



MAR 30 2004

MEMORANDUM FOR RONALD POUSSARD

DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT:

FAR Case 2002-005, Transportation: Standard Industry
Practices

Attached are comments received on the subject FAR case published at 69 FR 4004;
January 27, 2004; The comment closing date was March 29, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2002-005-1	01/29/04	01/29/04	Chaymin Phillips
2002-005-2	03/08/04	03/08/04	N. Jay Bassin
2002-005-3	03/11/04	03/11/04	Ivan Thomas
2002-005-4	03/29/04	03/29/04	Kevin Conneen
2002-005-5	03/28/04	03/28/04	Linda Rothleder

Attachments

2002-005-1



"Phillips, Chayim
SPAWAR"
<chayim.phillips@navy
.mil>

To: farcase.2002-005@gsa.gov
cc:
Subject: Question for FAR Case 2002-005 on clause at FAR 52.247-67

01/29/2004 05:31 PM

Dear Ms. Parnell,

The proposed rule at FAR 47.103-2 under FAR Case 2002-005 says to use the clause at FAR 52.247-67, Submission of Transportation Documents for Audit, in solicitations and contracts "when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract."

We are confused.

In reading the existing text and the proposed text of the clause at FAR 52.247-67, Submission of Transportation Documents for Audit, it is not clear that after the commercial bill of lading is audited and the commercial bill of lading is forwarded to the paying office for payment, who the paying office makes the check out to. Is it the shipper or is it the contractor for the supply contract that contains the clause at FAR 52.247-1, F.o.b. Origin?

The clause at FAR 52.247-1, F.o.b. Origin, tells the contractor to prepare a commercial bill of lading and then have the supplies shipped to the location specified in the contract. Under this circumstance, the commercial bill of lading is audited under the clause at FAR 52.247-67, Submission of Transportation Documents for Audit, and then forwarded to the paying office for payment. If the check is made out to the shipper then the contract or a first-tier cost-reimbursement subcontract thereunder will not be authorizing reimbursement of transportation as a direct charge to the contract or subcontract. Rather, it will be a payment by the Government to the shipper.

We request that if the intention is for the check to be cut to the contractor who prepared the commercial bill of lading, the clause at FAR 52.247-67, Submission of Transportation Documents for Audit, be further amended to specifically say that payment will be made to the contractor for the commercial bill of lading. If the intent is for the payment to be made to the shipper, then the prescription at FAR 47.103-2 should reflect that we are to use the clause when payment for transportation charges under a commercial bill of lading are to be made to the shipper.

If you have any questions on this matter, please telephone me at (619) 524-7177 or e-mail me at chayim.phillips@navy.mil.

Chayim Phillips
Contracts Policy Branch, Space and Naval Warfare Systems Command (SPAWAR 02-41C)
4301 Pacific Highway, San Diego, CA

2002-005-2



JBassin@emsus.com

To: farcase.2002-005@gsa.gov

cc:

03/08/2004 05:08 PM

Subject: FAR Case 2002-005, Transportation

FAR clause 52.247-67 (GSA Commercial Transportation Bills of Lading) requires that all cost-type contractors compile and submit to the General Services Administration each month copies of all vouchers for travel (air and train coupons), freight charges, and even air express and local courier bills from primes and first-tier subcontractors.

This clause requires an inordinate amount of administration and effort because of the volume of airbills, FedEx vouchers, local courier vouchers, and other coupons involved. Each month, we send a box to GSA; we are a tiny company, and I can only imagine the trucks that pull up to GSA from the big contracting firms. I cannot imagine the effort required by GSA to review all these vouchers.

I have heard (well over a year ago) that GSA had reported very little compliance government-wide, and that they were beginning to institute audits of federal agencies. We have talked to our contracting officers about eliminating the clause or modifying it, and their response is invariably, "yes, it's burdensome, but no, it's required by law and we can't change it." My small firm has complied with the clause despite the administrative burden. However, if it is true that we are in the minority, it seems pointless and places us at a competitive disadvantage. You should delete the clause or increase its thresholds to avoid burdensome requirements on small businesses.

