

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 212, 242, 247, 252, and 253**

RIN 0750-AH53

Defense Federal Acquisition Regulation Supplement: Shipping Instructions (DFARS Case 2011-D052)

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 update the form used by contractors to request shipping instructions and the associated contract clause and clause prescription to cover both commercial and Government bills of lading, and to relocate the coverage within the DFARS.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before March 30, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011-D052, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inserting "DFARS Case 2011-D052" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011-D052." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011-D052" on your attached document.
- *Email:* dfars@osd.mil. Include DFARS Case 2011-D052 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 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, telephone (703) 602-1302.

SUPPLEMENTARY INFORMATION:**I. Background**

Since 1991, DoD has used the clause at DFARS 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions, to instruct contractors to use the DD Form 1659, entitled "Application for U.S. Government Shipping Documentation/Instructions," to request instructions for shipment from the Transportation Officer or contract administration office. In recent years, however, DoD primarily uses commercial bills of lading (with some exceptions for international shipments, noncontiguous domestic trade shipments, and/or customs considerations) where use of Government bills of lading is appropriate. Therefore, the preferred term is "bill(s) of lading," which includes both commercial and Government bills of lading.

FAR Case 2002-005, published as a final rule on April 19, 2006, moved FAR subpart 42.14, Traffic and Transportation Management, to FAR part 47, Transportation. As a result of publication of FAR Case 2002-005, this rule proposes to delete or relocate material, as necessary, from DFARS 242.14, by—

- Relocating the clause prescription at DFARS 242.1404-2-70 to DFARS 247.207, with revisions that will simplify and clarify requirements for use of the DFARS clause, and removing the obsolete clause prescription at DFARS 242.1404-2 because the prescribed clauses are no longer required;
- Including the clause prescription for DFARS 252.247-70XX in DFARS 212.301, as this clause is applicable under commercial contracts;
- Relocating the clause to DFARS 252.247-70XX from its current location in DFARS 252.242-7003, to align with the relocation of related DFARS coverage on transportation and related services, and deleting the single word "Government" in both the clause and the DD Form 1659;
- Removing the obsolete requirement to use the DD Form 1659 when using the clauses at FAR 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail;
- Relocating the shipping instructions at DFARS 242.1403 to DFARS 247.101(h), and deleting the obsolete shipping instructions; and

- Removing DFARS 242.1405, as this same reference is included in FAR 47.207-10.

The DD Form 1659 will also be corrected to replace the word "contractor" with "commercial" when expanding the term Commercial and Government Entity (CAGE) Code in the legend. The term "continental United States" will be corrected to "contiguous United States."

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. 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 there are no substantive changes being made by this rule. The rule proposes only to delete the word "Government" in front of "Bill(s) of Lading" in the DD Form 1659 and the associated clause at DFARS 252.247-70XX (previously DFARS 252.242-7003) in order to clarify that the DD Form 1659 can be used to request a bill of lading that inputs these shipments into the Defense Transportation System. The purpose of this form is to obtain shipping instructions, a common practice that has been in effect since 1991, and does not impose an additional hardship on any entity. Many services/agencies have moved toward an electronic environment eliminating the need to submit the DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions. In these instances, shipment requests are obtained through an automated system.

Therefore, an initial regulatory flexibility analysis has not been performed. However, 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 2011–D052), in correspondence.

IV. Paperwork Reduction Act

This rule contains information collection requirements in the clause at DFARS 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions, and the associated form, DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions (previously, the clause at DFARS 252.242–7003), currently approved through March 31, 2013, under OMB Control Number 0704–0250, titled DFARS part 242, Contract Administration and Audit Services, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The reduction in paperwork burden realized through use of electronic request systems is negligible because preparation of the DD Form 1659, a common practice since 1991, is not a significant administrative burden. Additionally, there is a negligible impact on paperwork burden resulting from revisions to the DD form, because only the single word “Government,” in front of “Bill(s) of Lading” is being revised, and two terms are being updated. There are no substantive changes being made either to the form or to the associated clause at DFARS 252.247–70XX.

List of Subjects in 48 CFR Parts 212, 242, 247, 252, and 253

Accounting, Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 212, 242, 247, 252, and 253 as follows:

1. The authority citation for 48 CFR parts 212, 242, 247, 252, and 253 is revised to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. In section 212.301, add paragraph (f)(iv)(N) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) * * *

(N) Use the clause at 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

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PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 242.14—[Removed]

3. Remove subpart 242.14.

PART 247—TRANSPORTATION

4. Add subpart 247.1, consisting of section 247.101, to read as follows:

Subpart 247.1—General

247.101 Policies

(h) *Shipping documents covering f.o.b. origin shipments.* (i) Procedures for the contractor to obtain bills of lading are in the clause at 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions.

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

5. Revise section 247.207 to read as follows:

247.207 Solicitation provisions, contract clauses, and special requirements.

(1) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts for carriage, including acquisitions of commercial items, in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

(2) Use the clause at 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions, in solicitations and contracts, including acquisitions of commercial items, when shipping under Bills of Lading and Domestic Route Order under f.o.b. origin contracts, Export Traffic Release regardless of f.o.b. terms, or foreign military sales shipments.

6. In subpart 247.2, add sections 247.207–11 and 247.207–70 to read as follows:

247.207–11 Volume movements within the contiguous United States.

For reporting of volume movements within the contiguous United States, follow the procedures at PGI 247.207–11.

247.207–70 Demurrage and detention charges.

Follow the procedures for demurrage and detention charges at PGI 247.207–70.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.242–7003 [Removed and Reserved]

7. Section 252.242–7003 is removed and reserved.

8. Section 252.247–70XX is added to read as follows:

252.247–70XX Application for U.S. Government Shipping Documentation/Instructions.

As prescribed in 247.207, use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (DATE)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(1) Transportation Officer, if named in the contract schedule; or

(2) Contract administration office.

(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy’s Global Freight Management–Electronic Transportation Acquisition (GFM–ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force’s Cargo Movement Operations System, DCMA’s Shipment Instruction Request (SIR) e-Tool application, and DLA’s Distribution Standard System Vendor Shipment Module) in lieu of DD Form 1659.

(End of clause)

[FR Doc. 2012–1494 Filed 1–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

RIN 0750–AH54

Defense Federal Acquisition Regulation Supplement; Performance-Based Payments (DFARS Case 2011–D045)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition