

authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk

and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before may take effect, the agency promulgating the rule a rule must submit a report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective December 27, 2010.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 12, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2010-26962 Filed 10-22-10; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 212, 247, and 252

**RIN 0750-AG81**

#### Defense Federal Acquisition Regulation Supplement; Defense Cargo Riding Gang Members (DFARS Case 2007-D002)

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

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

**SUMMARY:** DoD is issuing an interim rule to amend the Defense Federal

Acquisition Regulation Supplement (DFARS) to implement section 3504 of the National Defense Authorization Act for Fiscal Year 2009. Section 3504 addresses requirements that apply to riding gang members and DoD-exempted individuals who perform work on U.S.-flag vessels under DoD contracts for transportation services. Section 3504 amended section 1018 of the National Defense Authorization Act for Fiscal Year 2007.

**DATES:** *Effective date:* October 25, 2010.

*Comment date:* Comments on this interim rule should be submitted in writing to the address shown below on or before December 27, 2010 to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2007-D002, 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 2007-D002 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

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

To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Overstreet, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-0311; facsimile 703-602-0350. Please cite DFARS Case 2007-D002.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This interim rule implements section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 3504 amended section 1018 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

Section 3504 addresses requirements that apply to riding gang members and DoD-exempted individuals who perform work on U.S.-flag vessels under DoD contracts for transportation services

documented under chapter 121, title 46 U.S.C. Such riding gang members must hold a U.S. Merchant Mariner's Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title. Section 3504 also permits exemptions for certain individuals, provided a background check of the individual is conducted.

U.S. law requires crews of predominantly U.S. citizens aboard U.S.-flag vessels. For many years, foreign nationals have been utilized on U.S.-flag vessels as members of "riding gangs" who perform work beyond standard vessel maintenance and repair while ships are underway. In 2006, Congress prohibited the use of such foreign riding personnel on board vessels that are under contract with the DoD unless the DoD complied with certain limitations. (The Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109-241.) The exceptions provided to DoD in 2006 did not match those applicable to other U.S.-flag vessels. The Defense Authorization Act of FY 2009 made it clear that the exceptions available to DoD are complete exemptions both from the DoD-specific riding gang limitations and those generally applicable to U.S.-flag vessels.

Contracting officers are encouraged to apply this rule to the maximum extent practicable to existing contracts, consistent with FAR 1.108(d).

## II. Executive Order 12866

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

## III. 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 provide authorization, restrictions, and exemptions for the use of riding gang members on U.S.-flag vessels under charter or contract to DoD for the carriage of DoD cargo. The requirements of the rule will apply to entities interested in receiving DoD contracts for carriage of DoD cargo.

The rule requires the contractor to ensure each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title. Any individual who is exempt

from these requirements must pass a DoD background check before going aboard the vessel. With regard to these exempt individuals, the contractor shall submit the name and other necessary identifying information for a background check to the approving official specified in the contract.

DoD invites comments from small businesses and other interested parties on the impact of this rule on small entities. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2007-D002) in correspondence.

## IV. 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.*

## V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary to ensure contracts are compliant with section 3504 of the DoD Appropriations Act for Fiscal Year 2009 (Pub. L. 110-417), which requires contractors to ensure that each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title. Implementing language must be published as quickly as possible to ensure that screening and security requirements are met for riding gang members who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under chapter 121, title 46 U.S.C. Pursuant to 41 U.S.C. 418b, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 212, 247, and 252

Government procurement.

#### Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 212, 247, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 247, and 252 continues to read as follows:

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

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by adding paragraph (f)(xv) to read as follows:

### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) \* \* \*

(xv) Use the clause at 252.247-7027, Riding Gang Member Requirements, as prescribed in 247.574(f).

