

DEPARTMENT OF DEFENSE**48 CFR Part 241****[DFARS Case 2003–D096]****Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Utility Rates Established by Regulatory Bodies**

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to utility rates established by independent and nonindependent regulatory bodies. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D096.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The rule—

- Revises DFARS 241.201 to clarify that utility rates established by independent regulatory bodies may be relied upon as fair and reasonable; and
- Adds DFARS 241.501 to clarify requirements for use of contract clauses addressing changes in rates for regulated and unregulated utility services.

DoD published a proposed rule at 70 FR 8565 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 certifies that this final rule will not 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 rule contains clarifying DFARS amendments, with no significant change to DoD contracting policy.

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.*

List of Subjects in 48 CFR Part 241

Government procurement.

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Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 241 is amended as follows:

PART 241—ACQUISITION OF UTILITY SERVICES

■ 1. The authority citation for 48 CFR part 241 continues to read as follows:

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

■ 2. Section 241.201 is revised to read as follows:

241.201 Policy.

(1) DoD, as a matter of comity, generally complies with the current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—

- (i) Formats and technical provisions consistent with local practice; and
- (ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body—

- (i) Are considered “prices set by law or regulation”; and
- (ii) Are sufficient to set prices without obtaining cost or pricing data (see FAR Subpart 15.4); and

(iii) Are a valid basis on which prices can be determined fair and reasonable.

(4) Compliance with the regulations, practices, and decisions of independent regulatory bodies as a matter of comity is not a substitute for the procedures at FAR 41.202(a).

■ 3. Section 241.501 is added to read as follows:

241.501 Solicitation provision and contract clauses.

(d)(1) Use a clause substantially the same as the clause at FAR 52.241–7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services to be provided are subject to an independent regulatory body.

(2) Use a clause substantially the same as the clause at FAR 52.241–8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services to be provided are not subject to a regulatory body or are subject to a nonindependent regulatory body.

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DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 172, and 173**

[Docket No. RSPA–2004–18795 (HM–237)]

RIN 2137–AD88

Hazardous Materials: Requirements for Lighters and Lighter Refills

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends requirements in the Hazardous Materials Regulations (HMR) pertaining to the examination, testing, certification, and transportation of lighters and lighter refills. This action will clarify regulatory requirements and, where appropriate, decrease the regulatory burden, while continuing to provide for the safe transportation of lighters and lighter refills in commerce.

DATES: *Effective Date:* The effective date of these amendments is January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens or Kurt Eichenlaub, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, telephone (202) 366–8553.