N. Jay Bassin
Environmental Management Support, Inc.
8601 Georgia Avenue, Suite 500
Silver Spring, MD 20910
301-589-5318, ext. 31
301-589-8487 (fax)
jay.bassin@emsus.com

2002-005-3



ivan.thomas@faa.gov

03/11/2004 08:55 AM

To: farcase.2002-005@gsa.gov

cc:

Subject: Comments

Dear Sir,

I have a few comments for FAR case 2002-005.

For 47.101 Policies paragraph (h), the Military Traffic Management Command had a name change. New name is Surface Deployment and Distribution Command (SDDC).

For 47.001 Definitions. Could you consider the term, Transportation Service Provider (TSP)? Since this is a term that GSA uses when referring to a "carrier."

Regards,

Ivan Thomas
Transportation Officer
Property Administrator, CPPM
202-493-4574

2002-005-4



"Conneen, Kevin (HQ
DLA)"
<Kevin_Conneen@hq.
dla.mil>

To: "Farcase.2002-005@gsa.gov" <Farcase.2002-005@gsa.gov>
cc:
Subject: FW: FAR Case 2002-005

03/29/2004 06:20 AM

The attached comments concerning the subject FAR Case are forwarded for your consideration. Any questions may be directed to the undersigned.

Kevin Conneen

703-767-1472

-----Original Message-----



<<2002-0005.doc>> 2002-0005.doc

2002-005-4

FAR CASE 2002-005

These comments are submitted in response to the publication of proposed rule and FAR Case 2002-005 in the Federal Register on January 27, 2004.

The proposed rule says at 47.101 (a): "For domestic shipments, the contracting officer shall authorize shipments on commercial bills of lading (CBLs). Government bills of lading (GBLs) may be used for international or noncontiguous domestic trade shipments or when otherwise authorized." This requirement continues throughout the coverage. DOD was mandated to use a data processing system called Power Track for transportations movements. Power Track is an automated system that provides all the necessary checks and balances occurring during a domestic transportation movement. Power Track does not provide or require the use of Commercial or Government Bills of Lading except for containerized and overseas shipments which in concurrence with Power Track utilize the Electronic Transportation Acquisition System (ETA). ETA produces a commercial Bill of Lading (BOL).

DESC objects to the requirement to use BOLs for bulk domestic shipments. The documents have historically served three principal purposes: They are the carrier payment instrument, they document the shipment in terms of weight hauled by each carrier, and they satisfy the Hazardous Rules of the Department of Transportations (DOT) by carrying the Hazard Class and nomenclature. DESC achieves all three purposes by using Power Track in concert with the Fuels Automated System (FAS). Additionally, DESC continues to use the required DD250 or DD1348 as is required.

At 47.103-1, the proposed coverage discusses the requirement to audit transportations services. Pre audit seems to be one of the objectives of the rule. Under Power Track, the issuing office and receiving office confirm matching deliveries prior to the request for any type of payment for all deliveries over \$1600.00. This pre audit could be extended to lower value deliveries if necessary.

As discussed above, there are instances when Commercial Bills of Lading are used by DESC. Containerized and overseas shipments utilize the Electronic Transportation Acquisition (ETA) systems which generates a CBL and forwards it to the contractor. This system will not be expanded to include the greatest portion of CONUS transportation requirements. Eventually, a COTS system will replace ETA and at that time, it is expected that it will become DESC policy to issue CBLs for all shipments.

The coverage refers to the Military Traffic Management Command (MTMC). The name has changed to the Surface Deployment and Distribution Command (SDDC).

Clause 52.247-68 refers to explosives and poisons, classes A and B. In accordance with 49 CFR Transportation of Hazardous Materials: Paragraph 173.2, Subpart A, they are changed to Zones A, B, C or D based on their toxicity.

2002-005-5



LindaSR816@aol.com

03/28/2004 09:30 AM

To: farcase.2002-005@gsa.gov

cc:

Subject: [Docket No: 02-005; 9000-AJ84];[FR Doc: 04-01507];[Page 4003-4009];
Federal Acqu

Dear Ms. Duarte:

Please accept the attached documents as The Military Mobility Coalition's comments to FAR Case 2002-005.

