

released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.  
Federal Communications Commission.

**John A. Karousos,**

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

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BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

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

[DFARS Case 98-D014]

#### Defense Federal Acquisition Regulation Supplement; Cargo Preference—Subcontracts for Commercial Items

**AGENCY:** Department of Defense (DoD).  
**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) guidance regarding the applicability of statutory requirements for use of U.S. vessels in the transportation of DoD supplies by sea. The DFARS presently waives these requirements for subcontracts for the acquisition of commercial items. This rule would require the use of the U.S. vessels under certain subcontracts for commercial items.

**DATES:** Comments on the proposed rule should be submitted in writing to the

address specified below on or before August 23, 1999, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350. Please cite DFARS Case 98-D014.

E-mail comments submitted over the Internet should be addressed to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil).

Please cite DFARS Case 98-D014 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 98-D014 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131. Please cite DFARS Case 98-D014.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

10 U.S.C. 2631 provides a preference for use of U.S. vessels for ocean transportation of supplies purchased under DoD contracts. DFARS Parts 212 and 247 presently waive the requirements of 10 U.S.C. 2631 for subcontracts for the acquisition of commercial items or commercial components. This rule proposes to amend DFARS Parts 212 and 247 and corresponding clauses to limit the types of subcontracts for which the waiver of 10 U.S.C. 2631 is applicable. The rule is intended to ensure compliance with 10 U.S.C. 2631 for ocean cargoes clearly destined for DoD cause, while avoiding disruption of commercial delivery systems.

##### B. Regulatory Flexibility Act

The proposed 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 entities providing ocean transportation of cargo are not small business concerns. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98-D014 in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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, 247, and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 212, 247, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 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. Section 212.504 is amended by revising paragraph (a)(xxii) to read as follows:

**§ 212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(A) \* \* \*

(xxii) 10 U.S.C. 2631, Transportation of Supplies by sea (except for the types of supplies listed at 252.247-7023(b)).

\* \* \* \* \*

#### PART 247—TRANSPORTATION

##### § 247.572-1 [Amended]

3. Section 247.572-1 is amended in paragraph (a) by removing the last sentence.

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

4. Section 252.212-7001 is amended by revising the clause date; in paragraph (b) by adding in numerical order the entry “\_\_\_252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).”; and by revising paragraph (c) to read as follows:

**§ 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (XXX 1999)**

\* \* \* \* \*

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items

clause of this contract, the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

5. Section 252.244-7000 is revised to read as follows:

**§ 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).**

As prescribed in 244.403, use the following clause:

**Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (XXX 1999)**

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

6. Section 252.247-7023 is amended by revising the clause date; in paragraph (a)(5) by removing the last sentence; by redesignating paragraphs (b) through (g) as paragraphs (c) through (h) respectively; by adding a new paragraph (b); in newly designated paragraph (c) by removing the first sentence; and by revising newly designated paragraph (h). The added and revised text reads as follows:

**§ 252.247-7023 Transportation of Supplies by Sea.**

\* \* \* \* \*

**Transportation of Supplies by Sea (XXX 1999)**

\* \* \* \* \*

(b) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract. A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(1) This contract is a construction contract; or

(2) The supplies being transported are—

(i) Non-commercial items; or

(ii) Commercial items that are—

(A) Shipped in direct support of U.S. military contingencies, exercises, or forces deployed in peacekeeping missions.

(B) For commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643; or

(C) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value with it subcontracts items for f.o.b. destination shipment.)

\* \* \* \* \*

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that—

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b) of this clause.

(End of Clause)

7. Section 252.247-7024 is amended by revising the clause date and paragraph (b) to read as follows:

**252.247-7024 Notification of Transportation of Supplies By Sea.**

\* \* \* \* \*

**Notification of Transportation of Supplies by Sea (XXX 1999)**

\* \* \* \* \*

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Non-commercial items; or

(ii) Commercial items that are—

(A) Shipped in direct support of U.S. military contingencies, exercises, or forces deployed in peacekeeping missions;

(B) For commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643; or

(C) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value when it subcontracts items for f.o.b. destination shipment.)

(End of clause)

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 214 and 215**

[DFARS Case 97-D011]

**Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments**

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** DoD is withdrawing a proposed rule published on November 26, 1997 (62 FR 63047). The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that, when a contract contains multiple accounting classification reference numbers and a clause for progress payments, the contracting officer must provide instructions to enable the payment office to distribute the progress payments in proportions that reasonably reflect the performance of work under the contract. After review of public comments, and in consultation with the Office of the Under Secretary of Defense (Comptroller), the Director of Defense Procurement issued a policy memorandum, dated August 12, 1998, which is available via the Internet at <http://www.acq.osd.mil/dp/>. The memorandum requires contracting officers to provide progress payment distribution instructions for any fixed-price contract, other than firm-fixed-price, that is funded with multiple appropriations. Consequently, DoD has determined that the proposed DFARS revisions are unnecessary.

**FOR FURTHER INFORMATION CONTACT:** Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062; telephone (703) 602-0131; telefax (703) 602-0350.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

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