

(B) Making the review before issuance of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record; and

(C) Referring recommendations that have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. If an SBA procurement center representative is not assigned, see FAR 19.402(a).

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(e) For information on the appointment and functions of small business specialists, see PGI 219.201(e).

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 242

[DFARS Case 2003-D051]

#### Defense Federal Acquisition Regulation Supplement; Contract Administration Functions

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing functions performed by DoD contract administration offices. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** *Effective Date:* August 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D051.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will

contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule revises the list of contract administration functions at DFARS 242.302 to—

- Clarify responsibilities for payment administration and for verification of contractor compliance with earned value management system requirements;
- Delete obsolete text on mobilization production planning surveys; and
- Delete procedures for designation of contract payment offices. Text on this subject has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 67955 on November 9, 2005. One respondent submitted comments on the proposed rule. The respondent stated that (1) there is a lack of clear regulatory authority for acceptance other than FAR 46.502, which assigns acceptance responsibility to contracting officers; (2) acceptance is not one of the contract administration functions at FAR 42.302; and (3) FAR 46.502, where it refers to delegation of responsibility for acceptance to a contract administration office, errs in its reference to FAR 42.202(g), since refusal of a contract administration delegation is exclusive of actions inferred in performing acceptance when an administration office is assigned. The respondent recommended that, since acceptance actions can be performed on behalf of a contracting officer when a contract is not assigned for administration (e.g., destination acceptance) by an activity other than a contract administration office, DFARS 242.302 should provide coverage of acceptance responsibility when a contracting officer intends that a contract administration office perform acceptance.

DoD does not agree that DFARS 242.302 should be amended to provide coverage of acceptance responsibility when a contracting officer intends that a contract administration office perform acceptance. FAR 42.302 lists the functions that are normally delegated to a contract administration office. Even though acceptance is not specifically

mentioned, it is covered under FAR 42.302(a)(38), which provides for ensuring contractor compliance with contractual quality assurance requirements and references FAR Part 46. In particular, FAR 46.502 provides for delegation of responsibility for acceptance to a contract administration office. However, DoD recognizes that there are times when a contract administration office has been assigned responsibility for ensuring contractor compliance with contract quality assurance requirements, but where actual product acceptance is performed by an activity other than the contract administration office (i.e., destination acceptance). DoD has established a separate DFARS Case, 2005-D024, to address this situation.

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 the rule addresses internal DoD responsibilities for performance of contract administration functions.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the 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 Part 242

Government procurement.

##### Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 242 is amended as follows:

#### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR Part 242 continues to read as follows:

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

■ 2. Section 242.302 is revised to read as follows:

##### 242.302 Contract administration functions.

(a)(4) Also, review and evaluate—  
(A) Contractor estimating systems (see FAR 15.407-5); and

(B) Contractor material management and accounting systems under subpart 242.72.

(7) See 242.7502 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771-3(a).

(12) Also perform all payment administration in accordance with any applicable payment clauses.

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA).

(B) Follow the procedures at PGI 242.302(a)(13)(B) for designation of payment offices.

(39) See 223.370 for contract administration responsibilities on contracts for ammunition and explosives.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(S-70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements for SPI processes, when authorized by the affected components.

(S-71) DCMA has responsibility for reviewing earned value management system (EVMS) plans and for verifying initial and continuing contractor compliance with DoD EVMS criteria. The contracting officer shall not retain this function.

(b)(S-70) Issue, negotiate, and execute orders under basic ordering agreements for overhaul, maintenance, and repair.

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 171

[Docket No. PHMSA-2005-22208 (HM-240)]

RIN 2137-AE12

#### Hazardous Materials: Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** On December 9, 2005, PHMSA published a final rule to revise

terminology, definitions, and requirements for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005. These amendments included revising the definitions of “hazmat employee” and “hazmat employer”; modifying shipping paper retention requirements; providing a security plan exception for farmers; and replacing the term “Exemption” with “Special permit.” This final rule corrects an error in the final rule. In addition, we are clarifying the amendments applicable to shipping paper retention requirements, the definition of “hazmat employer,” and the transition from “Exemption” to “Special permit.”

**DATE:** *Effective date:* August 8, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Cameron Satterthwaite or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On December 9, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a final rule under Docket No. PHMSA-2005-22208 (HM-240) revising the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to reflect amendments made to the Federal hazardous materials law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) by the Hazardous Materials Safety and Security Reauthorization Act of 2005 (the Act; Title VII of Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005)).

The December 9, 2005 final rule made the following amendments to the HMR:

- Revised the definitions of “hazmat employee” and “hazmat employer”;
- Revised shipping paper retention requirements;
- Added a security plan exception for farmers;
- Revised applicability of the HMR to matter subject to postal laws and regulations; and
- Replaced “Exemption” with “Special permit.”

We received a number of questions from the regulated community concerning the amendments in the final rule applicable to the revised definition of “hazmat employer”, new shipping paper retention requirements, and the transition from “Exemption” to “Special permit.” To ensure our responses to these questions reach a broad audience, we are addressing them in this final rule.

## II. Clarifications

### A. Definition of “Hazmat Employer”

We revised the definition of “hazmat employer” in § 171.8 for consistency with editorial revisions adopted under the Act. The revised definition is not intended to apply more broadly than the previous definition. The amendment does not expand the scope of the definition or revise the training requirements applicable to hazmat employers in subpart H of part 172 or the operational requirements applicable to training in parts 173-180 of the HMR.

### B. Revision of Shipping Paper Retention Requirements

In accordance with the Act, we revised the HMR to require shippers to retain a copy of a shipping paper for a period of two years after the shipping paper is provided to a carrier and to require carriers to retain a copy of a shipping paper for a period of one year after the date the shipping paper is received from the shipper. We also specified that shippers and carriers of a hazardous waste must continue to retain a shipping paper for 3 years after the material is accepted by the initial carrier. PHMSA is aware of confusion in the regulated community regarding the implementation of these provisions. The provisions for shipping paper retention in this rulemaking became effective on January 9, 2006 (the effective date of the final rule). It was not our intention to apply the revised shipping paper retention requirements retroactively to documents retained for shipments made prior to the effective date of the final rule. Shipments offered or accepted for transportation prior to January 9, 2006 are not subject to the new shipping paper retention provisions. For shipments offered or accepted for transportation prior to January 9, 2006, each person who provides a shipping paper and each person who receives a shipping paper must retain a copy of the shipping paper or an electronic image thereof for 375 days after the shipment is accepted by the initial carrier. For shipments offered or accepted for transportation on or after January 9, 2006, each person who provides a shipping paper must retain a copy of the shipping paper or an electronic image thereof for two years after the shipment is accepted by the initial carrier; each person who receives a shipping paper must retain a copy of the shipping paper or an electronic image thereof for one year after the shipment is accepted by the initial carrier.