Thank you,

Linda Rothleder, CRP
Director, Military Mobility Coalition
1200 G Street, NW
Suite 800
Washington, DC 20004



(301) 384-5696 FAR 47 Response ltr.ZI

MMC



General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, DC 20405

ATTN: Laurie Duarte

Re: FAR case 2002-005

Dear Ms. Duarte:

The Military Mobility Coalition opposes the proposed amendments in the above-referenced Federal Acquisition Regulation ("FAR") case on the grounds that (i) they give the impression that federal agencies must use bills of lading and rate tenders in procuring household goods transportation and related services instead of FAR-based procedures; and (ii) they fail to state a preference for utilizing FAR-based procurements in the acquisition of household goods transportation and related services.

Section A of the Federal Register notice states:

Also, the rule implements changes resulting from the Federal Management Regulation amendments that require the use of commercial bills of lading for domestic shipments.

We are unaware of any federal statute or regulation that mandates the use of bills of lading and rate tenders in all procurements for transportation services, including those for the transportation of household goods and related services. Currently, the federal government obtains transportation and transportation-related services either through: (1) normal competitive acquisitions subject to the FAR; or (2) acquisitions under government rate tenders pursuant to 49 U.S.C. § 10721 (pertaining to rail carriers) or 49 U.S.C. § 13712 (pertaining to motor carriers) through a bill of lading. We are concerned that the language in Section A, as quoted above, will create a false impression that agencies must use bills of lading in lieu of FAR-based procurements or that use of bills of lading is preferred over FAR-based procurements. We suggest that the language in Section A, as quoted above, be clarified to eliminate these possible inaccurate interpretations. Specifically, the words "that require" should be stricken and replaced with "relating to."

Additionally, we object to the proposed amendments because they fail to state a clear preference for using FAR-based procurements for transportation procurements, including acquisitions for household goods transportation and related services. The use of bills of lading and

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rate tenders as an alternate contracting method distinct from existing procurement methods under the FAR lacks justification, contravenes long-standing federal policy to promote full and open competition, and harms the Government.

Since the FAR is applicable to virtually all federal procurements for goods and services, is and has been the procurement standard in federal procurements for decades, and provides the Government with the right blend of flexibility, protection and control to ensure the best value for its money, we believe that FAR-based procurements of household goods transportation and related services should be preferred over bills of lading and rate tenders.

The proposed amendments unnecessarily preserve an exemption from the competition requirements of the FAR for the Government's acquisition of transportation for the movement of household goods and personal effects under bills of lading. See 48 C.F.R. §§ 47.000(a)(2), 47.200(d)(2). The statutory authority for this exception is 49 U.S.C. §§ 10721 and 13712, which provide, inter alia, that 41 U.S.C. § 5, does not apply to the Federal government's acquisition of transportation from lawfully operating carriers. Section 5 of Title 41 requires the Federal government to procure supplies and services by publicly advertising for bids.

The Government's ability to contract for transportation services without advertising for bids can be traced back to the Transportation Act of 1940, Pub. L. No. 785, 54 Stat. 898 (1940). Because of vast changes in the transportation industry since that time, the statutory exemption from competition for contracts with carriers is no longer necessary and, in fact, no longer serves the purpose for which it was enacted.

The world and the domestic transportation industry have changed substantially in the intervening 64 years. The transportation industry is now a fully mature and highly competitive industry that has adapted to and reaped the benefits from rate competition. In 1994 and 1995, Congress deregulated most of the industry after determining that competition controlled rates more effectively than tariffs and regulation. Under the new statutory scheme, only the movement of household goods and "non-contiguous domestic trade zone" traffic remain rate regulated. See 49 U.S.C. § 13701. Carriers are still required to file tariffs for the transportation of household goods with the Department of Transportation and the prohibition against preferential treatment remains in effect. 49 U.S.C. § 13701 et seq. However, carriers of household goods remain free to adjust their prices in order to competitively bid for Federal transportation contracts and have done so successfully. 49 U.S.C. § 13712. The need for protecting carriers from price competition in the procurement of household goods transportation services has long gone.

The benefits of FAR-based flexible, competitive, open-market, performance-based contracting far outweigh the use of bills of lading and rate tenders, which promote more inflexible low price-based contracting. We believe, therefore, that the FAR should eliminate any perceived preference for bills of lading and clearly articulate a preference in favor of FAR-based procurements when the Government acquires transportation of household goods and related services. We have attached a red-lined copy of the proposed FAR amendment to reflect our proposed changes.

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We are available to speak to you about our concerns and our proposed changes if you desire.

Sincerely,

/s/

Linda Rothleder, CRP
Director, Military Mobility Coalition

Enc.



