State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Winnebago Indian Tribe, Thurston County.	315498	August 6, 1996, Emerg; N/A, Reg; January 6, 2010, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 14, 2009.

Edward L. Connor,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–30731 Filed 12–28–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207 and 227

[DFARS Case 2006–D055]

Defense Federal Acquisition Regulation Supplement; Technical Data and Computer Software Requirements for Major Weapon Systems

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with a minor change, the interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 and DoD policy requirements. Section 802(a) contains requirements for DoD to assess long-term technical data needs when acquiring major weapon systems and subsystems. DoD policy requires similar assessment for computer software needs.

DATES: *Effective Date:* December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2006–D055.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 51188 on September 6, 2007, to implement Section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 802(a) adds a new subsection (e) to 10 U.S.C. 2320 regarding technical data needs for sustainment of major weapon systems. DoD received one response to the interim rule. This response provided general comments, specific comments, and a proposed alternative.

1. General Comments

a. The rule should better articulate selected policy points. The respondent comments that the rule should better articulate policy points in order to provide insight into the intent of the statute and the program managers' responsibilities—primarily by referencing or reinforcing existing statements of policy and practice, such as those found in the USD (AT&L) Guidebook ''Intellectual Property: Navigating Through Commercial Waters''. The respondent suggests that contractors rely strongly on these existing policy guidelines and that any ''fundamental change to the DoD policy'' in the rule could negatively impact contractors' long-term plans for participation in DoD weapons systems programs.

Response: There is no fundamental change in long-standing policy in this rule, only a clarified and enhanced requirement to expressly address specific data rights considerations in the acquisition strategy documentation.

b. The new rule may increase the potential for contractors to ''walk away from the Government market.'' The respondent notes that small or medium sized companies would be more likely to avoid Government contracts ''[if they] had to turn all their data over to the Government with the possibility that it would then be given to a competitor * * *''

Response: Contractors of any size might avoid business opportunities with the Government—or with any other party for that matter—that would require the uncompensated relinquishment of valuable intellectual property assets. However, nothing in the interim rule alters the Government's ability to require delivery of data or software, nor expands (nor limits nor affects in any way) the Government's ability to disclose proprietary or other sensitive information to a competitor. Nothing in the interim rule changes long-standing, statutorily-based, DoD policy that contractors shall not be required to relinquish proprietary rights as a condition of responding to or receiving award of a DoD solicitation. No revisions have been made in the final rule in response to this comment.

c. Clarify the effect on pre-existing statutory requirements. The respondent requests clarification of whether the rule is intended to affect preexisting statutory requirements such as ''march-in rights'' under the Bayh-Dole Act.

Response: This rule does not conflict with any pre-existing statutory, policy, or regulatory requirements. For example, the rule covers pre-contractual requirements to address technical data and computer software in acquisition strategies, and has absolutely no relationship, express or implied, to the Government's post-contractual interest or ability in exercising its statutory ''march-in rights'' for patented inventions made during the contract. Accordingly, no clarification in the final rule is necessary.

2. Specific Comments

a. Extension of rule to cover computer software. The respondent objects to the extension of the precepts of section 802(a) to computer software documentation.

Response: This issue was anticipated and expressly addressed in the background materials published with the interim rule. DoD strongly reaffirms the policy-based application of these new requirements to computer software, in addition to the mandatory implementation of the statutorily-based requirements for technical data.

The respondent correctly notes that section 802(a) does not expressly apply to computer software—it amends 10 U.S.C. 2320, which applies only to technical data. Accordingly, the mandatory statutory changes could, technically, be implemented without affecting in any way the detailed requirements for documenting software-specific considerations in acquisition

strategies. There is no other Title 10 statute that establishes requirements for the acquisition of computer software (*e.g.,* equivalent 10 U.S.C. 2320). Similarly, there is nothing in the legislative history of section 802(a) that indicates congressional intent that these requirements should *not* apply to computer software.

