

under DoD contracts when payments are from funds appropriated in fiscal year 1997.

DATES: *Effective date:* December 13, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before February 11, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D330 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS 231.205-6, Compensation for Personal Services, to implement Section 8071 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208). Section 8071 limits allowable individual compensation costs for all contractor personnel to \$250,000 per year. This restriction applies to DoD contracts when payments are from funds appropriated in fiscal year 1997.

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 8071 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208), which was effective upon enactment on September 30, 1996. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and should cite DFARS Case 96-D330 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.
Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205-6 is amended by redesignating paragraphs (a)(2)(i) and (a)(2)(ii) as paragraphs (a)(2)(i)(A) and (a)(2)(i)(B), respectively, and by adding a new paragraph (a)(2)(ii) to read as follows:

231.205-6 Compensation for personal services.

(a)(2) * * *

(ii) Costs for individual compensation in excess of \$250,000 per year are unallowable under new DoD contracts funded by fiscal year 1997 appropriations (Section 8071 of Public Law 104-208). For purposes of this limitation, the term "compensation" means—

(A) The total amount of taxable wages paid to the employee for the year concerned; plus

(B) The total amount of elective deferred compensation earned by the employee in the year concerned.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Chapter I

[Notice No. 96-25]

Advisory Notice: Transportation of Air Carrier Company Materials (COMAT) by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: This document provides advisory guidance as to the extent and application of exceptions from the Hazardous Materials Regulations applicable to the transportation of an air carrier's company materials.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Director, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590-0001, Telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION: In testimony at a recent hearing conducted by the National Transportation Safety Board (NTSB), and in a position paper prepared for the hearing by the Air Line Pilots Association (ALPA), concerns were expressed with regard to the provisions of § 175.10(a)(2) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-80), applicable to an air carrier's transportation of its own company materials (COMAT). This advisory guidance is being issued to clarify the application of these provisions of the HMR and to overcome a number of apparent misunderstandings of them.

Part 175 of the HMR is entitled "Carriage By Aircraft" and applies to the acceptance for transportation, loading, and transportation of hazardous materials in any aircraft in the United States and in aircraft of U.S. registry anywhere in air commerce. Section 175.10 of the part is entitled "Exceptions." Paragraph (a)(2) of the section (herein referred to as the COMAT exception) follows an introduction stating "This subchapter [the HMR] does not apply to:" and reads as follows:

(2) Hazardous materials required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. Unless otherwise approved by the Associate Administrator for Hazardous Materials Safety, items of replacement for such hazardous materials must be transported in accordance with this subchapter except that—

(i) In place of the required packagings, packagings specially designed for the

transport of aircraft spares and supplies may be used, provided such packagings provide at least an equivalent level of protection to those that would be required by this subchapter;

(ii) Aircraft batteries are not subject to quantity limitations such as those provided in § 172.101 or § 175.75(a) of this subchapter; and, (iii) A tire assembly with a serviceable tire is not subject to the provisions of this subchapter provided the tire is not inflated to a gauge pressure exceeding the maximum rated pressure for that tire.

The first sentence of paragraph (a)(2) addresses hazardous materials required for the operation of an aircraft under applicable provisions of Federal Aviation Administration regulations in 14 CFR. These items include equipment required to be carried aboard the aircraft, such as portable fire extinguishers, and installed equipment containing hazardous materials, such as cylinders containing oxygen. This sentence simply reiterates that the HMR do not apply to installed components of an aircraft and other items required to be on the aircraft, because the HMR regulate hazardous materials transported in commerce (e.g., hazardous materials transported as cargo, baggage, or as items carried on by passengers or crewmembers).

The second sentence of paragraph (a)(2) contains introductory text and three subparagraphs and states, in part, that “ * * * items of replacement for such hazardous materials must be transported in accordance with this subchapter [the HMR] * * * ” [emphasis added]. The sentence addresses only items of replacement for those hazardous materials required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. These replacement items are transported in commerce and must be offered and transported in conformance with the HMR, except for the limited relief provided in subparagraphs (i), (ii), and (iii).

The exceptions in the second sentence do not apply to many of the hazardous materials consumed or used in the aircraft industry such as paints, chemicals for corrosion removal, automotive batteries, engine-powered ground equipment containing fuel, and wastes. These materials must be offered and transported in conformance with the HMR.

Serviceable items and items removed for servicing or repair, that are items of replacement, are eligible for the exceptions in § 175.10(a)(2) when otherwise offered for transportation in compliance with the HMR. However, an expendable device such as a fuel saturated filter or an oxygen generator

removed from an aircraft for immediate or eventual disposal is not an item of replacement and may not be carried aboard aircraft under § 175.10(a)(2).

Subparagraph (a)(2)(i) permits the use of packagings specially designed for the transport of aircraft spares and supplies, provided such packagings provide at least an equivalent level of protection to those that would otherwise be required by the HMR. This exception allows air carriers to use specialized packagings not specifically addressed in the HMR, such as lined aluminum cases for overpacking cylinders. It does not address materials that are not necessary to meet applicable airworthiness requirements and operating regulations. Subparagraph (a)(2)(ii) provides relief from quantity limitations for aircraft batteries, allowing aircraft batteries which are COMAT to be transported in larger sizes or in greater quantities than would normally be permitted, when all other provisions of the HMR are followed.

Subparagraph (a)(2)(iii) removes the application of the HMR from a tire assembly with a serviceable tire provided the tire is not inflated to a gauge pressure exceeding the maximum rated pressure for that tire. Only this third exception relating to tires, removes the application of the HMR. Therefore, among other requirements, the following apply to all hazardous materials carried as items of replacement (as discussed above) under the COMAT provisions of subparagraphs (a)(2)(i) and (ii):

Subject	Citation: 49 CFR—
Training	Part 172, Subpart H and § 175.20.
Forbidden Materials ..	§§ 173.21 and 173.54.
Packaging	Parts 172, 173 and 178. In particular 173.24, 173.24a and 173.27.
Marking	Part 172, Subpart D.
Labeling	Part 172, Subpart E.
Shipping Papers and Certification.	Part 172, Subpart C.
Quantity limitations per package—Passenger Aircraft.	§§ 172.101 and 173.27.
Quantity limitations per package—Cargo Aircraft.	§§ 172.101 and 173.27.
Quantity limitations—Inaccessible cargo compartments.	§ 175.75.
Notification of Pilot-in-Command.	§ 175.33.
Reports of discrepancies.	§ 175.31.
Incident Reporting	§§ 171.15 and 171.16.

RSPA published a document entitled “Advisory Guidance; Offering, Accepting, and Transporting Hazardous Materials” in the Federal Register on June 14, 1996 (61 FR 30444). The guidance addressed a number of topics related to the safe transportation of hazardous materials.

Persons who supervise or perform hazardous materials functions, including persons who manufacture packagings, prepare and package hazardous materials and otherwise perform functions leading to the introduction of hazardous materials into transportation, are encouraged to review the guidance in its entirety. See the definition of “Hazmat employer” and “Hazmat employee” in 49 CFR 171.8. In many cases, more than one person may be involved in the performance of offering functions in addition to the person executing the certification required by § 172.204. See RSPA’s interpretations at 55 FR 6758 (Feb. 26, 1990) and 57 FR 48740 (Oct. 28, 1992).

As stated in section III of the advisory guidance (61 FR at 30446):

The HMR are only effective when persons who engage in day-to-day transportation-related activities make a concerted effort to ensure their own compliance, as well as that of others from who they may receive shipments.

RSPA urges all persons involved in hazardous materials transportation activities to carefully examine all of their procedures to ensure conformance with the HMR.

Issued in Washington, DC, on December 10, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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49 CFR Chapter I

[Notice No. 96-24]

Advisory Guidance; Transportation of Hazardous Materials in MC 330 and MC 331 Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: Recently, RSPA was advised by the Federal Highway Administration of a hazardous materials incident which occurred in North Carolina on September 8, 1996. Preliminary information suggests there may be a problem in the unloading configuration of a number of MC 330 and MC 331 cargo tank motor vehicles used to