

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 247 and 252**

RIN 0750-AG30

**Defense Federal Acquisition Regulation Supplement; Motor Carrier Fuel Surcharge (DFARS Case 2008-D040)**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 884 of the National Defense Authorization Act for Fiscal Year 2009. Section 884 requires DoD to ensure that fuel-related adjustments in contracts for carriage are passed through to the person bearing the cost of the fuel to which the adjustment relates.

**DATES:** *Effective date:* July 29, 2009.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before September 28, 2009, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008-D040, using any of the following methods:

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

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2008-D040 in the subject line of the message.

○ *Fax:* 703-602-7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, 703-602-0302.

**SUPPLEMENTARY INFORMATION****A. Background**

Section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) requires DoD to take

appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts that provide for a fuel-related adjustment, any such adjustment is passed through to the person who bears the cost of the fuel to which the adjustment relates. These actions include the insertion of a clause, with appropriate flow-down requirements, in all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services providing for a fuel-related adjustment. This interim rule adds a contract clause at DFARS 252.247-7003 to implement the statutory requirement. The interim rule also adds this new clause to paragraphs (b) and (c) of DFARS 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. For administrative purposes only, this addition to 252.212-7001 is shown with the amendments to 252.212-7001 made by DFARS Case 2008-D003, published elsewhere in this edition of the **Federal Register**.

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 has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to establish a DoD contract clause addressing the statutory requirement for fuel-related contract adjustments to be passed to the entity bearing the cost of the fuel. The legal basis for the rule is Section 884 of Public Law 110-417. The rule will apply to motor carriers, brokers, and freight forwarders providing or arranging truck transportation services under DoD contracts and subcontracts. The number of small entities to which the rule will apply is unknown at this time. However, DoD anticipates that the rule will benefit small entities by ensuring that fuel-related contract adjustments are passed to the appropriate party.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008-D040.

**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.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 884 requires DoD to take appropriate actions to ensure that, to the maximum extent practicable, any fuel-related adjustment in a contract for carriage is passed through to the person who bears the cost of the fuel to which the adjustment relates. These actions include the use of a clause, with appropriate flow-down requirements, in all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services providing for a fuel-related adjustment. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Parts 247 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 247 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 247 and 252 continues to read as follows:

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

**PART 247—TRANSPORTATION**

■ 2. Section 247.207 is added to read as follows:

**247.207 Solicitation provisions, contract clauses, and special requirements.**

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 in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment. This clause implements Section 884 of the National Defense

Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.247-7003 is added to read as follows:

### 252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

As prescribed in 247.207, use the following clause:

#### PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUL 2009)

(a) The Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in all subcontracts with motor carriers, brokers, or freight forwarders. (End of clause)

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 390

#### Regulatory Guidance on the Definition of “Principal Place of Business”

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of regulatory guidance.

**SUMMARY:** The FMCSA announces regulatory guidance concerning its definition of “principal place of business.” The regulatory guidance is presented in a question-and-answer format and is generally applicable to motor carrier operations subject to the Federal Motor Carrier Safety Regulations. No prior interpretations or regulatory guidance concerning the term “principal place of business,” whether published or unpublished may be relied upon as authoritative if they are inconsistent with the guidance published today. This guidance will provide the motor carrier industry and Federal, State and local law enforcement officials with uniform information for use in determining which locations may be designated by a motor carrier as its principal place of business.

**DATES: Effective Date:** This regulatory guidance is effective on August 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Mahorney, Chief, Enforcement and Compliance Division, (202) 493-0001. Federal Motor Carrier Safety Administration, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m. EST, Monday through Friday, except legal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators. (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate.” (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

This document provides regulatory guidance to the public with respect to the definition of “principal place of business” in 49 CFR 390.5 of the Federal Motor Carrier Safety Regulations (FMCSRs).

Members of the motor carrier industry and other interested parties may also access the guidance in this document through the FMCSA’s Internet site at: <http://www.fmcsa.dot.gov>.

Specific questions addressing any of the interpretive material published in this document should be directed to the contact person listed above or the FMCSA Division Office in each State.

#### Basis for This Guidance

The regulatory guidance in this notice responds to recurring questions FMCSA has received concerning the definition of “principal place of business” in 49 CFR 390.5: What location may a motor carrier designate as its principal place of business?

Section 390.5 defines principal place of business as “the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.”

The original definition of “principal place of business” in § 390.5 required that the motor carrier designate a single location where records required by Parts 387, 391, 394, 395, and 396 would be maintained. However, other provisions of the regulations permitted certain records to be maintained at other locations. (53 FR 18054). In 1993, the definition was revised to remove part 394 from the regulatory text and to add part 390. (58 FR 33777). In 1995, the definition was revised again. However, it still required that the location designated by the carrier be a location where records were maintained and available for inspection. (60 FR 38744). The current definition of “principal place of business” was adopted in 1998 in order to allow motor carriers with multiple terminals and business locations to maintain records, such as driver records of duty status or vehicle maintenance records, at a location where activity related to the records took place rather than at a company’s headquarters. The definition was revised to accompany a new § 390.29 allowing motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices, driver work reporting stations or the principal place of business. Nonetheless, it was still anticipated that in most cases the “principal place of business” would also be the company headquarters. (63 FR 33254).

It has been the position of FMCSA and its predecessor agencies that a