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#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 282A at Stamps.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Fouke, Channel 282A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 212, 242, 247, and 252

[DFARS Case 99-D009]

#### Defense Federal Acquisition Regulation Supplement; Transportation Acquisition Policy

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise policy pertaining to the acquisition of transportation, transportation-related services, and transportation in supply contracts. The rule provides for the use of evaluation factors that address support for DoD readiness programs such as the Civil Reserve Air Fleet and the Voluntary Intermodal Sealift Agreement.

**EFFECTIVE DATE:** August 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062; telephone (703) 602-0288; telefax (703) 602-0350. Please cite DFARS Case 99-D009.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

This rule amends the DFARS to revise policy pertaining to the acquisition of transportation, transportation-related services, and transportation in supply contracts. For contracts for transportation or transportation-related services, the rule specifies that contracting officers should consider using, as evaluation factors or subfactors, the offeror's record of claims involving loss or damage, provider availability, and support for DoD readiness programs such as the Civil Reserve Air Fleet and the Voluntary Intermodal Sealift Agreement. For contracts that will include a significant requirement for transportation of items outside the continental United States, the rule contains a requirement for use of an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs.

The rule implements a policy memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on January 15, 1998, Subject: Transportation Acquisition Policy. The January 15, 1998, memorandum is available via the Internet at [http://www.acq.osd.mil/log/tp/trans\\_\\_programs/defense\\_\\_trans\\_\\_library/tp\\_\\_library.html](http://www.acq.osd.mil/log/tp/trans__programs/defense__trans__library/tp__library.html). The rule also updates references and organizational names and addresses, and makes other editorial changes.

DoD published a proposed rule at 65 FR 2104 on January 13, 2000. Seven sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

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 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 most small entities that are eligible to transport DoD cargo or passengers already participate in DoD readiness programs.

#### 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 212, 242, 247, and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 212, 242, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 242, 247, and 252 continues to read as follows:

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

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Subpart 212.6 is added to read as follows:

##### Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

Sec.

212.602 Streamlined evaluation of offers.

##### 212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the continental United States, also evaluate offers in accordance with the criterion at 247.301-71.

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criterion at 247.572-2(c)(2).

#### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

##### 242.1401 [Removed]

3. Section 242.1401 is removed.

4. Section 242.1402 is amended in paragraph (a)(2)(A)(1) by revising the last sentence; and in paragraph (a)(2)(C) by removing the word "foreign" the first time it appears and adding in its place the word "freight". The revised text reads as follows:

##### 242.1402 Volume movements within the continental United States.

(a)(2) \* \* \*

(A) \* \* \*

(1) \* \* \* If a volume movement appears likely, the transportation office reports a planned volume movement in accordance with DoD 4500.9-R, Defense

Transportation Regulation, Part II, Chapter 201.

\* \* \* \* \*

5. Section 242.1403 is amended by revising paragraph (a)(ii) to read as follows:

**242.1403 Shipping documents covering f.o.b. origin shipments.**

(a) \* \* \*

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

6. Section 242.1405 is revised to read as follows:

**242.1405 Discrepancies incident to shipment of supplies.**

(a) See also DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 210, for discrepancy procedures.

**242.1470 [Amended]**

7. Section 242.1470 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

**PART 247—TRANSPORTATION**

8. Section 247.001 is added preceding Subpart 247.1 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.

**247.103 [Removed]**

9. Section 247.103 is removed.

**247.104-3 [Removed]**

10. Section 247.104-3 is removed.

11. Section 247.104-5 is revised to read as follows:

**247.104-5 Citation of Government rate tenders.**

(a) See DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 206, for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

12. Section 247.105 is amended by redesignating paragraph (a) as paragraph (b); and by revising newly designated paragraphs (b)(i)(A), (b)(ii), and (b)(iii)(D) to read as follows:

**247.105 Transportation assistance.**

(b)(i) \* \* \*

(A) Rates and prices (for evaluation of bids or routing purposes);

\* \* \* \* \*

(ii) Within CONUS, the Military Traffic Management Command (MTMC)

is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services.

