

**List of Subjects in 42 CFR Part 1007**

Administrative practice and procedure, Fraud, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 1007 is proposed to be amended as set forth below:

**PART 1007—[AMENDED]**

1. Revise the authority citation to part 1007 to read as follows:

**Authority:** 42 U.S.C. 1396b(a)(6), 1396b(b)(3), 1396b(q), and 1302.

2. In § 1007.1, add in alphabetical order the definition for “data mining” to read as follows:

**§ 1007.1 Definitions.**

\* \* \* \* \*

*Data mining* is defined as the practice of electronically sorting Medicaid claims through statistical models and intelligent technologies to uncover patterns and relationships contained within the Medicaid claims activity and history to identify aberrant utilization and billing practices that are potentially fraudulent.

\* \* \* \* \*

3. In § 1007.17, add paragraph (i) to read as follows:

**§ 1007.17 Annual report.**

\* \* \* \* \*

(i) All costs expended that year attributed to data mining activities under § 1007.20; the number of cases generated from those data mining activities; the outcome and status of those cases, including the expected and actual monetary recoveries (both Federal and non-Federal share); and any other relevant indicia of return on investment from such activities.

\* \* \* \* \*

4. In § 1007.19, revise paragraph (e)(2) to read as follows:

**§ 1007.19 Federal financial participation (FFP).**

\* \* \* \* \*

(e) \* \* \*

(2) Routine verification with recipients of whether services billed by providers were actually received, or, except as provided in section 1007.20, efforts to identify situations in which a question of fraud may exist, including the screening of claims and analysis of patterns of practice that involve data mining as defined in section 1007.1;

\* \* \* \* \*

5. Add § 1007.20 to read as follows:

**§ 1007.20 Conditions under which data mining is permissible and approval by HHS Office of Inspector General.**

(a) Notwithstanding § 1007.19(e)(2), a unit may engage in data mining and receive Federal Financial Participation only under the three following conditions:

(1) The activity has a defined duration and staff time devoted to the activity is described;

(2) The MFCU identifies the methods of cooperation between the MFCU and State Medicaid agency as well as a primary point of contact for data mining at the two agencies; and

(3) MFCU employees engaged in data mining receive specialized training in data mining techniques.

(b) The MFCU shall describe how it will comply with each of the conditions described in paragraph (a) of this section as part of the agreement required by § 1007.9(d).

(c) The Office of Inspector General, Department of Health and Human Services, in consultation with the Centers for Medicare & Medicaid Services, approves in advance the provisions of the agreement as defined in paragraph (b) of this section.

Dated: May 14, 2010.

**Daniel R. Levinson,**

*Inspector General.*

Dated: October 15, 2010.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

**Editorial Note:** This document was received in the Office of the Federal Register on March 10, 2011.

[FR Doc. 2011-6012 Filed 3-16-11; 8:45 am]

**BILLING CODE 4152-01-P**

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 209 and 252****Defense Federal Acquisition Regulation Supplement; Identification of Critical Safety Items (DFARS Case 2010-D022)**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper

risk-based surveillance can be performed.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 16, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2010-D022, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “DFARS Case 2010-D022” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2010-D022.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2010-D022” on your attached document.

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2010-D022 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-1302; facsimile 703-602-0350.

**SUPPLEMENTARY INFORMATION:****I. Background**

This DFARS case was initiated at the request of the Defense Contract Management Agency so that when DoD requiring activities identify procurements involving critical safety items, the buying activities will include a clause in the solicitation and resulting contract that identifies specific items in the procurement that are critical safety items.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136), section 802, entitled “Quality Control in Procurement of Aviation Critical Safety Items and Related

Services,” defined “aviation critical safety item” to mean a part, assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system which, if it failed, could cause catastrophic damage, unacceptable risk of personal injury, or loss of life. Implementing regulations established processes for designated design control activities to identify aviation critical safety items. Similar definitions and requirements have been applied to ship critical safety items to implement section 130 of the National Defense Authorization Act for Fiscal Year 2007. When design control activities identify such items to the contracting activity, the latter will contract only with sources approved by the design control activity for the procurement, modification, repair, or overhaul of critical safety items. Using the clause in this proposed rule will enable contract administration activities to identify and apply additional risk-based surveillance to comply with joint agency instructions, such as Management of Aviation Critical Safety Items (dated January 25, 2006).

DoD is proposing to amend DFARS subpart 209.2, Qualifications Requirements, to add a new contract clause. Specifically, DoD proposes to add a clause prescription at DFARS 209.270–5, Contract clause, and a new clause at 252.209–700X, Critical Safety Items. The requirement to identify critical safety items, procure such items only from sources designated by the design control activity, and apply enhanced risk-based surveillance has been in effect for a number of years. However, there was no single DoD-wide means of complying with this requirement.

## II. Executive Order 12866

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

## III. Executive Order 13563

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public. It is consistent with the intent of the National Defense Authorization Acts for Fiscal Years 2004 and 2007 and joint agency instructions, such as Management of Aviation Critical Safety Items (dated January 25, 2006), to identify and apply additional risk-based

surveillance to items identified as critical safety items.

