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DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

48 CFR Part 247

RIN 0750-AI38

**Defense Federal Acquisition Regulation: Ocean Transportation by
U.S.-Flag Vessels (DFARS Case 2014-D012)**

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text regarding contracting officer responsibilities, when purchasing ocean transportation services, that are procedural in nature.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Fallon, telephone 571-372-6098.

SUPPLEMENTARY INFORMATION:

I. Discussion

DoD is revising DFARS 247.572 and 247.573 to include a statement of delegated authority and to remove guidance that is internal to DoD concerning procedures contracting officers must follow when purchasing ocean transportation services. The

internal DoD guidance removed from DFARS will be addressed in revised DFARS Procedures, Guidance and Information (PGI) 247.573.

II. Publication of this final rule for public comment is not required by statute.

"Publication of proposed regulations," 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the change is not substantive and only modifies the internal operating procedures of DoD.

III. 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). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, or 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.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 247

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 247 is amended as follows:

PART 247—TRANSPORTATION

1. The authority citation for 48 CFR part 247 continues to read as follows:

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

2. Section 247.572 paragraph (a) is revised to read as follows:

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors shall transport supplies, as defined in the clause at 252.247-7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods; or

(3) The proposed freight charges are excessive or unreasonable.

* * * * *

3. Section 247.573 heading is revised and new text added to read as follows:

247.573 General.

(a) Delegated authority. Pursuant to 10 U.S.C. 2631(a) and Secretary of Defense Memorandum dated February 7, 2012, (see PGI 245.573) the authority to make determinations of excessive ocean liner rates and excessive charter rates is delegated to—

(1) The Commander, United States Transportation Command, for excessive ocean liner rate determinations; and

(2) The Secretary of the Navy for excessive charter rate determinations.

(b) Procedures. (1) Contracting officers shall follow the procedures at PGI 247.573(b)(1) when purchase of ocean transportation services is incidental to a contract for supplies, services, or construction.

(2) Contracting officers shall follow the procedures at PGI 247.573(b)(2) when direct purchase of ocean transportation services is the principal purpose of the contract.

(3) Agency and department procedures relating to annual reporting requirements of information received from offerors in response to solicitation provision 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise of Noncontiguous Trade, are found at PGI 247.573(b)(3).

(4) Procedures are provided at PGI 247.573(b)(4) to accomplish security background checks pursuant to clause 252.247-7027, Riding Gang Member Requirements.

247.573-1, 247.573-2 and 247.573-3 [Removed]

4. Remove sections 247.573-1, 247.573-2, and 247.573-3.

247.574 [Amended]

5. Section 247.574 is amended by—

- a. In paragraph (e), removing the last two sentences; and
- b. In paragraph (f), removing the last sentence.

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