

(ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

\* \* \* \* \*

Dated: August 13, 2010.

**Tom Bryant,**

*Associate General Counsel.*

[FR Doc. 2010-20525 Filed 8-19-10; 8:45 am]

BILLING CODE 6050-28-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 202, 212, and 234

[DFARS Case 2008-D011]

#### Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

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

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, without change, the interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008. This rule specified when time-and-materials or labor-hour contracts may be used for the acquisition of commercial items, and revised the language to address the conditions under which major weapon systems or subsystems may be treated as commercial items.

**DATES:** *Effective Date:* August 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cassandra R. Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-8383; facsimile 703-602-0350. Please cite DFARS Case 2008-D011.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 74 FR 34263 on July 15, 2009, to implement sections 805 and 815 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Pub. L. 110-181). A correction to the interim rule was published at 74 FR 35825 on

July 21, 2009, to clarify the types of services to which this rule applies, consistent with subsections (c)(1)(A) and (c)(1)(C)(i) of section 805 of the NDAA for Fiscal Year 2008. Section 805 specified when time-and-materials or labor-hour contracts may be used for commercial item acquisitions. Section 815 of the NDAA for Fiscal Year 2008 provided clarification regarding situations under which the procurement of a major weapon system, subsystems of major weapon systems, and components and spare parts for major weapon systems, may be acquired using procedures established for the acquisition of commercial items. Section 815 also clarified that the terms "general public" and "non-governmental entities" with regard to sales of commercial items, do not include the Federal Government or a State, local, or foreign 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

DoD certifies that this rule will not 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 reinforces existing requirements for the appropriate use of commercial acquisition procedures and for ensuring that contract prices are fair and reasonable.

##### 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 202, 212, and 234

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

##### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule published at 74 FR 34263 on July 15, 2009, as corrected at 75 FR 35825 on July 21, 2009, is adopted as final without change.

[FR Doc. 2010-20436 Filed 8-19-10; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 247 and 252

#### Defense Federal Acquisition Regulation Supplement; Transportation (DFARS Case 2003-D028)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule, with changes, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on transportation matters relating to DoD contracts.

**DATES:** *Effective Date:* August 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Overstreet, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-0311; facsimile 703-602-0350. Please cite DFARS Case 2003-D028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

In keeping with the DFARS Transformation initiative objective of improving the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate, DoD issued a proposed rule at 70 FR 43109 on July 26, 2005, to update text on transportation matters relating to DoD contracts, including clarifying certain shipping procedures and offering additional guidance on their use.

This final rule is a result of the DFARS Transformation initiative. The changes to the final rule—

- Delete text on transportation matters that are sufficiently addressed in the Federal Acquisition Regulation or in DoD transportation regulations;
- Clarify requirements for inclusion of shipping instructions in solicitations and contracts; and
- Delete procedures for contracting for the preparation of property for shipment or storage; and for preparation of consignment instructions. Text on these subjects will be relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.

**B. Public Comments**

No public comments were received in response to the proposed rule.

**C. Summary of Changes to the Proposed Rule**

The following changes to the proposed rule resulted from DoD deliberations:

- 247.001 indicates the availability of additional information at PGI 247.001 for the Voluntary Intermodal Sealift Agreement program.

- 247.200 indicates the availability of additional guidance at PGI 247.200 for procurement of transportation or related services.

- 247.270–3, proposed for deletion, has been retained (redesignated as 240.270–2).

- 247.271–2, proposed for deletion, has been retained (redesignated as 247.271–1).

- 247.271–4(i) (redesignated as 247.271–3(i)) indicates the availability of additional information at PGI 247.271–3(c)(1) for demurrage and detention charges.

- 247.301 indicates the availability of guidance at PGI 247.301 relating to Government Purchase Card purchases that require shipments to destinations outside CONUS.

- 247.371 (redesignated as 247.370) indicates the availability of guidance at PGI 247.370 relating to DD Form 1384, Transportation Control and Movement Document.

