

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 223 and 252****RIN 0750-AG35****Defense Federal Acquisition Regulation Supplement; Minimizing Use of Hexavalent Chromium (DFARS Case 2009-D004)**

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for minimizing the use of hexavalent chromium in defense weapon systems, subsystems, components, and other items. The proposed rule prohibits the delivery of items containing hexavalent chromium under DoD contracts unless an exception applies.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 7, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009-D004, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2009-D004 in the subject line of the message.

Fax: 703-602-7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, 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.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:**A. Background**

Hexavalent chromium is a significant chemical in numerous DoD weapon systems and platforms due to its corrosion protection properties. On April 8, 2009, the Under Secretary of Defense (Acquisition, Technology and Logistics) issued a memorandum establishing policy for the minimization of hexavalent chromium use throughout

DoD (<https://www.denix.osd.mil/portal/page/portal/denix/environment/MERIT>).

This proposed rule adds a new DFARS subpart and a corresponding contract clause to address requirements for minimizing the use of hexavalent chromium in defense items.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does 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 proposed rule is consistent with national and international restrictions and controls on the use of hexavalent chromium. 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-D004) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the proposed rule does not contain 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 Parts 223 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 223 and 252 as follows:

1. The authority citation for 48 CFR parts 223 and 252 continues to read as follows:

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

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Add subpart 223.73 to read as follows:

Subpart 223.73—Minimizing the Use of Hexavalent Chromium

Sec.

223.7301 Policy.

223.7302 Prohibition.

223.7303 Exceptions.

223.7304 Contract clause.

223.7301 Policy.

It is DoD policy to minimize the use of hexavalent chromium (an anti-corrosive) due to the serious human health and environmental risks related to its use.

223.7302 Prohibition.

Except as provided in section 223.7303, no DoD contract may include a specification or standard that results in a deliverable containing hexavalent chromium or the use of hexavalent chromium in contract performance. This prohibition is in addition to any imposed by the Clean Air Act regardless of the place of performance.

223.7303 Exceptions.

The prohibition in 223.7302 does not apply—

(a) If the use of hexavalent chromium is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service from the Program Executive Office or equivalent level, in coordination with the component Corrosion Control and Prevention Executive. Forward any request for approval to allow the delivery or use of products or materials containing hexavalent chromium to the cognizant technical representative for evaluation and, if necessary, authorization by the appropriate official.

(b) To legacy systems and their related parts, subsystems, and components that already contain hexavalent chromium. However, alternatives to hexavalent chromium shall be considered during system modifications, follow-on procurements of legacy systems, or maintenance procedure updates.

223.7304 Contract clause.

Unless an exception has been authorized in accordance with 223.7303, use the clause at 252.223-7XXX, Prohibition on Use of Hexavalent Chromium, in solicitations and contracts for supplies, maintenance and repair services, or construction.

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

3. Add section 252.223–7XXX to read as follows:

252.223–7XXX, Prohibition on use of hexavalent chromium.

As prescribed in 223.7304, use the following clause:

PROHIBITION ON USE OF HEXAVALENT CHROMIUM (DATE)

(a) *Definitions.* As used in this clause—

Homogeneous material means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

Mechanically disjointed means that the materials can be, in principle, separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) *Prohibition.* Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverables under this contract, or use materials in performance of this contract, that contain hexavalent chromium in a concentration greater than 0.1

percent by weight in any homogeneous material.

(c) *Liability.* The Contractor is financially liable for any damages resulting from use or delivery of any materials that contain unapproved hexavalent chromium.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts for supplies, maintenance and repair services, or construction materials.
(End of clause)

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