(iii) \* \* \*

(D) Of supplies between points outside CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

- Army: Deputy Chief of Staff for Logistics, ATTN: DALO-TSP, Washington, DC 20310-0500
- Navy: Naval Supply Systems Command, Code 4D, 5450 Carlisle Pike, PO Box 2050, Mechanicsburg, PA 17055-0791
- Air Force: Applicable Overseas Air Force Command:
  - HQ PACAF/LGT, 25 East Street, Suite I-305, Hickam AFB, HI 96853-5427
  - HQ USAFE/LGT, Unit 305, Box 105, APO AE 09094-0105
  - HQ AFSPACECOM/LGT, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914-4540
- Marine Corps: HQ, U.S. Marine Corps, Traffic Management Branch (LFT1), 2 Navy Annex, Washington, DC 20380-1775

\* \* \* \* \*

13. Sections 247.200 and 247.206 are added 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.

**247.206 Preparation of solicitations and contracts.**

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

- (i) Record of claims involving loss or damage;
  - (ii) Provider availability; and
  - (iii) Commitment of transportation assets to readiness support (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).
- (2) To the maximum extent practicable, structure contracts and agreements to allow for their use by DoD contractors.

**247.270-1 [Amended]**

14. Section 247.270-1 is amended in the first sentence by removing the word "peculiar" and adding in its place the word "unique".

**247.270-2 [Amended]**

15. Section 247.270-2 is amended in the definition of "Commodity rate" as follows:

a. In paragraph (1) by removing the period and adding "; and" in its place; and

b. In paragraph (2), by removing the word "which" and adding in its place the word "that".

16. Sections 247.270-3 through 247.270-6 are revised to read as follows:

**247.270-3 Technical provisions.**

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

**247.270-4 Evaluation of bids and proposals.**

As a minimum, require that offers include—

- (a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;
- (b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and
- (c) Rates for equipment rental.

**247.270-5 Award of contract.**

Make the award to the offeror submitting the offer most advantageous to the Government, considering cost or price and other factors specified in the solicitation. Evaluation will include, but is not limited to—

- (a) Total estimated cost of tonnage to be moved at commodity rates;
- (b) Estimated cost at labor-hour rates; and
- (c) Cost of equipment rental.

**247.270-6 Contract clauses.**

Use the following clauses in solicitations and contracts for stevedoring services as indicated:

- (a) 252.247-7000, Hardship Conditions, in all solicitations and contracts.
- (b) 252.247-7001, Price Adjustment, when using sealed bidding.
- (c) 252.247-7002, Revision of Prices, when using negotiation.
- (d) 252.247-7004, Indefinite Quantities—Fixed Charges, when the contract is an indefinite-quantity type and will provide for the payment of fixed charges.
- (e) 252.247-7005, Indefinite Quantities—No Fixed Charges, when the contract is an indefinite-quantity type and will not provide for the payment of fixed charges.

(f) 252.247-7006, Removal of Contractor's Employees, in all solicitations and contracts.

(g) 252.247-7007, Liability and Insurance, in all solicitations and contracts.

**247.270-7 [Removed]**

17. Section 247.270-7 is removed.

**247.271-1 [Amended]**

18. Section 247.271-1 is amended in the first sentence by removing the word "peculiar" and adding in its place the word "unique".

19. Section 247.271-2 is amended by revising paragraph (a)(1) introductory text, paragraph (c) introductory text, and paragraphs (c)(1) and (c)(2)(ii) to read as follows:

**247.271-2 Policy.**

(a) \* \* \*

(1) Use requirements contracts to acquire services for the—

\* \* \* \* \*

(c) *Maximum requirements-minimum capability.* The contracting officer must—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.9-R, Defense Transportation Regulation, Part IV;

(2) \* \* \*

(ii) Will encourage maximum participation of small business concerns as offerors.

20. Section 247.271-3 is amended as follows:

a. In paragraph (a)(1) in the first and last sentence by removing the word "shall" and adding in its place the word "must";

b. By revising paragraph (a)(2);

c. In paragraphs (b)(2)(iii) by removing the word "shall" and adding in its place the word "must";

d. In paragraph (c) introductory text by removing the dash and adding a colon in its place; and

e. In paragraphs (c)(1), (c)(2), and (c)(3) by removing the word "shall" and adding in its place the word "must". The revised text reads as follows:

**247.271-3 Procedures.**

(a) \* \* \*

(2) The Commander, Military Traffic Management Command (MTMC), must designate the contracting activity when local commanders are unable to reach agreement.

21. Section 247.271-4 is amended as follows:

a. By revising paragraph (c) introductory text;

b. In paragraph (c)(4) and in the last sentence of paragraph (c)(5) by

removing the word "shall" and adding in its place the word "must";

c. By revising paragraph (c)(6);

d. In paragraph (e) in the last sentence by removing the word "shall" and adding in its place the word "must";

e. In paragraph (f) by revising the last sentence; and

f. By revising paragraphs (j) and (p). The revised text reads as follows:

**247.271-4 Solicitation provisions, schedule formats, and contract clauses.**

\* \* \* \* \*

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.9-R, Defense Transportation Regulation, Part IV, as provided by the installation personal property shipping office.