This is not a significant regulatory action, and therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**D. Regulatory Flexibility Act**

DoD certifies that this final rule will not 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 addresses internal DoD requirements for transportation planning and management. Therefore, DoD has not performed a final regulatory flexibility analysis. No comments were received from small business concerns and other interested parties on the expected impact of this rule on small entities.

**E. 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 247 and 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, DoD is amending 48 CFR parts 247 and 252 as follows:

■ 1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

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

**PART 247—TRANSPORTATION**

■ 2. Section 247.001 is revised to read as follows:

**247.001 Definitions.**

For definitions of “Civil Reserve Air Fleet” and “Voluntary Intermodal Sealift Agreement,” see Joint Pub 1–02, DoD Dictionary of Military and Associated Terms. See additional information at PGI 247.001 for the Voluntary Intermodal Sealift Agreement program.

**Subpart 247.1 [Removed]**

■ 3. Subpart 247.1 is removed.

■ 4. Section 247.200 is revised to read as follows:

**247.200 Scope of subpart.**

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government. See additional guidance at PGI 247.200 for procurement of transportation or related services.

■ 5. Section 247.206 is revised to read as follows:

**247.206 Preparation of solicitations and contracts.**

Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

(1) Record of claims involving loss or damage; and

(2) Commitment of transportation assets to readiness support (*e.g.*, Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

**247.270–1 [Removed]**

■ 6. Section 247.270–1 is removed.

**247.270–2, 247.270–3, and 247.270–4 [Redesignated]**

■ 7. Sections 247.270–2, 247.270–3, and 247.270–4 are redesignated as sections 247.270–1, 247.270–2, and 247.270–3, respectively.

**247.270–5 [Removed]**

■ 8. Section 247.270–5 is removed.

**247.270–6 [Redesignated]**

■ 9. Section 247.270–6 is redesignated as section 247.270–4.

**247.271–1 [Removed]**

■ 10. Section 247.271–1 is removed.

**247.271–2 and 247.271–3 [Redesignated]**

■ 11. Sections 247.271–2 and 247.271–3 are redesignated as sections 247.271–1 and 247.271–2, respectively.

■ 12. Newly designated section 247.271–2 is revised to read as follows:

**247.271–2 Procedures.**

Follow the procedures at PGI 247.271–2 for contracting for the preparation of personal property for shipment or storage.

**247.271–4 [Redesignated]**

■ 13. Section 247.271–4 is redesignated as section 247.271–3.

■ 14. Newly designated section 247.271–3 is amended by revising paragraphs (c) and (i) to read as follows:

**247.271–3 Solicitation provisions, schedule formats, and contract clauses.**

\* \* \* \* \*

(c) In solicitations and resulting contracts, the schedules provided by the installation personal property shipping office. Follow the procedures at PGI 247.271–3(c) for use of schedules.

\* \* \* \* \*

(i) The clause at 252.247–7014, Demurrage. See additional information at PGI 247.271–3(c)(1) for demurrage and detention charges.

\* \* \* \* \*

■ 15. Section 247.301 is revised to read as follows:

**247.301 General.**

See PGI 247.301 for transportation guidance relating to Government Purchase Card purchases that require shipments to destinations outside CONUS.

■ 15a. Sections 247.305–10 and 247.305–70 are revised to read as follows:

**247.305–10 Packing, marking, and consignment instructions.**

Follow the procedures at PGI 247.305–10 for preparation of consignment instructions.

**247.305–70 Returnable containers other than cylinders.**

Use the clause at 252.247–7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, or other returnable containers if the

contractor is to retain title to the containers.

**247.370 [Removed]**

- 16. Section 247.370 is removed.

**247.371 and 247.372 [Redesignated]**

- 17. Sections 247.371 and 247.372 are redesignated as sections 247.370 and 247.371, respectively.

- 18. Newly designated sections 247.370 and 247.371 are revised to read as follows:

**247.370 DD Form 1384, Transportation Control and Movement Document.**

The transportation office of the shipping activity prepares the DD Form 1384 to accompany all shipments made through a military air or water port, in accordance with DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 203. A link to this document is available in PGI 247.370.