## PART 247—TRANSPORTATION

■ 3. Section 247.570 is amended by revising paragraph (a) to read as follows:

### 247.570 Scope.

\* \* \* \* \*

(a) Implements—

(1) The Cargo Preference Act of 1904 ("the 1904 Act"), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam; and

(3) Section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), which addresses requirements that apply to riding gang members and DoD-exempted individuals (see 252.247-7027(c)) who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under chapter 121, title 46 U.S.C.

\* \* \* \* \*

■ 4. Section 247.572 is amended by adding paragraph (e) to read as follows:

### 247.572 Policy.

\* \* \* \* \*

(e) In accordance with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), DoD may not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C., unless the contract contains the clause at 252.247-7027.

■ 5. Section 247.574 is amended by adding paragraph (f) to read as follows:

**247.574 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(f) Use the clause at 252.247–7027, Riding Gang Member Requirements, in solicitations and contracts for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Section 252.247–7027 is added to read as follows:

**252.247–7027 Riding gang member requirements.**

As prescribed in 247.574(f), use the following clause:

**RIDING GANG MEMBER REQUIREMENTS (OCT 2010)**

(a) *Definition.* *Riding gang member*, as used in this clause, has the same definition as “riding gang member” in title 46 U.S.C. 2101.

(b) *Requirements relating to riding gang members.* Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner’s Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(c) *Exemption.*

(1) An individual is exempt from the requirements of paragraph (b) of this clause and shall not be treated as a riding gang member for the purposes of section 8106 of title 46, if that individual is on a vessel for purposes other than engaging in the operation or maintenance of the vessel and is—

(i) One of the personnel who accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

(ii) One of the force protection personnel of the vessel;

(iii) A specialized repair technician; or

(iv) An individual who is otherwise required by the Secretary of Defense or designee to be aboard the vessel.

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel. With regard to these exempt individuals, the Contractor shall submit the name and other necessary identifying information for a background check to the approving official specified in the contract. The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner’s Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title.

(3) An individual exempted under paragraph (c)(1) of this clause is not treated as a riding gang member and shall not be counted as an individual in addition to the crew for the purposes of 46 U.S.C. 3304.

(End of clause)

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BILLING CODE 5001–08–P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 219 and 252**

[DFARS Case 2009–D002]

**Defense Federal Acquisition Regulation Supplement; Electronic Subcontracting Reporting System**

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

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

**SUMMARY:** This interim rule amends the Defense Acquisition Regulation Supplement (DFARS) to conform to the Federal Acquisition Regulation (FAR) by providing Department of Defense (DoD)-specific policy and procedures related to the Electronic Subcontracting Reporting System (eSRS). The FAR has been revised to reflect use of the eSRS, rather than Standard Form 294—Subcontract Report for Individual Contracts, and Standard Form 295—Summary Subcontract Report, for submission of small business subcontract reports.

**DATES:** *Effective date:* October 25, 2010.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before December 27, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009–D002, 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 2009–D002 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra R. Freeman, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

All comments received will be posted to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cassandra R. Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, Telephone 703–602–8383;

facsimile(703)602–0350. Please cite DFARS Case 2009–D002.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This DFARS case is the companion case to FAR Case 2005–040 Electronic Subcontracting Reporting System. This DFARS interim rule amends sections 219.708 and 252.219 to provide DoD-specific procedures and policies related to DoD’s implementation of eSRS.

**B. Regulatory Flexibility Act**

DoD does not expect this 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 small businesses are not required to have subcontracting plans and, therefore, are not required to use eSRS to submit reports on their progress in achieving the goals in those plans.

Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 DFARS Case 2009–D002 in correspondence.

**C. Paperwork Reduction Act**

This interim rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This rule provides DoD instructions on how to submit reports that are already required by the FAR and are covered under Office of Management and Budget Clearance Numbers 9000–0006 and 9000–0007.

**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. The FAR already requires the use of eSRS for submission of subcontracting reports. This interim rule provides to DoD contractors the DoD-specific policies and procedures that they must follow in order to be able to submit subcontract reports using eSRS, as required by the FAR.