

**DEPARTMENT OF DEFENSE****Office of the Secretary****48 CFR Part 5432**

[DOD-2008-DARS-0006]

RIN 0790-A105

**Transporter Proof of Delivery****AGENCY:** Department of Defense.**ACTION:** Proposed rule.

**SUMMARY:** This rule establishes a clause allowing the Government to require that contractors provide Transporter Proof of Delivery (TPD) when requested. As used in this rule, TPD means a commercial document that is generated by the contractor or the contractor's transporter of supplies and is signed by the Government customer in order to document delivery of supplies under a contract or order.

**DATES:** Consideration will be given to all comments received on or before July 28, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Christine Bond Jawish, (703) 767-8451.

**SUPPLEMENTARY INFORMATION:****Executive Summary****I. Purpose of This Regulatory Action**

Not all Defense Logistics Agency (DLA) customers provide acknowledgement of receipt, which can lead to payment problems and negatively impact auditability. The TPD clause provides a mechanism for procuring proof of delivery from affected contractors, if the receiving

activity has not acknowledged receipt of material. TPD documentation will be used as evidential matter in support of the receipt and acceptance functions, which will facilitate the payment process and support timely payment, thus decreasing Prompt Payment Act interest charges against the Government. It is estimated that on an annual basis, DLA pays approximately \$800,000 in interest due to late payment.

The legal authority for the regulatory action is 41 U.S.C. 1303, the general authority for Federal Acquisition Regulations system rule making.

**II. Summary of the Major Provisions of This Regulatory Action**

This regulatory action provides for issuance of a TPD clause that requires contractors to submit TPD information when requested. The clause will be applicable to solicitations and awards for acquisitions for supplies issued by DLA Aviation, DLA Land and Maritime, and DLA Troop Support when contract deliveries will be made directly to DLA customers, with the following exceptions: Acquisitions requiring DCMA Inspection and Acceptance, shipments for overseas destinations or to containerization consolidation points, and acquisitions conducted under the Subsistence Total Order and Receipt Electronic System (STORES), Defense Medical Logistics Standard Support (DMLSS), Industrial Prime Vendor (IPV), or Integrated Logistics Partner (ILP) programs.

TPD will normally be requested from a contractor only when it is known or appears likely, based on current or past experience, that a customer receiving supplies under the applicable contract or order will not provide material receipt acknowledgment (MRA) in a timely manner so as to support payment in accordance with Prompt Payment Act requirements.

The clause states that when the Government requests TPD, the request and response will be made using electronic mail and requires the contractor to submit the requested TPD documentation in a prescribed digital format. It is anticipated that contractors will either have or will easily be able to collect the TPD documentation in the normal course of business.

**III. Cost and Benefits of This Regulatory Action**

It is anticipated that costs related to use of the clause will not be significant. The information to be submitted under the clause is expected to be required only on an exception basis, is expected to be readily available to the contractors subject to the clause, and will normally

be provided using electronic means (digital attachments to electronic mail).

Use of the clause will facilitate the contract payment process in instances where the normal system for receipt and acceptance is not functioning in a timely manner. It is anticipated that facilitation of the contract payment process will result in a decrease in Prompt Payment Act interest accrual and resulting payments to contractors by the Defense Logistics Agency.

**Regulatory Analysis**

*Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"*

It has been determined that 48 CFR part 5432 is a significant regulatory action and has been reviewed by OMB.

*Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"*

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

*Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

The implementation of this rule will facilitate the receipt documentation process and enhance the accountability of DLA-provided goods, as well as provide a basis for more efficient and expeditious payments to affected contractors.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

Section 5432.2 of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated

collection techniques or other forms of information technology.

*Title:* Transporter Proof of Delivery.

*Type of Request:* Existing collection in use without an OMB Control Number.

*Number of Respondents:* 158,307.

*Responses per Respondent:* 1.

*Annual Responses:* 158,307.

*Average Burden per Response:* 10 minutes.

*Annual Burden Hours:* 26,385 hours.

*Needs and Uses:* Transporter Proof of Delivery documentation will be requested from a contractor when it is known or appears likely, based on current or past experience that a customer receiving supplies under the applicable contractor or order will not provide material receipt acknowledgment in a timely manner so as to support payment in accordance with Prompt Payment requirements.

*Affected Public:* Businesses or other for-profits.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Jasmeet Seehra.

Written comments and

recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Logistics Agency, ATTN: J71, Suite 3122, 8725 John Kingman Road, Fort Belvoir, VA 22060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

\* *Federal eRulemaking Portal:*

<http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency, ATTN: J71, Suite 3122, 8725 John Kingman Road, Fort Belvoir, VA 22060. POC is Christine Bond Jawish, 703-767-8451.

#### *Executive Order 13132, "Federalism"*

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

#### **List of Subjects in 48 CFR Part 5432**

Contract delivery receipt process.

Accordingly, title 48 CFR Chapter 54, is proposed to be amended to add part 5432 to read as follows:

#### **PART 5432—TRANSPORTER PROOF OF DELIVERY**

Sec.