**247.371 DD Form 1653, Transportation Data for Solicitations.**

The transportation specialist prepares the DD Form 1653 to accompany requirements for the acquisition of supplies. The completed form should contain recommendations for suitable f.o.b. terms and other suggested transportation provisions for inclusion in the solicitation.

**247.373 [Redesignated]**

- 19. Section 247.373 is redesignated as section 247.372.

- 20. Section 247.573-1 is amended by revising paragraphs (b) and (c) to read as follows:

**247.573-1 Ocean transportation incidental to a contract for supplies, services, or construction.**

\* \* \* \* \*

(b) DD Form 1653, Transportation Data for Solicitations, shall be used—

(1) By the requesting activity in developing the Government estimate for transportation costs; and

(2) By the contracting officer in ensuring that valid shipping instructions and delivery terms are included in solicitations and contracts that may involve transportation of supplies by sea.

(c) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer must request confirmation of the nonavailability from—

(i) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC; or

(ii) The Commander, Military Surface Deployment and Distribution (SDDC), through the SDDC global e-mailbox *sddc.ops.ffw@us.army.mil* and the Principal Assistant Responsible for Contracting, SDDC.

(2) The proposed freight charges to the Government, the contractor, or any subcontractor are higher than charges for transportation of like goods to private persons, the contracting officer may approve a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting an exception, the contracting officer must request advice, oral or written, from the Commander, MSC, or the Commander, MTMC.

(ii) In advising the contracting officer whether to grant the exception, the Commander, MSC, or the Commander, SDDC, must consider, as appropriate, evidence from—

- (A) Published tariffs;
- (B) Industry publications;
- (C) The Maritime Administration; and
- (D) Any other available sources.

(3) The freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(i) The contracting officer must prepare a report in determination and finding format, and must—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review;

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(1) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in

terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(4) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, through the SDDC global e-mailbox: *sddc.ops.ffw@us.army.mil* and the Principal Assistant Responsible for Contracting, SDDC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, SDDC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

**247.573-2 [Amended]**

- 21. Section 247.573-2 paragraph (d) is amended by removing the acronym “MTMC” and adding in its place the acronym “SDDC” each time it appears as follows:

- a. In paragraph (d)(1) introductory text;

- b. In paragraph (d)(1)(i);

- c. In paragraph (d)(1)(ii)(B);

- d. In paragraph (d)(1)(iii);

- e. In paragraph (d)(2);

- f. In paragraph (d)(3)(ii)(B); and

- g. In paragraph (d)(3)(iii).

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.247-7000 through 252.247-7002 and 252.247-7004 through 252.247-7007 [Amended]**

- 22. Sections 252.247-7000 through 252.247-7002 and 252.247-7004 through 252.247-7007 are amended in the introductory text by removing “247.270-6” and adding in its place “247.270-4”.

**252.247-7008 [Amended]**

- 23. Section 252.247-7008 and its Alternate I are amended in the introductory text by removing “247.271-4” and adding in its place “247.271-3”.

**252.247-7009 through 252.247-7012 [Amended]**

- 24. Sections 252.247-7009 through 252.247-7012 are amended in the introductory text by removing “247.271-4” and adding in its place “247.271-3”.

**252.247-7013 [Amended]**

- 25. Section 252.247-7013 is amended in the introductory text as follows:

- a. By removing “247.271–4” and adding in its place “247.271–3”; and
- b. By removing the parenthetical “(see 247.271–2(b))”.

**252.247–7014 and 252.247–7016 through 252.247–7020 [Amended]**

- 26. Sections 252.247–7014 and 252.247–7016 through 252.247–7020 are amended in the introductory text by removing “247.271–4” and adding in its place “247.271–3”.