005-5

FAR Case 2002-005

The Military Mobility Coalition's proposed changes are redlined in the document below.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Interstate Transportation Act, which abolished tariff-filing requirements for motor carriers of freight and the Interstate Commerce Commission. Also, the rule implements changes resulting from the Federal Management Regulation amendments that require use of commercial bills of lading for domestic shipments.

DATES: Interested parties should submit comments in writing on or before March 29, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to--General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to--farcase.2002-005@gsa.gov.

Please submit comments only and cite FAR case 2002-005 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAR case 2002-005.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to implement changes to the Interstate Transportation Act. The Act has been substantially amended in recent years, most notably by the Trucking Industry Reform Act of 1994, which abolished tariff-filing requirements for motor carriers of freight, and by the Interstate Commerce Commission (ICC) Termination Act of 1995 (Pub. L. 014-88), which abolished the ICC. Also, the rule implements changes resulting from the Federal Management Regulation amendments ~~that require regarding the~~ use of commercial bills of lading for domestic

shipments. This rule proposes to--

- Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52.242-10 and FAR 52.242-11, and revise and relocate FAR clause 52.242-12 to FAR 52.247-68;
- Add definitions of "Bill of lading," "Commercial bill of lading," and "Government bill of lading" and clarify the usage of each term throughout FAR Part 47;
- Add definitions of "Government rate tenders," "Household goods," "Noncontiguous domestic trade," and "Release/declared value"
- Require the use of commercial bills of lading

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for domestic shipments where transportation services are acquired through the use of bills of ladings, tariffs and rate tenders as opposed to FAR-based contracting methods;

- Revise the references to "49 U.S.C. 10721" to read "49 U.S.C. 10721 and 13712" throughout FAR Part 47 to make it clear that while government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carriers, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of "carrier" at 49 U.S.C. 12102), the use of FAR-based contracting methods and procedures is preferred;

- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR part 372, subpart B; and

- Make other conforming and editorial changes to FAR Part 47 and related clauses.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed 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 the rule only clarifies and updates the coverage to reflect the latest changes of the referenced Federal Management Regulation and statutes. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 42, 47, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAR case 2002-005), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose 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 42, 47, 52, and 53

Government procurement.

Dated: January 20, 2004.

Laura Auletta,
Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 42, 47, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 42, 47, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42--CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 42.14-- [Reserved]

2. Remove and reserve Subpart 42.14.

PART 47--TRANSPORTATION

3. Amend section 47.000 by revising paragraph (a) (2) to read as follows:

47.000 Scope of subpart.

(a) * * *

(2) Acquiring transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms. Transportation and transportation services can be obtained by acquisition subject to the FAR or by acquisition under 49 U.S.C. 10721 or 49 U.S.C. 13712. However, acquisition of transportation for household goods and related services should be accomplished through the FAR because of the benefits FAR-based procurements provide agencies over the use of bills of lading. Even though the FAR does not regulate the

acquisition of transportation or transportation-related services when the bill of lading is the contract, ~~this contract method is widely used and, therefore,~~ relevant guidance on the use of the bill of lading is provided in this part (see 47.104).

* * * * *

4. Amend section 47.001 by adding, in alphabetical order, the definitions

[[Page 4005]]

"Bill of lading", "Government rate tender", "Household goods", "Noncontiguous domestic trade", and "Release/declared value" to read as follows:

47.001 Definitions.

* * * * *

Bill of lading, means a transportation document, used as a receipt of goods, as documentary evidence of title, for clearing customs, and generally used as a contract of carriage.

(1) Commercial bill of lading (CBL), unlike the GBL, the CBL is not an accountable transportation document.

(2) Government bill of lading (GBL) is an accountable transportation document, authorized and prepared by a Government official.

* * * * *

Government rate tender under 49 U.S.C. 10721 and 13712 means an offer by a common carrier to the United States at a rate below the regulated rate offered to the general public.

Household goods in accordance with 49 U.S.C. 13102 means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the

transportation of such effects or property is arranged and paid for by-

(1) The householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(2) Another party.

Noncontiguous domestic trade means transportation (except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) subject to regulation by the Surface Transportation Board involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States (see 49 U.S.C. 13102(15)).

Release/declared value means the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods.

5. Revise section 47.002 to read as follows:

47.002 Applicability.

All Government personnel concerned with the following activities shall follow the regulations in part 47 as applicable:

(a) Acquisition of supplies.

(b) Acquisition of transportation and transportation-related services.

(c) Transportation assistance and traffic management.

(d) Administration of transportation contracts, transportation-related services, and other contracts that involve transportation.

(e) The making and administration of contracts under which payments are made from Government funds for--

(1) The transportation of supplies;

(2) Transportation-related services; or

(3) Transportation of contractor personnel and their personal belongings.

6. Amend section 47.101 by--

a. Redesignating paragraphs (a), (b), (c), (d), and (e) as (c), (d), (e), (f), and (g), respectively; and adding new paragraphs (a), (b), and (h); and

b. Amending newly designated paragraph (d)(2) introductory text by removing "subparagraph (b)(1) above" and adding "paragraph (d)(1) of this section" in its place. The added text reads as follows:

47.101 Policies.

(a) For domestic shipments where transportation services are acquired through the use of bills of ladings, tariffs and rate tenders as opposed to FAR-based contracting methods, the contracting officer shall authorize shipments on commercial bills of lading (CBL's). Government bills of lading (GBL's) may be used for international or noncontiguous domestic trade shipments or when otherwise authorized.

(b) Where transportation services are acquired through the use of bills of ladings, tariffs and rate tenders as opposed to FAR-based contracting methods The contract administration office (CAO) shall

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ensure that instructions to contractors result in the most efficient and economical use of transportation services and equipment. Transportation personnel will assist and provide transportation management expertise to the CAO. Specific responsibilities and details on transportation management are located in the Federal Management Regulation at 41 CFR parts 102-117 and 102-118. (For the Department of Defense, DoD 4500.9-R, Defense Transportation Regulation.)

* * * * *

(h) When a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on bills of lading, or on other shipping documents prescribed by Military Traffic Management Command in the case of seavan containers, either at the direction of or furnished by the CAO or the appropriate agency transportation office.

7. Revise section 47.103 and add sections 47.103-1 and 47.103-2 to read as follows:

47.103 Transportation Payment and Audit Regulation.

47.103-1 General.

(a) (1) Regulations and procedures governing the bill of lading, documentation, payment, and audit of transportation services acquired by the United States Government are prescribed in 41 CFR part 102-118, Transportation Payment and Audit.

(2) For DoD shipments, corresponding guidance is in DoD 4500.9-R, Defense Transportation Regulation, Part II.

(b) Under 31 U.S.C. 3726, all agencies are required to establish a prepayment audit program. For details on the establishment of a prepayment audit, see 41 CFR part 102-118.

47.103-2 Contract clause.

Complete and insert the clause at 52.247-67, Submission of Transportation Documents for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

8. Revise sections 47.104 through 47.104-5 to read as follows:

47.104 Government rate tenders under sections 10721 and 13712 of the Interstate Commerce Act (49 U.S.C. 10721 and 13712).

(a) This subpart explains statutory authority for common carriers subject to the jurisdiction of the Surface Transportation Board (motor carrier, water carrier, freight forwarder, rail carrier) to offer to transport persons or property for the account of the United States without charge or at "a rate reduced from the applicable commercial rate". Reduced rates are offered in a Government rate tender. Additional information for civilian agencies is available in the Federal Management Regulation (41 CFR chapter 102) and for DoD in the Defense Transportation Regulation (DoD 4500.9-R).

(b) Reduced rates offered in a Government rate tender are authorized for transportation provided by a rail carrier, for the movement of household goods, and for movement by or with a water carrier in noncontiguous domestic trade.

(1) For Government rate tenders submitted by a rail carrier, "a rate reduced from the applicable commercial rate" is a rate reduced from a rate regulated by the Surface Transportation Board.

[[Page 4006]]

(2) For Government rate tenders submitted for the movement of household goods, "a rate reduced from the applicable commercial rate" is a rate reduced from a rate contained in a published tariff subject to regulation by the Surface Transportation Board.

(3) For Government rate tenders submitted for movement by or with a water carrier in noncontiguous domestic trade, "a rate reduced from the applicable commercial rate" is a rate reduced from a rate contained in a published tariff required to be filed with the Surface Transportation Board.

47.104-1 Government rate tender procedures.