It is long-standing DoD policy to treat computer software and technical data in the same manner, to the maximum extent practicable. During the 1980s and early 1990s, technical data and computer software were both covered by the same combined rules in DFARS Subpart 227.40. In 1995, this coverage was completely reworked and the materials were split into two separate subparts—227.71 for technical data, and 227.72 for computer software. However, the substance and language of these two subparts was, and continues to be, nearly identical except for the interchangeable use of the terms ''technical data'' and ''computer software.'' This unnecessary split, resulting in unnecessary duplication of DFARS language, was noted and proposed for elimination in the DFARS Transformation of Part 227 (DFARS Case 2003–D049, approved by the DARC, and currently in pre-publication review), which proposes to recombine the coverage for technical data and computer software into a single subpart to eliminate the massive redundancy, while staunchly maintaining all of the substantive distinctions in the detailed coverage. The rule in the current case also follows this model: Applying the same policies and rules for both technical data and computer software when appropriate, and recognizing any instance in which technical data and computer software should be treated differently.

In the current case, the new statutory-based requirements for technical data are equally applicable to computer software—both under the long-standing policy of equivalent treatment for technical data and computer software, and in view of the most current acquisition policies. In fact, the new requirements are so top-level, and so consistent with existing policy objectives for both technical data and computer software, that it would be inconsistent with the current DFARS coverage if the new rule did not apply equally to computer software.

In review of this issue, DoD has noted and corrected an apparent typographical error/omission in the interim rule: The requirements specified at DFARS 207.106(S–70)(1)(ii) inadvertently omitted the phrase ''and computer software'' prior to the term ''deliverables.'' This error is remedied by inserting the omitted text in the final rule.

b. Impact on acquisition of computer software. The respondent also comments in some detail on the differences required for maintenance of software as opposed to hardware, and that there is danger that Program Managers may seek to acquire computer software in the same manner they acquire technical data, even when this does not make sense.

Response: The DFARS rule establishes only top-level requirements to assess long-term needs, establish acquisition strategies to meet those needs, and to expressly address more specific considerations in the acquisition strategy documentation. The interim rule is directed towards the acquisition planning stage. At this preliminary planning stage, both computer software and technical data needs can be assessed and both have similar issues and needs that can be accounted for. DoD acquisition personnel have always been required to consider intellectual property requirements and costs when determining acquisition strategies.

c. Acquisition of rights. The respondent notes that Government personnel could become confused about the requirements of the interim rule when creating the acquisition strategy. In particular, the respondent notes that a program manager could ''unnecessarily interpret'' the rule as requiring the acquisition of more rights than required under the current ''Limited Rights'' regime.

Response: DoD does find the respondent's argument persuasive that Government personnel will become confused. The respondent notes that such an interpretation would be unnecessary. The simple requirement to address technical data and computer software in acquisition strategies for major weapon systems does not override any current policies on acquiring limited rights.

d. Information regarding the data sought by the Government. The respondent also raises numerous issues regarding the language contained in Part 227.106 of the interim rule, including the information which the contractor would possess regarding the data being sought by the Government, who would access the data, and the future value of the data.

Response: This information would usually be routinely provided in the solicitation or in the course of communications with the Government. It is unnecessary to amend the rule to include this information.

e. Term ''option.'' The respondent requests clarification of the term ''option,'' as used in the phrase ''priced contract option'' in both the interim rule and the statutory requirement.

Response: DoD considers that this term/phrase is unambiguous in this context.

f. Change orders. Another issue raised by the respondent involves the ability of the Government to issue change orders modifying the option following contract award. The respondent notes that these changes would entitle the contractor to request equitable adjustments and that such an ability to issue change orders would remove many of the guidelines governing the contracting officer's behavior.

Response: Nothing in the interim rule eliminates, limits, or affects in any way any preexisting requirements, rules, or procedures—including those governing change orders.

g. Desired license options. The last issue raised by the respondent in its ''Specific Comments'' section is a request to amend the interim rule to require program managers to provide detailed guidance on the details of their desired license options. It is also requested that the interim rule be amended to limit the scope of the desired license option to the sustainment of the system or subsystems underlying the solicitation.

Response: DoD does not agree that amendments of this sort are warranted. The DFARS does not provide direction to program managers.

