

DEPARTMENT OF HOMELAND SECURITY**48 CFR Parts 3001, 3002, 3009, and 3013**

[Docket No. DHS-2008-0051]

RIN 1601-AA51

Office of the Chief Procurement Officer; Revision of Department of Homeland Security Acquisition Regulation; Technical Amendments (HSAR Case 2008-001)**AGENCY:** Department of Homeland Security.**ACTION:** Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its Homeland Security Acquisition Regulation to make the Transportation Security Administration subject to that regulation and to the Federal Acquisition Regulation system for acquisitions initiated after June 22, 2008. This rule also removes provisions related to DHS special streamlined acquisition authority, changes the name of the Bureau of Immigration and Customs Enforcement to U.S. Immigration and Customs Enforcement, and the name of the Bureau of Customs and Border Protection to U.S. Customs and Border Protection in the Homeland Security Acquisition Regulation, and makes other technical amendments.

DATES: *Effective date:* This rule is effective May 27, 2008. Although this rule goes into effect on May 27, 2008, the Transportation Security Administration exemption from the Homeland Security Acquisition Regulation and the Federal Acquisition Regulation system remains in effect up to and including June 22, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Strouss, Office of the Chief Procurement Officer, Department of Homeland Security (DHS), (202) 447-5300.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose**

The Homeland Security Acquisition Regulation (HSAR) supplements the Federal Acquisition Regulation (FAR) system to provide a uniform department-wide acquisition regulation for the Department of Homeland Security (DHS). The Transportation Security Administration (TSA) has historically been exempt from the HSAR by authority of section 101(a) of the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, codified at section 114(o) of title 49, which applies the acquisition management system

(AMS) established by the Administrator of the Federal Aviation Administration (FAA) to TSA acquisitions. The Homeland Security Act of 2002, Pub. L. 107-296 (HSA), as amended, transferred TSA into DHS, but did not remove the application of the FAA AMS to TSA acquisitions. TSA thus continues to use the FAA AMS, and not the HSAR and the FAR, for TSA acquisitions.

On December 26, 2007, the President signed and thereby enacted the Consolidated Appropriations Act of 2008, Pub. L. 110-161. This legislation at division E, Title V, section 568, strikes section 114(o) of Title 49 effective June 23, 2008. Accordingly, TSA will be required to follow the FAR system and HSAR authorities for TSA acquisitions initiated after June 22, 2008. This final rule implements those changes by removing the TSA exemption from the HSAR and applying the HSAR and the FAR system to TSA acquisitions initiated on or after June 23, 2008.

Removal of DHS Streamlined Acquisition Authority, Name Changes for Two Components, and Additional Technical Amendments

Additional amendments contained in this regulatory action include technical amendments to 48 CFR Chapter 30 content as follows:

- Name changes for the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection in Parts 3001 and 3002;
- Removal of expired authority at 3013.70 regarding special streamlined acquisition authority; and
- Removal of the HSAR 3052.209-72 provision prescription content at the 3009.507 heading.

These amendments incorporate into the HSAR name changes made by DHS to two DHS Components. Congress and the President established DHS on January 24, 2003, as the result of the reorganization of 22 federal agencies, including the former Immigration and Naturalization Service (INS) and the U.S. Customs Service (Customs Service). Pursuant to sections 403, 442, 451 and 1502 of the HSA, the INS and the Customs Service were transferred to DHS effective March 1, 2003, and reorganized to become the Bureau of Citizenship and Immigration Services, the Bureau of Immigration and Customs Enforcement, and the Bureau of Customs and Border Protection. On January 18, 2007, DHS notified Congress that, pursuant to HSA section 872(a)(2), DHS was renaming the Bureau of Immigration and Customs Enforcement as U.S. Immigration and Customs Enforcement (ICE), and the Bureau of

Customs and Border Protection as U.S. Customs and Border Protection (CBP). These name changes are reflected in a DHS notice published in the **Federal Register** on April 23, 2007, at 72 FR 20131. That notice requires that all references to the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection in existing documents and actions be construed as references to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), respectively. The amendments below make corresponding name changes to HSAR regulatory text.

The amendments also remove the provision prescription at 3009.507, which is now obsolete.

