

INDIANA OZONE
[8-Hour standard]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date	Type
Fort Wayne, IN: Allen County	2/12/07	Attainment		

^a Includes Indian Country located in each county or area, except as otherwise specified.
¹ This date is June 15, 2004, unless otherwise noted.

[FR Doc. E7-255 Filed 1-10-07; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3001, 3002, and 3033

[Docket No. DHS-2007-0001]

RIN 1601-AA42

Revision of Department of Homeland Security Acquisition Regulation

AGENCY: Department of Homeland Security.

ACTION: Interim rule with requests for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its acquisition regulation to reflect a statutorily-mandated jurisdictional change for the agency Board of Contract Appeals from the Department of Transportation Board of Contract Appeals to the Civilian Board of Contract Appeals. DHS is also making several non-substantive amendments to its acquisition regulation in order to reflect organization changes.

DATES: This rule is effective January 11, 2007. Comments must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy on or before February 12, 2007, to be considered in the formation of the final rule.

ADDRESSES: Please submit written comments, identified by agency name and docket number DHS-2007-0001, by one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, ATTN: Anne Terry, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Anne Terry, Department of Homeland

Security, Office of the Chief Procurement Officer, Acquisition Policy, at (202) 447-5253.

SUPPLEMENTARY INFORMATION:

- I. Request for Comments
- II. Background
- III. Discussion of Interim Rule
- IV. Regulatory Requirements
 - A. Executive Order 12866 Assessment
 - B. Regulatory Flexibility Act
 - C. Good Cause To Issue an Interim Rule

I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. Comments should be organized by Homeland Security Acquisition Regulation (HSAR) Part, and address the specific section that is being commented on. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and material received during the comment period.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

II. Background

In the National Defense Authorization Act for Fiscal Year 2006, Congress established the Civilian Board of Contract Appeals (CBCA), and terminated every agency Board of Contract Appeals (BCA), except those for the armed services, the Tennessee Valley Authority, and the U.S. Postal Service. Public Law 109-163, Title VIII, section 847.

The General Services Administration (GSA) announced this change by Notice in the **Federal Register**. See 71 FR 65825 (Nov. 9, 2006). In that Notice, GSA stated that, effective January 6, 2007, jurisdiction would be transferred from the BCAs for GSA and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs to the CBCA.

Through January 5, 2007, DHS contract appeals were handled by the Department of Transportation's BCA. However, on January 6, 2007, BCA jurisdiction for DHS transferred to the CBCA. While the statutory change with regard to BCA jurisdiction was self-executing, this rule is required to ensure that the information contained in the HSAR regarding contract appeals is accurate, and corresponds to the requirements of section 847 of the 2006 National Defense Authorization Act.

This rule also provides technical amendments to correct organizational information reflected in the HSAR.

General changes made to HSAR by this rulemaking are provided in the list below.

III. Discussion of Interim Rule

The interim rule revises HSAR 48 CFR 3001.104, 3002.270, 3033.201, 3033.211 and 3033.214 to implement Public Law 109-163, Title VIII, Section 847 (jurisdictional change for hearing and deciding contract appeals for DHS).

This rule also establishes additional technical amendments at HSAR 48 CFR 3001.105-2 and 3002.101 to correct nomenclature for the Federal Emergency Management Agency in the HSAR.

IV. Regulatory Requirements

A. Executive Order 12866 Assessment

DHS has determined that this interim rule is not a major rule under 5 U.S.C. 804, nor is it a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. It therefore does not require an assessment of potential costs and benefits under

section 6(a)(3) of that Order, nor has it been reviewed by the Office of Management and Budget.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This 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.

C. Good Cause To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Homeland Security that urgent and compelling reasons exist to promulgate this interim rule regarding jurisdictional changes to hearing and deciding contract appeals for DHS without prior opportunity for public comment. This action is necessary because the effective date for the transfer of jurisdiction from the DOTBCA to the CBCA for DHS contract appeals was January 6, 2007. While the statute is self-executing, DHS believes that it is important to amend its regulations promptly in order to ensure that the regulation reflects accurate information as to the contract appeals process. Moreover, the jurisdictional changes reflected in this rule are the results of Congressional action, rather than a new DHS policy. Accordingly, providing an opportunity to comment before the change is implemented is impracticable and not in the public interest.

