

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 212, 242, 247, and 252**

RIN 0750-AH53

Defense Federal Acquisition Regulation Supplement: Shipping Instructions (DFARS Case 2011-D052)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the form used by contractors to request shipping instructions and the associated contract clause and clause prescription to cover both commercial and Government bills of lading, and to relocate the coverage within the DFARS.

DATES: *Effective Date:* June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, telephone 571-372-6098.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD published a proposed rule in the *Federal Register* at 77 FR 4637 on January 30, 2012, to relocate information from DFARS subpart 242.14 to DFARS part 247 to align with changes to the Federal Acquisition Regulation and to update DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to provide for use of both commercial and Government bills of lading. No respondents submitted public comments in response to the proposed rule.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

III. 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 there are no substantive changes being made by this rule. The rule makes only two minor changes in terminology in the DD Form 1659 and the associated clause at DFARS 252.247-7028 (formerly DFARS 252.242-7003) in order to clarify that the DD Form 1659 can be used to request a bill of lading that inputs these shipments into the Defense Transportation System (DTS). The purpose of this form is to obtain shipping instructions, a practice that has been in effect for many years. Requesting shipping instructions does not impose a hardship on any entity. No comments were received from any entities concerning the impact of the proposed change on small business.

IV. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the clause at DFARS 252.247-7028 (formerly DFARS 252.242-7003), Application for U.S. Government Shipping Documentation/Instructions, and the associated DD form 1659 (same title as the clause), currently approved under OMB Control Number 0704-0250, titled DFARS Part 242, Contract Administration and Audit Services, in the amount of 276,773 hours, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because only minor changes in terminology are being made. There are no substantive changes made either to the form or the associated clause at DFARS 252.247-7028 (formerly 252.242-7003). No public comments were received on the paperwork impact in response to the proposed rule.

List of Subjects in 48 CFR Parts 212, 242, 247, and 252.

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 242, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraph (f)(iv)(P) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) * * *

(P) Use the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

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PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**Subpart 242.14—[Removed]**

■ 3. Remove subpart 242.14.

PART 247—TRANSPORTATION

■ 4. The authority citation for 48 CFR part 247 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 5. Add subpart 247.1, consisting of section 247.101, to read as follows:

Subpart 247.1—General**247.101 Policies.**

(h) *Shipping documents covering f.o.b. origin shipments.*

(i) Procedures for the contractor to obtain bills of lading are in the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term “commercial bills of lading” includes the use of any commercial form or procedure.

■ 6. Revise section 247.207 to read as follows:

247.207 Solicitation provisions, contract clauses, and special requirements.

(1) Use the clause at 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

(2) Use the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions, when shipping under Bills of Lading and Domestic Route Order under FOB origin contracts, Export Traffic Release regardless of FOB terms, or foreign military sales shipments.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.242–7003 [Removed and Reserved]

- 7. Remove and reserve section 252.242–7003.
- 8. Add section 252.247–7028 to read as follows:

252.247–7028 Application for U.S. Government Shipping Documentation/Instructions.

As prescribed in 247.207, use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (JUN 2012)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(1) Transportation Officer, if named in the contract schedule; or

(2) Contract administration office.

(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy's Global Freight Management—Electronic Transportation Acquisition (GFM—ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force's Cargo Movement Operations System, DCMA's Shipment Instruction Request (SIR) E-tool, and DLA's Distribution Standard System Vendor Shipment Module in lieu of DD Form 1659.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 244, and 252

RIN 0750–AH39

Defense Federal Acquisition Regulation Supplement: Applicability of Hexavalent Chromium Policy to Commercial Items (DFARS Case 2011–D047)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the applicability to commercial items of DoD policies relating to the use of material containing hexavalent chromium.

DATES: *Effective Date:* June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a final rule (DFARS Case 2009–D004) in the **Federal Register** at 76 FR 25569 on May 5, 2011, to implement in the DFARS the DoD policy addressing the serious human health and environmental risks related to the use of hexavalent chromium. Hexavalent chromium is a chemical that has been used in numerous DoD weapons systems platforms due to its corrosion protection properties. However, hexavalent chromium is a known carcinogen. The final rule, codified in a new DFARS clause 252.223–7008, minimized the use of materials containing hexavalent chromium in items acquired by DoD. Shortly after the final rule was published, DoD became aware of a drafting oversight and the need to correct the text of final rule to reflect DoD's intent that the rule should apply to commercial items. This rule corrects that oversight.

DoD published a proposed rule in the **Federal Register** at 76 FR 71926 on November 21, 2011, to clarify the applicability to commercial items of DoD policies relating to the use of materials containing hexavalent chromium. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comment in the development of the final rule, which is discussed as follows.

Comment: The respondent stated that requiring different standards for chromated defense products than are required of commercial products imposes a significant cost related to the need for additional training and wastes already limited factory space. The respondent also stated that bringing defense product finishes into line with commercial finishes without sacrificing performance and maintaining a single process should improve production, efficiency, and quality.

Response: This comment is out of scope as the rule does not modify the DoD policy relating to the use of hexavalent chromium, it only clarifies the applicability of the previously published final rule. As such, the respondent's concerns are misplaced because this rule does not create any new requirements for commercial products; it simply makes clear the scope of applicability of DFARS clause 252.223–7008.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. 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 this rule is just correcting a drafting oversight in rule 2009–D004 published on May 5, 2011 (76 FR 25569).

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 244, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 212, 244, and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 212, 244, and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

- 2. Amend section 212.301 by—
 - a. Redesignating paragraphs (f)(iv)(G) through (P) as paragraphs (f)(iv)(H) through (Q); and
 - b. Adding new paragraph (f)(iv)(G) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *