

DEPARTMENT OF DEFENSE

48 CFR Part 235

Department of Defense Federal Acquisition Regulation Supplement; Cost Sharing

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council is revising the Defense Federal Acquisition Regulation Supplement to change section 235.003 regarding cost sharing in DoD contracts. The purpose of the change is to clarify existing coverage with respect to cost sharing policy.

EFFECTIVE DATE: June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION

A. Background

Original proposed revised coverage was published as a proposed rule on November 13, 1985 (50 FR 46796). Based on public comments received in response to that notice, the original proposed coverage has been revised to more prominently discourage the consideration of cost sharing arrangements in the case of educational institutions and nonprofit organizations while still allowing for their use when agreeable to the parties. Specific revisions are at 235.003 (b)(S-71)(iv) and (b)(S-72)(v).

B. Regulatory Flexibility Act

The Department of Defense certifies that the final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, because the rule merely clarifies existing coverage to comport with current DoD policy regarding cost sharing with educational institutions.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements which require OMB approval under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.
Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Part 235 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.003 is amended by revising paragraphs (a) and (b) to read as follows:

235.003 Policy.

(a) *Use of Contracts.* Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense Directives as implemented in Departmental procedures.

(b) *Cost Sharing.* This section provides guidelines for the use of cost sharing type contracts, as defined in FAR 16.303, for research and development type contracts (see FAR 35.003(b)).

(b)(S-70) *Scope.*

(i) These guidelines are applicable to research contracts.

(ii) These guidelines may be applied to development projects (i.e., projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials, devices, systems or methods).

(b)(S-71) *Cost Participation by Contractors.* Contractor contribution to the cost of performing research should be considered unless it is concluded that cost sharing would not be appropriate for one of the following reasons:

(i) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;

(ii) The research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or

(iii) The contractor has few or no private sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. Those contractors predominantly engaged in research and development and having little or no production or

other service activities may not be in a favorable position to make a cost contribution.

(b)(S-72) *Amount of Cost Sharing.* When cost sharing, the amount of cost participation by the contractor may vary in accordance with a number of factors related to the contractor's organization (profit or nonprofit) and the character of the research effort such as the following:

(i) The amount of cost participation by contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise, or competitive position and the value of such enhancement to the contractor (but see subparagraph (v) below).

(ii) If the contractor will not acquire title or the right to use inventions, patents, or technical information resulting from the research project, less contractor cost sharing is appropriate than in cases in which the contractor acquires such rights.

(iii) Less contractor cost sharing is appropriate when an area of research requires special stimulus in the national interest.

(iv) The amount of contractor cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research.

(v) When an educational institution or nonprofit organization agrees to absorb a portion of the research costs in the expectation of substantial compensating benefits, the amount of sharing should normally be between 1% and 5% of the total contract cost.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-145F; Amdt. No. 171-90]

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Revision to the final rule (Amendment No. 171-90).

SUMMARY: This document revises the definition of "hazardous substance" in 49 CFR 171.8, as adopted in a final rule published on November 21, 1986 (51 FR 42174; Amendment No. 171-90), to clarify that the definition does not apply to petroleum products that are

lubricants or fuels. The revision reinstates an exception for petroleum products that appeared in the definition of "hazardous substance" prior to the November 21 final rule.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document revises the definition in 49 CFR 171.8 of a "hazardous substance", as adopted in a final rule published on November 21, 1986 (Amendment No. 171-90; 51 FR 42174). The final rule revised DOT's definition for a "hazardous substance" by deleting both the reference to the § 172.101 Hazardous Materials Table and the exception for petroleum products that are lubricants or fuels. Deletion of the exception was based on the fact that such an exception is contained in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA; Pub. L. 96-510). As defined in section 101(14) of CERCLA, the term "hazardous substance" does not include ". . . petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance . . . and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)".

The deletion of the petroleum products exception from DOT's

definition of a "hazardous substance" has generated numerous inquiries. It appears that removing this exception from the definition has caused confusion and led many people to the conclusion that the exception no longer exists. This is not what RSPA intended.

Upon further consideration, RSPA believes that despite the fact that an exception for petroleum products exists in CERCLA, it is appropriate to include a similar exception in the definition of a "hazardous substance" in 49 CFR 171.8. Therefore, RSPA is reinstating the exception in the hazardous substance definition essentially as it appears prior to the November 21 final rule, with the addition of a reference to applicable EPA regulations in 40 CFR 300.6.

The revision contained in this rule imposes no new regulatory requirement, will not affect the cost of regulatory enforcement nor impose added costs on industry, consumers, Federal, state or local governments. Consequently, public notice is dispensed with this rule is effective immediately.

Administrative Notices

The RSPA has determined that this amendment (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures [44 FR 11034]; (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) will not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). Based on limited

information concerning the size and nature of entities likely affected, I certify that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 171

Hazardous materials transportation, Definitions.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, and 1808; Pub. L. 99-499; and 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition for "hazardous substance" is amended by adding the following sentence after the table which appears in the definition:

§ 171.8 Definitions and abbreviations.

* * * * *

This definition does not apply to petroleum products that are lubricants or fuels (see 40 CFR 300.6).

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Issued in Washington, DC on June 26, 1987 under authority delegated in 49 CFR Part 1.

M. Cynthia Douglas,

Administrator, Research and Special Programs Administration.

[FR Doc. 87-14604 Filed 6-30-87; 8:45 am]

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