However, pursuant to Public Law 98–577 and Federal Acquisition Regulation (FAR) 48 CFR 1.501, DHS will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 3001, 3002, and 3033

Government procurement.

Dated: January 4, 2007.

Elaine C. Duke,

Chief Procurement Officer.

■ Accordingly, DHS amends 48 CFR parts 3001, 3002 and 3033 as follows:

PART 3001—FEDERAL ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR parts 3001, 3002, and 3033 continues to read as follows:

Authority: 41 U.S.C. 418b (a) and (b).

■ 2. Amend Section 3001.104 by revising paragraphs (b) and (c) to read as follows:

3001.104 Applicability.

* * * * *

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (section 101(a) of Public Law 107–71).

(c) Contracts involving Non-Appropriated Fund Instrumentalities (NAFIs) must contain suitable dispute provisions and may provide for appellate dispute jurisdiction in the Civilian Board of Contract Appeals (CBCA). However, the contract must not attempt to confer court jurisdiction that does not otherwise exist.

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■ 3. Amend Section 3001.105–2 by revising paragraph (a) to read as follows:

3001.105–2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by 48 CFR 1.105–2. Guidance that is unique to a Component contains the organization’s acronym or abbreviation directly following the title. The following acronyms apply: Bureau of Customs and Border Protection (CBP); Bureau of Immigration and Customs Enforcement (ICE); DHS Office of Procurement Operations (OPO); Federal Emergency Management Agency (FEMA); Federal Law Enforcement Training Center (FLETC); Transportation Security Administration (TSA); U.S. Coast Guard (USCG); and U.S. Secret Service (USSS).

PART 3002—DEFINITIONS OF WORDS AND TERMS

■ 4. Amend Section 3002.101 by revising the definition for “Component” to read as follows:

3002.101 Definitions.

* * * * *

Component means the following entities for purposes of this chapter:

- (1) Bureau of Customs and Border Protection (CBP);
- (2) Bureau of Immigration and Customs Enforcement (ICE);
- (3) DHS Office of Procurement Operations (OPO);
- (4) Federal Emergency Management Agency (FEMA);
- (5) Federal Law Enforcement Training Center (FLETC);

(6) Transportation Security Administration (TSA); (TSA is exempt from the HSAR and HSAM, pursuant to the “Aviation and Transportation Security Act of 2001”);

- (7) U.S. Coast Guard (USCG); and
- (8) U.S. Secret Service (USSS).

* * * * *

■ 5. Section 3002.270 is revised to read as follows:

3002.270 Abbreviations.

CBCA Civilian Board of Contract Appeals
 CFO Chief Financial Officer
 CIO Chief Information Officer
 COCO Chief of the Contracting Office
 COR Contracting Officer’s Representative
 COTR Contracting Officer’s Technical Representative
 CPO Chief Procurement Officer
 D&F Determination and Findings
 FOIA Freedom of Information Act
 HCA Head of Contracting Activity
 J&A Justification and Approval for Other than Full and Open Competition
 KO Contracting Officer
 MD Management Directive
 OCPO Office of the Chief Procurement Officer
 OIG Office of the Inspector General
 OSDBU Office of Small and Disadvantaged Business Utilization
 PCR SBA’s Procurement Center Representative
 RFP Request for Proposal
 SBA Small Business Administration
 SBS Small Business Specialist
 SPE Senior Procurement Executive

PART 3033—PROTESTS, DISPUTES, AND APPEALS

■ 6. Section 3033.201 is revised to read as follows:

3033.201 Definitions.

Agency Board of Contract Appeals means the Civilian Board of Contract Appeals (CBCA).

■ 7. Section 3033.211 is revised to read as follows:

3033.211 Contracting Officer’s decision.

For DHS contracts, the Board of Contract Appeals (BCA) noted in (FAR) 33.211 is the Civilian Board of Contract Appeals (CBCA) 1800 F Street, NW., Washington, DC 20405.