(a) 49 U.S.C. 10721 and 13712 rates are published in Government rate tenders and apply to shipments moving for the account of the Government on--

(1) Commercial bills of lading endorsed to show that total transportation charges are assignable to, and will be reimbursed by, the Government (see the clause at 52.247-1, Commercial Bill of Lading Notations); and

(2) Government bills of lading.

(b) Agencies may negotiate with carriers for additional or revised 49 U.S.C. 10721 and 13712 rates in appropriate situations. Only personnel authorized in agency procedures may carry out these negotiations. The following are examples of situations in which negotiations for additional or revised 49 U.S.C. 10721 and 13712 rates may be appropriate:

(1) Volume movements are expected.

(2) Shipments will be made on a recurring basis between designated places, and substantial savings in transportation costs appear possible even though a volume movement is not involved.

(3) Transit arrangements are feasible and advantageous to the Government.

47.104-2 Fixed-price contracts.

(a) F.o.b. destination. 49 U.S.C. 10721 and 13712 rates do not apply to shipments under fixed-price f.o.b. destination contracts (delivered price).

(b) F.o.b. origin. If it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of 49 U.S.C. 10721 and 13712 rates.

47.104-3 Cost-reimbursement contracts.

(a) 49 U.S.C. 10721 and 13712 rates may be applied to shipments other than those made by the Government if the total benefit accrues to

the Government, i.e., the Government shall pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, 49 U.S.C. 10721 and 13712 rates may be used for shipments moving on commercial bills of lading in cost reimbursement contracts under which the transportation costs are direct and allowable costs under the cost principles of Part 31.

(b) 49 U.S.C. 10721 and 13712 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower 49 U.S.C. 10721 and 13712 rates in cost-reimbursement contracts as described in paragraphs (a) and (b) of this subsection.

(d) Contracting officers shall--

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation officer designated to furnish support and guidance when using Government rate tenders.

(e) The transportation office shall--

(1) Advise and assist contracting officers and contractors; and

(2) Make available to contractors the names of carriers that provide service under 49 U.S.C. 10721 and 13712 rates, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at 52.247-1, Commercial Bill of Lading Notations).

47.104-4 Contract clauses.

(a) In order to ensure the application of 49 U.S.C. 10721 and 13712 rates, where authorized (see 47.104(b)), insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be--

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or

(2) Fixed-price f.o.b. origin contracts (other than contracts at or below the simplified acquisition threshold) (see 47.104-2(b) and 47.104-3).

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold when it is contemplated that the delivery terms will be f.o.b. origin.

47.104-5 Citation of Government rate tenders.

When 49 U.S.C. 10721 and 13712 rates apply, transportation offices or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading.

47.105 [Amended]

9. Amend section 47.105 in the last sentence of paragraph (b) by removing the words "appropriate area headquarters of the".

10. Amend section 47.200 by revising paragraphs (b) (3), (d), and (e) to read as follows:

47.200 Scope of subpart.

* * * * *

(b) * * *

(3) Household goods for which rates are negotiated under 49 U.S.C. 1072 and 13712; or

* * * * *

(d) The procedures in this subpart are applicable to the transportation of household goods of persons being relocated at Government expense except when acquired--

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR chapter 302);

(2) By DoD under DoD 4500.9-R, Defense Transportation Regulation; or

(3) Under 49 U.S.C. 10721 and 13712 rates.

(e) Additional guidance for DoD acquisition of freight and passenger transportation is in the Defense Transportation Regulation.

47.201 [Amended]

11. Amend section 47.201 by removing the definition "Household goods".

47.203 [Reserved]

12. Remove and reserve section 47.203.

13. Amend section 47.207-9 by revising the last sentence of paragraph (a) to read as follows:

47.207-9 Annotation and distribution of shipping and billing documents.

(a) * * * See 41 CFR part 102-118, Transportation Payment and Audit.

* * * * *

14. Add sections 47.207-10 and 47.207-11 to read as follows:

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47.207-10 Discrepancies incident to shipments.

Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carrier and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in 41 CFR parts 102-117 and 102-118. (For the Department of Defense (DoD), see DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 210.)

47.207-11 Volume movements within the continental United States.