3. Alternative Proposal

The respondent provides an alternate proposal for consideration, in which the DoD approach to technical data needed for sustainment would be modeled after a commercial model used for FAA-certified aircraft.

Response: Nothing in the rule would prohibit the use of such a model in appropriate circumstances. Although this approach, or a variation thereof, may be useful in individual or specific circumstances, it would be unnecessarily restrictive (and in some cases likely inapplicable or unworkable) for other DoD weapon systems programs.

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 this rule pertains to acquisition planning that is performed by the Government.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 207 and 227

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 207 and 227, which was published at 72 FR 51188 on September 6, 2007, is adopted as a final rule with the following changes:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

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

■ 2. Section 207.106 is amended by revising paragraph (S–70)(1)(ii) to read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–70)(1) * * *

(ii) Establish acquisition strategies that provide for the technical data and computer software deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include—

* * * * *

[FR Doc. E9–30672 Filed 12–28–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 171

[Docket No. PHMSA–2009–0411]

RIN 2137–AE48

Hazardous Materials: Adjustment of Maximum and Minimum Civil Penalties

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

ACTION: Final rule.

SUMMARY: PHMSA is adjusting the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. The maximum civil penalty is increased to $55,000, and to $110,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. The minimum civil penalty is increased to $275, and to $495 for a violation related to training. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* This final rule is effective on December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas S. Smith, Office of Hazardous Materials Enforcement, 202–366–4700, or Joseph Solomey, Assistant Chief Counsel for Hazardous Materials Safety, 202–366–4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996, requires each Federal agency to periodically adjust civil penalties it administers to consider the effects of inflation. The Act is set forth in the note to 28 U.S.C. 2461.

According to Section 5 of the Act, the maximum and minimum civil penalties must be increased based on a ''cost-of-living adjustment'' determined by the increase in the Consumer Price Index (CPI–U) for the month of June of the calendar year preceding the adjustment as compared to the CPI–U for the month of June of the calendar year in which the last adjustment was made. The Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $5,000, for a penalty between $10,000 and $100,000, and that the first adjustment to a civil penalty is limited to 10%. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU,'' Pub. L. 109–59, 119 Stat. 1905)) amended 49 U.S.C. 5123(a) to reset the maximum and minimum civil penalties for a knowing violation of Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* or a regulation, order, special permit, or approval issued under that law as follows:

—Maximum civil penalty—$50,000, except that amount may be increased to $100,000 for a violation that results in death, serious illness, or severe injury to a person or substantial destruction of property.

—Minimum civil penalty—$250, except that the minimum civil penalty for a violation related to training is $450.

Because these maximum and minimum civil penalties were reset by statute, they applied to any violation that occurred on or after August 10, 2005, the date on which SAFETEA–LU became law.

Under the Act, PHMSA is now required to adjust the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a), as amended by SAFETEA–LU. Because these adjustments are the first adjustment to the amounts reset in SAFETEA–LU, any increase in the maximum and minimum civil penalty amounts is limited to 10%.

Applying the adjustment formula in the Act, PHMSA has compared the CPI–U in June 2008 (218.815)—the year before the year in which the adjustment is being made—to the CPI–U in June 2005 (194.5)—the year in which the maximum and minimum civil penalties were reset in SAFETEA–LU. This comparison shows that the CPI–U increased by 12.5% during that period, which is greater than the 10% maximum increase allowed for the first adjustment. Accordingly, PHMSA is increasing the maximum and minimum civil penalties by 10%. Because this adjustment and the amount thereof are mandated by statute, notice of proposed rulemaking is unnecessary, and there is good cause to make the adjusted maximum and minimum civil penalties applicable to any violation occurring on or after January 1, 2010. 5 U.S.C. 553(b), (d).

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of (1) Federal hazardous material transportation law, which, at 49 U.S.C. 5123, provides civil penalties for a knowing violation of that law or a regulation, order, special permit, or approval issued under that law, and also (2) the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (see 28 U.S.C. 2461 note) which requires that maximum and minimum civil penalties