## IV. 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 does not impose new requirements on small entities. Its purpose is to alert Government quality-assurance activities to existing heightened surveillance requirements that are imposed by DoD requiring activities. The process for identifying an item as a critical safety item occurs entirely outside the procurement process, as does the process of approving a source for production of a critical safety item. Therefore, an initial regulatory flexibility analysis has not been prepared.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D022) in correspondence.

## 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 209 and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 209 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

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

## PART 209—CONTRACTOR QUALIFICATIONS

2. Add section 209.270–5 to read as follows:

### 209.270–5 Contract clause.

The contracting officer shall insert the clause at 252.209–700X, Critical Safety Items, in solicitations and contracts when the acquisition includes one or

more items designated by the design control activity as critical safety items.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 252.209–700X to read as follows:

### 252.209–700X Critical Safety Items.

As prescribed in 209.270–5, use the following clause:

*Critical Safety Items (Date)*

#### (a) Definitions.

*Aviation critical safety item* means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic, any failure, malfunction, or absence of which could cause—

(1) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;

(2) An unacceptable risk of personal injury or loss of life; or

(3) An uncommanded engine shutdown that jeopardizes safety.

#### *Design control activity*—

(1) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, in which an aviation critical safety item is to be used; and

(2) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment, in which a ship critical safety item is to be used.

*Ship critical safety item* means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause—

(1) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or

(2) An unacceptable risk of personal injury or loss of life.

#### (b) Identification of critical safety items.

One or more of the items being acquired under this contract is an aviation or ship critical safety item. The following items have been designated aviation critical safety items or ship critical safety items by the designated design control activity:

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*(insert additional lines, as necessary)*

(c) *Heightened quality assurance surveillance.* Items designated in paragraph (b) of this clause are subject to heightened, risk-based surveillance by the designated quality assurance representative.

(End of clause)

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 173

[Docket Number PHMSA-2009-0303 (HM-213D)]

RIN 2137-AE53

#### Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

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

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** PHMSA is notifying the public of our intent to extend the comment period by 30 days for a notice of proposed rulemaking published on January 27, 2011.

**DATES:** The comment period for the NPRM closing on March 28, 2011, is extended until April 27, 2011.

**ADDRESSES:** You may submit comments identified by the docket number (PHMSA-2009-0303) by any of the following methods:

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

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov>, or DOT's Docket Operations Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Dirk Der Kinderen, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366-8553; or Leonard Majors, Engineering and Research Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366-4545.

*Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://www.regulations.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On January 27, 2011, PHMSA published a notice of proposed rulemaking (NPRM) (HM-213D; 76 FR 4847) seeking public comment on a proposal to prohibit the transportation of flammable liquids in exposed external product piping (wetlines) on a cargo tank motor vehicle (CTMV) unless the CTMV is equipped with bottom damage protection that conforms to the requirements of § 178.337-10 or § 178.345-8(b)(1), as appropriate. We also invited comment on a number of provisions associated with this proposed prohibition such as the residue performance standard relating to applicability of the proposed prohibition as well as conditional exceptions and the proposed transition period and compliance dates. See the January 27, 2011 NPRM for background and a complete discussion of the proposals.

##### II. Comment Period Extension

We received comments from the American Trucking Associations, Inc. (ATA), the Commercial Vehicle Safety Alliance, the National Tank Truck Carriers, Inc., and the Tank Truck Manufacturers Association requesting an extension of the comment period. These member organizations represent carriers, manufacturers, and officials affected by the NPRM. They state their primary basis for extension is to allow for thorough review and analysis of the HM-213D docket materials. For example, the ATA notes in their comment that the regulatory evaluation

for this NPRM contains numerous new assumptions and revised economic analyses that warrant extensive evaluation by industry experts and outside consultants. They indicate that the evaluation will require a review of (1) The wetlines incidents cited by PHMSA; (2) the use and retrofit requirements associated with a manual purging system; and (3) the feasibility of alternatives available to comply with the proposed prohibition. The associations also indicate the need for time to convene with members at meetings scheduled to occur in April and May of 2011 to present findings and to obtain feedback. Additionally, the comment period for this NPRM overlaps with numerous other regulatory initiatives within DOT and other Federal agencies, such as the Environmental Protection Agency, the Occupational Safety and Health Administration, and the U.S. Customs and Border Protection that impact their members. Finally, they note that the trucking industry is dominated by small businesses that do not have the resources to understand and meaningfully participate in the rulemaking process of so many concurrent rulemaking actions. In light of the significance of this rulemaking to their members and for the reasons summarized above, the associations request that PHMSA grant an extension to the HM-213D NPRM comment period ranging from sixty days to six months.

Although PHMSA continues to believe that the initial 60-day comment period provides enough time to review and respond to the rulemaking proposals and supporting material, PHMSA is consenting to the commenter requests to extend the comment period to ensure sufficient time for public review. However, we do not consider a lengthy extension (e.g., 120 days) to be warranted. Accordingly, in the interest of moving this rulemaking action forward in a timely manner, we believe, in addition to the time that remains in the current comment period, extending the comment period by 30 days would be sufficient to relieve the burdens of conducting an extensive evaluation, overlapping rulemaking actions, and needing time to meet with respective trucking industry members for feedback. Thus, the comment period for the HM-213D NPRM is extended from March 28, 2011 until April 27, 2011.