(a) For purposes of contract administration, a volume movement is--

(1) In DoD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one

destination point or area; and

(2) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DoD activities report to the Military Traffic Management Command (MTMC) under DoD 4500.9-R, Defense Transportation Regulation. Civilian agencies report to the local office of GSA's Office of Transportation (see <http://www.fss.gsa.gov>

(click on Related Links, FSS contracts)).

15. Add sections 47.208, 47.208-1 and 47.208-2 to read as follows:

47.208 Report of shipment (REPSHIP).

47.208-1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

47.208-2 Contract clause.

The contracting officer shall insert the clause at 52.247-68, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

16. Amend section 47.303-1 by revising paragraphs (a) (4) and (b) (5) (v) to read as follows:

47.303-1 F.o.b. origin.

(a) * * *

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

17. Amend section 47.303-3 by revising paragraph (a) (1) (iv) to read

as follows:

47.303-3 F.o.b. origin, freight allowed.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

18. Amend section 47.303-4 by revising paragraph (a) (1) (iv) to read as follows:

47.303-4 F.o.b. origin, freight prepaid.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

19. Amend section 47.303-5 by revising paragraph (a) (1) (iv); and in paragraph (c) by removing "The contracting officer shall insert" and adding "Insert" in its place. The revised text reads as follows:

47.303-5 F.o.b. origin, with differentials.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract; and

* * * * *

47.303-13 [Amended]

20. Amend section 47.303-13 in paragraph (a) by removing "C.&f. destination" and adding "C.&f. (cost & freight) destination" in its place.

47.303-15 [Amended]

21. Amend section 47.303-15 in paragraph (b) (3) by removing the word "Government".

47.305-3 [Amended]

22. Amend section 47.305-3 in the first sentence of the introductory paragraph by removing ", and to 42.1404-2, where the use of bills of lading, parcel post, and indicia mail is prescribed".

47.305-6 [Amended]

23. Amend section 47.305-6 by--
- a. Removing "c.i.f. destination" from the introductory text of paragraph (a)(4) and adding "c.i.f. (cost, insurance, freight) destination" in its place;
 - b. Removing "MILSTAMP" from paragraph (f)(1)(i) and adding "DoD 4500.9-R, Defense Transportation Regulation, Part II," in its place; and revising the parenthetical in paragraph (f)(1)(ii) to read "(see DoD 4500.9-R, Defense Transportation Regulation, Part II)"; and
 - c. Removing "(see MILSTAMP at 47.301-3)" from paragraph (g).

47.305-13 [Amended]

24. Amend section 47.305-13 in paragraph (b)(3) by removing the last sentence.

47.504 [Amended]

25. Amend section 47.504 in paragraph (a) by removing "of the Panama Canal Commission or".

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PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES 52.242-10, 52.242-11, AND 52.242-12 [RESERVED]

26. Remove and reserve sections 52.242-10, 52.242-11, and 52.242-12.

52.247-1 [Amended]

27. Amend section 52.247-1 by revising the date of the clause to read "(Date)"; and by removing the word "If" from the introductory paragraph of the clause and adding "When" in its place.

52.247-3 [Amended]

28. Amend section 52.247-3 by--
- a. Revising the date of the clause to read "(Date)";
 - b. Removing "Interstate Commerce Commission" from the end of paragraph (a) of the clause and adding "Surface Transportation Board" in its place; and
 - c. Removing "(see 49 CFR 1048)" from the second sentence of paragraph (b)(2) of the clause and adding "(see Subpart B of 49 CFR part 372)" in its place.

29. Amend section 52.247-29 by revising the date of the clause and paragraphs (a)(4) and (b)(5)(v) to read as follows:

52.247-29 F.o.b. Origin.

* * * * *

F.O.B. ORIGIN (DATE)

(a) * * *

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier

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Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

(End of clause)

30. Amend section 52.247-30 by revising the date of the clause and paragraph (b) (5) (v) to read as follows:

52.247-30 F.o.b. Origin, Contractor's Facility.

* * * * *

F.O.B. ORIGIN, CONTRACTOR'S FACILITY (DATE)

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

(End of clause)

31. Amend section 52.247-31 by revising the date of the clause and paragraphs (a) (1) (iv) and (b) (5) (v) to read as follows:

52.247-31 F.o.b. Origin, Freight Allowed.