5432.1 Payment documentation process.

5432.2 Transporter proof of delivery.

*Authority:* 41 U.S.C. 401 *et seq.*

#### **§ 5432.1 Payment documentation process.**

(a) *General.* (1) *Transporter proof of delivery* (TPD). (i) TPD is a commercial document generated by the contractor or the transporter of supplies and signed by the Government customer at time of delivery. TPD, in combination with adequate contractor documentation cross-referencing the TPD to the specific supplies provided, demonstrates customer receipt. This documentation allows the Government to initiate the acceptance and payment process.

(ii) TPD is not a substitute for any other receipt and acceptance documentation, such as the material receipt acknowledgement (MRA) or the Wide Area Workflow receiving report (RR) required from the DoD customer, but is a supplement to such documentation, and may be used to document receipt and as the basis for Government acceptance to pay the contractor's invoice in the absence of an MRA or RR. The exceptions to the requirement for contractors to submit payment requests and receiving reports in electronic form are listed at DFARS 232.7002, to include cases in which DoD is unable to receive payment requests or provide acceptance in electronic form.

(2) [Reserved].

(b) *Content of invoices.* (1) *TPD.* (i) DLA may accept supplies based on submission by the contractor of satisfactory documentation to demonstrate customer receipt of supplies (correct items(s) and correct quantities) under a specific contract or order in accordance with paragraph (a)(1) of this section.

(ii) If the customer has submitted a supply discrepancy report (SDR) or MRA discrepancy indicator, payment shall not be made until the discrepancy is resolved. If payment is made before the purchasing organization receives the SDR or MRA discrepancy indicator, the Government may pursue appropriate remedies, including those provided by § 5432.2.

(2) Reserved.

(c) *Authorization to pay.* (1) *TPD.* (i) *Application.* Contracting officers at DLA Aviation, DLA Land and Maritime, and DLA Troop Support shall insert the clause at § 5432.2, TPD, in solicitations and awards for supplies when contract deliveries will be made directly to DLA customers. The following exceptions apply:

(A) DCMA Inspection and Acceptance

(B) Shipments to overseas destinations or to containerization consolidation points; and

(C) Acquisitions conducted under the Subsistence Total Order and Receipt Electronic System (STORES), Defense Medical Logistics Standard Support (DMLSS), Industrial Prime Vendor (IPV), or Integrated Logistics Partner (ILP) programs.

(ii) Transporter proof of delivery procedural guidance: TPD will normally be requested from a contractor only when it is known or appears likely, based on current or past experience, that a customer receiving supplies under the applicable contract or order will not provide material receipt acknowledgement (MRA) in a timely manner so as to support payment in accordance with Prompt Payment requirements. The customer is still required to submit the MRA, and supply chains shall continue to ensure that follow up action is taken by appropriate personnel to obtain the MRA from the customer when it is not provided.

(2) Reserved.

#### **§ 5432.2 Transporter proof of delivery.**

Insert the Transporter Proof of Delivery clause in this section, when applicable in accordance with § 5432.1(a)(1)(i) and when either the clause at 48 CFR 52.232-25, Prompt Payment, or the clause at 48 CFR 52.212-4, Contract Terms and Conditions—Commercial Items, is used. (Beginning of Clause)

#### **TRANSPORTER PROOF OF DELIVERY (TPD) (DATE)**

(a) *Definition.* As used in this clause, transporter proof of delivery (TPD) means a commercial document that is generated by the Contractor or the Contractor's transporter of supplies and that is signed by the Government

customer in order to document delivery of supplies under this contract/order. Examples of TPD are United Parcel Service (UPS) or Federal Express (FEDEX) delivery tracking reports. TPD documentation must include a Government customer signature and, if practicable, clearly state the name of the Government customer who signed.

(b) When this clause is included in the contract or order, the Government may use TPD, in combination with adequate Contractor documentation cross-referencing the TPD to the specific supplies provided, as a basis for accepting the supplies. TPD with adequate supporting documentation satisfies the receipt report requirement and in non-fast payment contracts and orders allows the Government to initiate the payment process, if all other applicable payment conditions are satisfied.

(c) To facilitate the payment process, the Government may initiate a request for the Contractor to provide TPD. The Contractor shall provide TPD upon request by the Government. The Contractor shall provide TPD within 10 calendar days following request. The request and response will be made using electronic mail. The Contractor shall immediately notify the Government if

TPD is not available. The TPD documentation shall be a clear, readable, and accurate copy of the original and be provided in standard Portable Document File (PDF) or Joint Photographic Experts Group (JPEG) digital format, and must include the following:

(1) Government customer signature and, if practicable, clearly state the name of the Government customer who signed;

(2) Contract number and, if applicable, order number;

(3) Contract line item number(s) (CLIN(s));

(4) Quantity of items;

(5) National stock number (NSN);

(6) Delivery date;

(7) Recipient organization's name and address; and

(8) Location where the carrier made delivery (activity name, building number, city, state).

(d) In addition to the above information which is required, the TPD should contain as much of the following information as possible:

(1) Unit price;

(2) Extended Price;

(3) Receiving activity Department of Defense activity address code (DoDAAC)

(4) Requisition document number (and suffix, when applicable);

(5) Shipment number; and,

(6) Invoice number.

(e) Responsibility for supplies for which TPD is requested.

(1) Title to the supplies passes to the Government when the Government accepts the supplies.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall:

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(End of Clause)

Dated: May 26, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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