest of the United States to exempt such contracts from the applicability of that provision of law. Covered provisions of law are those that, as determined by OFPP, impose on contractors Government-unique policies, procedures, requirements, or restrictions, except for—

- A provision of law that provides for criminal or civil penalties; or
- A provision of law that specifically refers to 41 U.S.C. 431, and states that the law is nevertheless applicable to COTS items.

10 U.S.C. 2533b does not provide for criminal or civil penalties; nor does it refer to 41 U.S.C. 431 and state that the law is nevertheless applicable to COTS items. Accordingly, this proposed rule—

- Creates a new DFARS section 212.570 to list 10 U.S.C. 2533b as

inapplicable to contracts and subcontracts for the acquisition of COTS items; and

- Includes acquisitions of COTS items containing specialty metals as an exception at DFARS 225.7002-2.

Exercise of this statutory COTS waiver is critical to DoD's access to the commercial marketplace. Manufacturers make component purchasing decisions based on factors such as cost, quality, availability, and maintaining the state of the art—not the country in which specialty metals in the components were melted. In addition, many commercial items commonly acquired in large quantities by DoD, such as computers, commercial-off-the shelf engines, and semi-conductors, may contain a small percentage of components made of specialty metals, subjecting the manufacturers to costly and burdensome, if not impossible, tracking requirements. Many manufacturers of COTS items are unwilling to change their existing processes, inventory systems, or facilities and incur the significant expense associated with tracking the sourcing of specialty metals in the components of a COTS item in order to generate sales to DoD, which typically represent a very small percentage of overall revenue for COTS items.

Section 2533b permits DoD to process a domestic non-availability determination, but such process poses difficulties for DoD in meeting mission-sensitive requirements in a timely manner. In order for DoD to be able to support a determination, a contractor must—

- (1) Work with its suppliers at every tier to identify non-compliant parts from among potentially hundreds of thousands of parts;

- (2) Determine that it cannot find a compliant source, either because lead times are longer than the contract permits, or because sufficient quantity is not available; and

- (3) Research whether and by when it can become compliant.

Once the information on noncompliant parts and their nonavailability is provided to DoD, the Department must conduct a validation review and develop a report to document the determination. All of these efforts taken together may entail thousands of hours of work, at considerable cost to the taxpayer, and a significant addition in lead time to the acquisition cycle.

For all of these reasons, an exemption from 10 U.S.C. 2533b for COTS items is in the best interest of the Government.

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 is not expected 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 manufacturers of COTS items have not generally changed their manufacturing and purchasing practices based on DoD regulations. The burden generally falls on the Government to forego purchase of the item or to process a domestic nonavailability determination requested by the prime contractor. So far, only large contractors have had the resources to request a domestic nonavailability determination. If there is any impact of this proposed rule, it should be beneficial, because small businesses providing COTS items, many of whom are subcontractors, will not have to—

- Rely on the prime contractor to request a domestic nonavailability determination from the Government; or
- Face the decision whether to cease doing business with the Government or set up systems to track and segregate all DoD parts that contain specialty metals.

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 2007–D013.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) does not apply, because the proposed rule contains no information collection requirements.

### List of Subjects in 48 CFR Parts 212 and 225

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 212 and 225 as follows:

1. The authority citation for 48 CFR parts 212 and 225 continues to read as follows:

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

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.570 is added to read as follows:

#### 212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items as defined in 41 U.S.C. 431(c).

### PART 225—FOREIGN ACQUISITION

3. Section 225.7002–2 is amended by adding paragraph (q) to read as follows:

#### 225.7002–2 Exceptions.

\* \* \* \* \*

(q) Acquisitions of commercially available off-the-shelf items containing specialty metals.

[FR Doc. E7–12763 Filed 6–29–07; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 172

[RSPA Docket No. 2006–26322 (HM–206F)]

RIN 2137–AE21

#### Hazardous Materials: Revision of Requirements for Emergency Response Telephone Numbers

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** In this NPRM, PHMSA proposes to amend the Hazardous Materials Regulations (HMR) to clarify requirements governing emergency response information services provided by arrangement with hazardous materials offerors. In order to preserve the effectiveness of these arrangements for providing accurate and timely emergency response information, PHMSA proposes to require that basic identifying information (offeror name or contract number) be included in shipping papers. This information will enable the service provider to identify the shipper on whose behalf it is accepting responsibility for providing emergency response information in the event of a hazardous materials incident.

**DATES:** Comments must be received by August 31, 2007. To the extent possible, we will consider late filed comments as we determine what further action will be taken.

**ADDRESSES:** You may submit comments by any of the following methods:

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

- *Web Site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

*Instructions:* Include the agency name and docket number PHMSA–06–26322 (HM–206F) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard or access our Web site at <http://dms.dot.gov>.

*Docket:* You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Operations office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The proposed rule would make a narrow, clarifying change to the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to shipping papers for certain hazardous materials shipments. With limited exceptions not applicable here, the HMR require that shipments of hazardous materials be accompanied by shipping papers and other documentation designed to communicate to transport workers and