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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

RIN 0750-AG30

Defense Federal Acquisition Regulation Supplement; Motor Carrier
Fuel Surcharge (DFARS Case 2008-D040)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 884 of the National Defense Authorization Act for Fiscal Year 2009. Section 884 requires DoD to ensure that fuel-related adjustments in contracts for carriage are passed through to the person bearing the cost of the fuel to which the adjustment relates.

DATES: Effective date: July 29, 2009.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 28, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008-D040, using any of the following methods:

[cir] Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

[cir] E-mail: dfars@osd.mil. Include DFARS Case 2008-D040 in the subject line of the message.

[cir] Fax: 703-602-7887.

[cir] Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

[cir] Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA

22202-3402.

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

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703-602-0302.

SUPPLEMENTARY INFORMATION

A. Background

Section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) requires DoD to take appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts that provide for a fuel-related adjustment, any such adjustment is passed through to the person who bears the cost of the fuel to which the adjustment relates. These actions include the insertion of a clause, with appropriate flow-down requirements, in all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services providing for a fuel-related adjustment. This interim rule adds a contract clause at DFARS 252.247-7003 to implement the statutory requirement. The interim rule also adds this new clause to paragraphs (b) and (c) of DFARS 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. For administrative purposes only, this addition to 252.212-7001 is shown with the amendments to 252.212-7001 made by DFARS Case 2008-D003, published elsewhere in this edition of the Federal Register.

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 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 establish a DoD contract clause addressing the statutory requirement for fuel-related contract adjustments to be passed to the entity bearing the cost of the fuel. The legal basis for the rule is Section 884 of Public Law 110-417. The rule will apply to motor carriers, brokers, and freight forwarders providing or arranging truck transportation services under DoD contracts and subcontracts. The number of small entities to which the rule will apply is unknown at this time. However, DoD anticipates that the rule will benefit small entities by ensuring that fuel-related contract adjustments are passed to the appropriate party.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008-D040.

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.

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. This interim rule implements Section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 884 requires DoD to take appropriate actions to ensure that, to the maximum extent practicable, any fuel-related adjustment in a contract for carriage is passed through to the person who bears the cost of the fuel to which the adjustment relates. These actions include the use of a clause, with appropriate flow-down requirements, in all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services providing for a fuel-related adjustment. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

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Therefore, 48 CFR Parts 247 and 252 are amended as follows:

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1. The authority citation for 48 CFR Parts 247 and 252 continues to read as follows:

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

PART 247--TRANSPORTATION

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2. Section 247.207 is added to read as follows:

247.207 Solicitation provisions, contract clauses, and special requirements.

Use the clause at 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment. This clause implements Section 884 of the National Defense

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Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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3. Section 252.247-7003 is added to read as follows:

252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

As prescribed in 247.207, use the following clause:

PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUL 2009)

(a) The Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in all subcontracts with motor carriers, brokers, or freight forwarders.
(End of clause)

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