■ 8. Section 3033.214(c) introductory text is revised to read as follows:

3033.214 Alternate disputes resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, *et seq.*,

authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. CBCA guidance on ADR may be obtained at http://www.gsbca.gsa.gov/CBCA-17712-v1-CBCA_ADR_INFORMATION.pdf or from the CBCA upon request. ADR procedures may be used—

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[FR Doc. 07–61 Filed 1–8–07; 11:15 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2007–26828]

RIN 2105–AD64

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Procedures for Non-Evidential Alcohol Screening Devices

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The National Highway Transportation Safety Administration (NHTSA) has recently approved a new breath tube alcohol screening device (ASD) which will qualify for use in DOT Agency regulated testing once it appears on NHTSA's conforming products list (CPL). This interim final rule (IFR) will provide procedures for use of the new device and remove procedures for a previously approved breath tube ASD which is no longer being manufactured.

DATES: This rule is effective January 11, 2007. Comments to the interim final rule should be submitted by February 12, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: *Written Comments:* Submit written comments to the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may submit comments identified by the docket number (OST–2007–26828) by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Web site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2478.

- *Mail:* Docket Management System; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

- *Hand Delivery:* To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

George Ellis or Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Room 10403, 400 Seventh Street, SW., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or bohdan.baczara@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Purpose

Department regulations require that in order for an employer to utilize a specific ASD to conduct required DOT alcohol tests, the device must (a) Have been approved by NHTSA as meeting required model specifications, (b) be published by NHTSA in the **Federal Register** on their most current ASD CPL, and (c) have Department-approved procedures in part 40 for its use. The procedures in this IFR will ensure that the NHTSA-approved breath tube ASD will be immediately available for use by employers upon publication of NHTSA's ASD CPL in the **Federal Register**.

Background

When it originally published its alcohol testing rules on February 15, 1994 (54 FR 7302 et seq.), the Department established breath testing using evidential breath testing devices (EBTs) as the required method. However, in response to comments requesting additional flexibility in testing methods, the Department said that NHTSA would develop model specifications for non-evidential alcohol screening devices, evaluate additional screening devices against those specifications, and periodically publish a conforming products list of screening devices that met the model specifications. The Department noted, too, that the Department would also have to undertake separate rulemaking proceedings to establish part 40 procedures for use by DOT-regulated

industries of any devices approved by NHTSA.

On April 20, 1995 (60 FR 19675), the Department published procedures for use of both breath and saliva ASDs. At that time, the Department did not anticipate that additional breath and saliva screening devices would be developed that would necessitate new procedures for their use. As a result, the revised part 40 published December 19, 2000 (65 FR 79462) stated, in part, that ASDs on the NHTSA CPL could be used for part 40 alcohol screening tests. Because NHTSA added an ASD to their CPL and the Department had no procedures for its use, we were forced to amend that rule. On August 9, 2001 (65 FR 41944), part 40 was amended to read, “You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part.”

On October 1, 2002 (67 FR 61521), the Department published procedures for the use of a breath tube ASD that had been approved by NHTSA and added to their May 4, 2001 CPL (66 FR 22639). By 2005, that device was no longer being manufactured, and was removed from the CPL effective September 19, 2005 (70 FR 54972).

NHTSA has recently approved a new breath tube ASD and anticipates adding it to their CPL in late January 2007. However, the breath tube procedures currently in our regulation are not consistent with instructions for use of the newly approved ASD. In this IFR, we have amended part 40 by eliminating procedures specific for the breath tube ASD which is no longer being manufactured and adding procedures for use of the newly approved device.

Instructions for use of the new ASD are generally similar to those for the previously approved breath tube device. The principal difference is in how the alcohol result is read by the technician. Instead of comparing the color of the crystals in the ASD with the colored crystals in a manufacturer-produced control tube, the new ASD uses an electronic analyzer to provide the technician and the employee with an automated visual result of negative (a flashing green light) or positive (a flashing red light) at 0.02. The Department will retain the requirement to read the result within 15 minutes of the test to ensure a confirmation test, when necessary, is conducted in a timely manner.

The addition of an electronic analyzer with this type of breath tube ASD will also add an entry to the list of fatal flaws which would require the alcohol screening test to be cancelled.