* * * * *

F.O.B. ORIGIN, FREIGHT ALLOWED (DATE)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

(End of clause)

32. Amend section 52.247-32 by revising the date of the clause and paragraph (a) (1) (iv); removing the word "commercial" from the first

sentence of the introductory text of paragraph (b) (5); and revising paragraph (b) (5) (v) to read as follows:

52.247-32 F.o.b. Origin, Freight Prepaid.

* * * * *

F.O.B. ORIGIN, FREIGHT PREPAID (DATE)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

* * * * *

(End of clause)

33. Amend section 52.247-33 by revising the date of the clause and paragraphs (a) (1) (iv), (b) (5) (v), and the second sentence of (c) (2) to read as follows:

52.247-33 F.o.b. Origin, with Differentials.

* * * * *

F.O.B. ORIGIN, WITH DIFFERENTIALS (DATE)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the Government"; and

* * * * *

(c) (1) * * *

(2) * * * If, at the time of shipment, the Government specifies a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight) as a separate

reimbursable item on the Contractor's invoice for the supplies.

* * * * *

(End of clause)

52.247-38 [Amended]

34. Amend section 52.247-38 by revising the date of the clause to read "(DATE)"; and in paragraph (b) (2) of the clause by adding "or other transportation receipt" after the word "lading".

52.247-43 [Amended]

35. Amend section 52.247-43 by revising the date of the clause to read "(DATE)"; and removing the word "Government" from paragraph (b) (3) of the clause.

52.247-52 [Amended]

- 36. Amend section 52.247-52 by--
 - a. Revising the date of the clause to read "(DATE)";
 - b. Removing "49 CFR 170-179" from paragraph (a) (3) (vi) of the clause and adding "49 CFR 173.403" in its place;
 - c. Removing "MILSTAMP" from paragraph (f) (1) of the clause and adding "transportation responsibilities under DoD 4500.9-R, Defense Transportation Regulation," in its place; and
 - d. Removing the word "commercial" from paragraphs (h) (1) and (h) (2) of the clause.

52.247-64 [Amended]

37. Amend section 52.247-64 by revising the date of the clause to read "(DATE)"; and removing "of the Panama Canal Commission or" from paragraph (e) (1) of the clause.

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- 38. Amend section 52.247-67 by--
 - a. Revising the section heading;
 - b. Revising the clause heading, paragraph (a) (1) introductory text, and (a) (2), and adding paragraph (a) (3);
 - c. Revising paragraphs (b) and (c); and
 - d. Removing the word "Contractor" from the first sentence of paragraph (d) and paragraph (d) (1) and adding "specified agency" in its place. The revised text reads as follows:

52.247-67 Submission of Transportation Documents for Audit.

* * * * *

SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (DATE)

(a) (1) In accordance with paragraph (a) (2) of this clause, the Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid--

* * * * *

(2) Cost-reimbursement Contractors shall only submit for audit

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those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(3) Contractors shall submit the above-referenced transportation documents to--

(To be filled in by Contracting Officer)

(b) The agency designated in paragraph (a)(3) of this clause shall forward original copies of paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package, for postpayment audit to the--General Services Administration, ATTN: FBA, 1800 F Street, NW., Washington, DC 20405. The specified agency shall include the paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly. The specified agency shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

* * * * *

(End of clause)

39. Section 52.247-68 is added to read as follows:

52.247-68 Report of Shipment (REPSHIP).

As prescribed in 47.208-2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (DATE)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic (i.e., within the United States, excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii, within Alaska or Hawaii, respectively) destination (other than a port for export). The notice shall be transmitted by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. The bill of lading or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving

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transportation officer. This document shall be prominently identified by the Contractor as being a "Report of Shipment" or "REPSHIP FOR T.O."

(a) Message example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY*
IN CAR NO. XX 123456**-GBL***-C98000031****
CONTRACT DLA-----ETA*****-JUNE 5 JONES & CO., JERSEY CITY, N.J.
*Name of rail carrier, trucker, or other carrier.
**Vehicle identification.
***Bill of lading.
****If not shipped by BL, identify lading document and state whether paid by contractor.
*****Estimated time of arrival.
(End of clause)

PART 53--FORMS

40. Revise section 53.247 to read as follows:

53.247 Transportation (Commercial Bill of Lading).

The commercial bill of lading is the preferred document for the transportation of property, as specified in 47.101.

[FR Doc. 04-1507 Filed 1-26-04; 8:45 am]