\* \* \* \* \*

(6) Process any modification of schedule format, other than those authorized in paragraphs (c)(1) through (5) of this subsection, as a request for deviation to the Commander, MTMC.

\* \* \* \* \*

(f) \* \* \* When provisions are made for placing oral orders in accordance with FAR 16.505(a)(4), document the oral orders in accordance with department or agency instructions.

\* \* \* \* \*

(j) When using the clause at FAR 52.216-21, Requirements, see 216.506(d), which prescribes an alternate to the clause.

\* \* \* \* \*

(p) The clauses at FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247-13, Accessorial Services—Moving Contracts.

22. Sections 247.301, 247.301-70, and 247.301-71 are added to read as follows:

**247.301 General.**

**247.301-70 Definition.**

"Integrated logistics managers" or "third-party logistics providers" means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

**247.301-71 Evaluation factor or subfactor.**

For contracts that will include a significant requirement for transportation of items outside CONUS, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve

Air Force Fleet and Voluntary Intermodal Sealift Agreement).

23. Section 247.350-10 is revised to read as follows:

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

(b) Consignment instructions must include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows:

(A) Consignee code and clear text identification of consignee and destination as published in—

(1) DoD 4000.25-6-M, Department of Defense Activity Address Directory (DODAAD);

(2) DoD 4000.25-8-M, Military Assistance Program Address Directory (MAPAD) System; or

(3) Transportation Control and Movement Document. Reporting procedures and instructions must comply with DoD 4500.32-R, Military Standard Transportation and Movement Procedures (MILSTAMP).

(B) Project code, when applicable.

(C) Transportation priority.

(D) Required delivery date.

(ii) Non-MILSTRIP shipments must include data similar to that described in paragraphs (b)(i)(A) through (D) of this subsection.

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (D) of this subsection, the following, when appropriate:

(A) Name of the activity originally designated, from which the stated quantities are to be deducted.

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) When assigning contract administration responsibility in accordance with FAR 42.202, include in instructions the—

(A) Modification serial number; and

(B) If a new line item is created by the issuance of shipping instructions—

(1) New line item number; and

(2) Existing line item number, if affected.

(v) For petroleum, oil, and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone or electronic media.

24. Section 247.370 is amended by revising the introductory text and paragraph (b)(3) to read as follows:

**247.370 Use of Standard Form 30 for consignment instructions.**

When complete consignment instructions are not known initially, use the Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone or electronic media.

\* \* \* \* \*

(b) \* \* \*

(3) for other contracts—

(i) Telephone—within 5 working days; and

(ii) Electronic media—consolidate on a monthly basis.

25. Section 247.570 and 247.571 are revised to read as follows:

**247.570 Scope.**

This subpart—

(a) Implements the Cargo Preference Act of 1904 (“the 1904 Act”), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(b) Does not specifically implement the Cargo Preference Act of 1954 (“the 1954 Act”), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act’s requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

**247.571 Policy.**

(a) DoD contractors must transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and the procedures at 247.572–1(d)(1) or 247.572–2(d)(1) are followed;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, and the procedures at 247.572–1(d)(2) or 247.572–2(d)(2) are followed; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges are excessive or unreasonable in accordance with 247.572–1(d)(3) or 247.572–2(d)(3).

(b) Contracts must provide for the use of Government-owned vessels when

security classifications prohibit the use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section must have any reflagging or repair work, as defined in the clause at 252.247–7025, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

26. Sections 247.572–1 and 247.572–2 are revised to read as follows:

**247.572–1 Ocean transportation incidental to a contract for supplies, services, or construction.**

(a) This subsection applies when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(b) The contracting officer must obtain assistance from the cognizant transportation activity (see 247.105) in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government; and

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer must ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.73(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the 1904 Act will apply to the contract, and the contractor must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) 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 Traffic Management Command (MTMC), through the Principal Assistant Responsible for Contracting, MTMC.

(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, MTMC, 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, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, 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.

#### **247.572-2 Direct purchase of ocean transportation services.**

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

- (1) Time charters;
- (2) Voyage charters;
- (3) Contracts for charter vessel services;

(4) Dedicated contractor contracts for charter vessel services;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—

- (1) A preference for U.S.-flag vessels in accordance with the 1904 Act; and
- (2) An evaluation factor or subfactor for offeror participation in the Voluntary Intermodal Sealift Agreement.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The Commander, MSC, or the Commander, MTMC, determines that no U.S.-flag vessels are available.

(i) The Commander, MSC, and the Commander, MTMC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(ii) The contracting officer must request such determinations—

(A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and

(B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by MTMC, including contracts for shipment of military household goods, through the Chiefs of the MTMC Ocean Cargo Clearance Authority.

(iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under MTMC solicitations or rate requests, the Commander, MTMC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s);

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, MTMC; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) After considering the factors in 247.572-1(d)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404-4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.572-1(d)(3)(i)(C).

(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, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, 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.

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

27. Section 252.247-7000 is revised to read as follows:

##### **252.247-7000 Hardship Conditions.**

As prescribed in 247.270-6(a), use the following clause:

##### **Hardship Conditions (AUG 2000)**

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall—

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of Clause)

##### **252.247-7001 [Amended]**

28. Section 252.247-7001 is amended in the introductory text by revising the reference “247.270-7(b)” to read “247.270-6(b)”.

##### **252.247-7002 [Amended]**

29. Section 252.247-7002 is amended in the introductory text by revising the reference “247.270-7(c)” to read “247.270-6(c)”.

##### **252.247-7003 [Removed and Reserved]**

30. Section 252.247-7003 is removed and reserved.

##### **252.247-7004 [Amended]**

31. Section 252.247-7004 is amended in the introductory text by revising the reference “247.270-7(e)” to read “247.270-6(d)”.

**252.247-7005 [Amended]**

32. Section 252.247-7005 is amended in the introductory text by revising the reference "247.270-7(f)" to read "247.270-6(e)".

**252.247-7006 [Amended]**

33. Section 252.247-7006 is amended in the introductory text by revising the reference "247.270-7(g)" to read "247.270-6(f)".

**252.247-7007 [Amended]**

34. Section 252.247-7007 is amended in the introductory text by revising the reference "247.270-7(h)" to read "247.270-6(g)".

35. Section 252.247-7020 is revised to read as follows:

**252.247-7020 Additional Services.**

As prescribed in 247.271-4(o), use the following clause:

**Additional Services (AUG 2000)**

The Contractor shall provide additional services not included in the Schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Military Traffic Management Command in effect at time of order.

(End of clause)

[FR Doc. 00-20960 Filed 8-16-00; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF DEFENSE****48 CFR Parts 217, 219, 236, and Appendix I to Chapter 2**

[DFARS Case 2000-D015]

**Defense Federal Acquisition Regulation Supplement; North American Industry Classification System**

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** The Director of defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to convert programs based on the Standard Industrial Classification system to the North American Industry Classification System, in accordance with the final rule issued by the Small Business Administration on May 15, 2000.

**DATES:** *Effective date:* October 1, 2000.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before October 16, 2000 to be

considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD (AT&L)JP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062; telefax (703) 602-0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000-D015 in all correspondence related to this rule. E-mail comments should cite DFARS Case 2000-D015 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602-0326.

**SUPPLEMENTARY INFORMATION:****A. Background**

This interim rule amends the DFARS to convert programs based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). The Small Business Administration (SBA) issued a final rule at 65 FR 30836 on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published at 65 FR 46055 on July 26, 2000, with an effective date of October 1, 2000, to establish policy for use of the new size standards in Government acquisitions. This rule makes corresponding changes to the DFARS.

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 this rule implements the final rule issued by SBA on May 15, 2000, and SBA has certified that the impact of the change from SIC to NAICS on each business will not be substantial. 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 2000-D015.

**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 this interim rule prior to affording the public an opportunity to comment. The SBA issued a final rule on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published on July 26, 2000, with an effective date of October 1, 2000, to establish policy for use of the new size standards in Government acquisitions. Corresponding changes to the DFARS are now needed. The required implementation date of October 1, 2000, does not permit time for issuance of a proposed rule and evaluation of public comments. DoD will consider comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 217, 219, and 236**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 217, 219, 236 and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 217, 219, 236, and Appendix I to Subchapter I continues to read as follows:

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

**PART 217—SPECIAL CONTRACTING METHODS****217.401 [Amended]**

2. Section 217.401 is amended as follows:

a. In paragraph (1)(i) by removing "Standard Industrial Classification (SIC) Major Group" and adding in its place "North American Industry Classification System (NAICS) Industry Subsector"; and