Finally, technical amendments to 3013.70 reflect the expiration of special streamlined DHS acquisition authorities. The HSA at division E, title VIII, section 833, authorized special streamlined acquisition authority for certain DHS procurement actions. That special authority expired on September 30, 2007. These amendments remove the HSAR guidance and instructions related to those expired authorities.

Good Cause for Immediate Adoption

DHS is issuing this final rule without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes the agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." DHS finds that prior notice and public comment to this interim final rule is unnecessary and contrary to the public interest because the regulatory action implements a non-discretionary, legislative mandate and makes other minor, technical changes that do not otherwise modify the Department's current policies. As such, this is a technical and administrative change for which prior public notice and comment is unnecessary and contrary to the public interest.

II. Rulemaking Analysis and Notices**A. Executive Order 12866**

The Office of Management and Budget has determined this rule to not be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), as amended. Accordingly, this action was not subject to review under the Executive Order by

the Office of Information and Regulatory Affairs within OMB.

B. Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DHS has certified that there is good cause for this interim final rule to be issued without prior notice and comment. In these circumstances an initial regulatory flexibility analysis is not required. In addition, this rule interprets legislation and is not subject to agency discretion. DHS thus certifies that this rule will not have a significant impact on a substantial number of small entities. DHS will, however, consider comments from small entities concerning the affected HSAR Part(s) in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately in writing to Kathy Strouss, the Office of the Chief Procurement Officer at Kathy.Strouss@dhs.gov and should cite to 5 U.S.C. 601, *et seq.* (HSAR case 2008-001), in the subject matter line of the correspondence.

C. Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

D. Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It 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.

List of Subjects in 48 CFR Parts 3001, 3002, 3009, and 3013

Government procurement.

Dated: May 19, 2008.

Thomas W. Essig,

Chief Procurement Officer, Department of Homeland Security.

■ For the reasons stated in the preamble, the Department of Homeland Security amends 48 CFR parts 3001, 3002, 3009, and 3013 as follows:

■ 1. The authority citation for 48 CFR parts 3001, 3002, 3009, and 3013 continues to read as follows:

Authority: 41 U.S.C. 418b(a) and (b).

PART 3001—FEDERAL ACQUISITION REGULATION SYSTEM

■ 2. Revise section 3001.104(b) to read as follows:

3001.104 Applicability.

* * * * *

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (ATSA) (section 101(a) of Public Law 107-71, as implemented at section 114(o) of title 49) for contracts awarded by TSA pursuant to this ATSA authority. The Consolidated Appropriations Act of 2008, Public Law 110-161, Division E, Title V, section 568 eliminates ATSA section 114(o) effective June 23, 2008. Accordingly, TSA acquisitions initiated after June 22, 2008 are subject to 48 CFR Chapters 1 and 30.

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■ 3. Revise section 3001.105-2(a) to read as follows:

3001.105-2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105-2. Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms apply:

DHS Office of Procurement Operations (OPO);
Federal Emergency Management Agency (FEMA);
Federal Law Enforcement Training Center (FLETC);
Transportation Security Administration (TSA);
U.S. Coast Guard (USCG);
U.S. Customs and Border Protection (CBP);
U.S. Immigration and Customs Enforcement (ICE); and
U.S. Secret Service (USSS).

PART 3002—DEFINITIONS OF WORDS AND TERMS

■ 4. Amend section 3002.101 by revising the definition for "Component" to read as follows:

3002.101 Definitions.

* * * * *

Component means the following entities for purposes of this chapter:

(1) DHS Office of Procurement Operations (OPO);

(2) Federal Emergency Management Agency (FEMA);

(3) Federal Law Enforcement Training Center (FLETC);

(4) Transportation Security Administration (TSA), for acquisitions initiated after June 22, 2008;

(5) U.S. Coast Guard (USCG);

(6) U.S. Customs and Border Protection (CBP);

(7) U.S. Immigration and Customs Enforcement (ICE); and

(8) U.S. Secret Service (USSS).

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PART 3009—CONTRACTOR QUALIFICATIONS

■ 5. Remove and reserve section 3009.507 to read as follows:

3009.507 Solicitation provision and contract clause. [Reserved]

PART 3013—SIMPLIFIED ACQUISITION PROCEDURES

3013.70 [Removed and reserved]

■ 6. Remove section 3013.70.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671-8010-02]

RIN 0648-X113

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 21, 2008, through 1200 hrs, A.l.t., July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.