

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR 165 as follows:

#### PART 165—REGULATER NAVIGATION AREAS AND LIMITED ACCESS AREAS

(1) The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

(2) Add § 165.T08-0059 to read as follows:

#### § 165.T08-0059 Safety Zone; Osage River, Mile 016.8 to 017.2.

(a) *Location.* The following area is a safety zone: all waters of the Osage River, Mile 016.8 to 017.2 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 10 p.m. until 10:30 p.m. CDT on July 4, 2010.

(c) *Periods of Enforcement.* This rule will be enforced from 10 p.m. until 10:30 p.m. CDT on July 4, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at (314) 269-2332.

(3) All persons and vessels must comply with the instruction of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 13, 2010.

**S.L. Hudson,**

*Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.*

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#### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 4 and 52

[**FAR Case 2009-027; Docket 2010-0091; Sequence 1**]

**RIN: 9000-AL60**

#### Federal Acquisition Regulation; FAR Case 2009-027, Personal Identity Verification of Contractor Personnel

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the

Federal Acquisition Regulation (FAR) to provide additional regulatory coverage in Subpart 4.13 and in clause 52.204-9 to reinforce the requirement of collecting from contractors all forms of Government provided identification once they are no longer needed to support a contract.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before July 23, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2009-027 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009-027" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009-027". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009-027" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2009-027, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT** Ms. Suzanne Neurauder, Procurement Analyst, at (202) 219-0310 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case 2009-027.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Department of Defense Inspector General Audit Report No. D02009-005, titled Controls Over the Contractor Common Access Card (CAC) Life Cycle, was performed to determine whether Government controls were in place over contractor CACs. A CAC is the DoD term for a Personal Identity Verification (PIV) card. A PIV card is required in order to gain access to a Federal facility. The most prevalent issue of the audit report, and the one that the Councils are undertaking with this case, was that the

CACs were not adequately accounted for after contract performance.

The Councils are proposing to amend the FAR by inserting new paragraphs (d)(1) and (2) under section 4.1301, Policy. Paragraph (d)(1) will provide policy on recovering PIVs. The text in paragraph (d)(1) states that agency procedures shall ensure that Government contractors account for all forms of Government-provided identification issued to Government contractors under a contract, and return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the agency: when no longer needed for contract performance; upon completion of a contractor employee's employment; upon contract completion or termination. The text in paragraph (d)(2) states that the contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements.

The Councils are also proposing to modify FAR clause 52.204-9, Personal Identity Verification of Contractor Personnel to be consistent with Part 4.

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 requirements of the actions required and the clause are not significantly burdensome. Currently, it is a common business practice to have procedures in place to revoke/return access cards when no longer in use by the contractor. 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 4 and 52 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 2009-027), 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. Chapter 35, *et seq.*

### List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: May 17, 2010.

**Edward Loeb,**

*Acting Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4 and 52 as set forth below:

1. The authority citation for 48 CFR parts 4 and 52 continues 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 4—ADMINISTRATIVE MATTERS

2. Amend section 4.1301 by adding paragraphs (d)(1) and (d)(2) to read as follows:

#### 4.1301 Policy.

\* \* \* \* \*

(d)(1) Agency procedures shall ensure that Government contractors account for all forms of Government-provided identification issued to Government contractors under a contract, *i.e.*, the Personal Identity Verification (PIV) cards or other similar badges, and shall ensure that contractors return such identification to the issuing agency as soon as any of the following occurs, unless otherwise determined by the agency:

- (i) When no longer needed for contract performance.
- (ii) Upon completion of a contractor employee's employment.
- (iii) Upon contract completion or termination.

(2) The contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.204-9 by:

- a. Revising the date of the clause;
- b. Redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c); and revising the newly designated paragraph (d).

The added and revised text reads as follows:

#### 52.204-9 Personal Identity Verification of Contractor Personnel.

\* \* \* \* \*

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (DATE)

(b) The Contractor shall account for all forms of Government-provided

identification issued to the Contractor under this contract. The contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- (1) When no longer needed for contract performance.
- (2) Upon completion of the Contractor employee's employment.
- (3) Upon contract completion or termination.

(c) The contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(End of clause)

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## DEPARTMENT OF ENERGY

### 48 CFR Parts 904, 952 and 970

RIN 1991-AB85

### Acquisition Regulation: Access to and Ownership of Records

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to revise the applicability and the policies and procedures involving the access to and ownership of records. Much work at DOE facilities is performed by contractor and subcontractor personnel and involves hazardous materials or the possibility of exposure to radioactive materials. It is necessary for the contractors and subcontractors to maintain extensive records for the Government involving these workers and processes, in particular, personnel; facility; occupational safety and health; environment; and medical records. DOE is proposing to amend these clauses for consistent inclusion in all applicable contracts, not just management and operating (M&O) contracts, based on the type of work being performed, to ensure preservation and Government ownership of records. Additionally, the proposed revisions address