[FR Doc. 2010–20439 Filed 8–19–10; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 390**

[Docket No. FMCSA–2005–23315]

RIN 2126–AB25

**Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment**

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

**ACTION:** Final rule; partial extension of compliance date.

**SUMMARY:** The FMCSA extends until June 30, 2011, the June 30, 2010, compliance date of its December 29, 2009, final rule concerning the inspection, repair, and maintenance of intermodal equipment (IME), specifically with respect to the requirement for drivers and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of IME even if no damage, defects, or deficiencies are discovered by, or reported to, the driver. This action is being taken to provide the Agency with sufficient time to address, through a notice-and-comment rulemaking proceeding, an issue raised in a petition for rulemaking submitted on March 31, 2010, by the Ocean Carrier Equipment Management Association (OCEMA) and the Institute of International Container Lessors (IICL) (also referred to as “the petitioners”). The requirements for intermodal equipment providers (IEPs) to have in place inspection, repair and maintenance programs, and a process for receiving and taking appropriate action in response to DVIRs on which damage, defects, or deficiencies are reported, remain in effect.

**DATES:** *Compliance Date:* As of August 20, 2010, the compliance date for the requirement in § 390.42(b) for drivers

and motor carriers to prepare a DVIR on an item of IME if no damage, defects, or deficiencies are discovered by, or reported to, the driver, is extended until June 30, 2011.

**ADDRESSES:**

- *Public Access to the Docket:* You may view, print, and download this final rule and all related documents and background material on-line at <http://www.regulations.gov>, using the Docket ID Number FMCSA–2005–23315. These documents can also be examined and copied for a fee at the U.S. Department of Transportation, Docket Operations, West Building-Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC–PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–4325.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The legal basis of the December 17, 2008 final rule (73 FR 76794) is also applicable to this rule.

**Background**

On December 17, 2008, FMCSA published a final rule adopting regulations to implement section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, 1729, August 10, 2005). The regulations require IEPs to register and file with FMCSA an Intermodal Equipment Provider Identification Report (Form MCS–150C); establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies. The regulations also require IEPs to mark each intermodal chassis offered for transportation in interstate commerce with a U.S. Department of Transportation (USDOT) identification number. These regulations, for the first time, made IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSRs), and called for shared safety responsibility among IEPs, motor carriers, and drivers. Additionally, FMCSA adopted inspection

requirements for motor carriers and drivers operating IME. Improved maintenance is expected to result in fewer chassis being placed out-of-service and fewer breakdowns involving intermodal chassis, thus improving the Nation’s intermodal transportation system. Because inadequately maintained intermodal chassis create risks for crashes, the regulations help ensure that commercial motor vehicle (CMV) operations are safer.

On December 29, 2009, FMCSA amended the December 2008 final rule to: (1) Create an additional marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of IME in response to a petition for reconsideration from the Intermodal Association of North America (IANA); (2) clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from OCEMA; and (3) extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections in response to a petition filed by OCEMA (74 FR 68703).

**OCEMA/IICL Petition**

On March 31, 2010, OCEMA and IICL submitted a joint petition to FMCSA requesting the repeal of the provision in § 390.42(b) of the FMCSRs that requires motor carriers to prepare and transmit a DVIR to the IEP at the time the IME is returned to the IEP even when no damage, defects, or deficiencies are noted (hereafter referred to as a “no-defect DVIR”). The petitioners contend that requiring the preparation and transmittal of these no-defect DVIRs imposes an undue burden on drivers, motor carriers, IEPs, and intermodal facilities nationwide. The petitioners estimate that a no-defect DVIR requirement will necessitate the completion, transmission, review, and retention of over 38 million unnecessary reports annually. In fact, the petitioners believe that the added administrative burdens of the requirement to file no-defect DVIRs actually could undermine the goal of safe IME. A copy of the petition has been placed in the docket referenced at the beginning of this notice.

The petitioners presented four arguments against the DVIR element of the current rule:

- SAFETEA–LU only requires DVIRs for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so. As such, the regulatory imposition of no-defect DVIRs is not required by law and