

equipment, transport vehicle or packaging, and vessel into which the material is transferred, including—

(i) Measures to evacuate the transfer system and depressurize the containment vessel;

(ii) Measures to safely disconnect the transfer equipment; and

(iii) Measures to secure fittings, valves, and closures.

(5) *Design, maintenance, and testing of transfer equipment.* Transfer equipment, used to unload cargo tanks must be compatible with the lading and meet the performance requirements in part 178, subpart J of this subchapter, as appropriate for the cargo tank specification. Transfer equipment and systems, including pumps, piping, hoses, and connections, must be properly maintained and tested (see § 180.416 for liquefied compressed gases). Each person who conducts these operations must develop and implement a periodic maintenance schedule to prevent deterioration of equipment and conduct periodic operational tests to ensure that the equipment functions as intended. Equipment and system repairs must be completed promptly and prior to any subsequent loading or unloading operation. The procedures developed in accordance with this paragraph must include a hose maintenance program.

(6) *Facility oversight of carrier personnel.* An operator of a facility required to perform a risk assessment in accordance with paragraph (a) of this section must ensure that any carrier who loads or unloads a cargo tank motor vehicle at that facility—

(i) Is supervised by trained facility personnel who are trained on the facility's loading and unloading operating procedures;

(ii) Is provided with written instructions on how to conduct the transfer operation in accordance with the facility's procedures; or

(iii) Has sufficient information to conduct the transfer operation in accordance with the facility's procedures.

(7) *Recordkeeping.* The operating procedures must be in writing and must be retained for as long as the procedures remain in effect. The operating procedures must be clearly written and easy to understand and must be reviewed annually and updated as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and equipment. Facility operating procedures must be available at the loading or unloading facility. Motor carrier operating procedures must be carried in the transport vehicle. Operating procedures must be made

available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations.

(c) *Exceptions:* To avoid unnecessary duplication, risk assessments, and operating procedures that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, state agencies, international organizations, or industry organizations may be used to satisfy the requirements in this part, or portions thereof, provided such operating procedures address the requirements specified in this part. Examples include the Occupational Safety and Health Administration's Process Safety Management Standards at 29 CFR 1910.119 and the Environmental Protection Agency's Risk Management Program regulations at 40 CFR part 68 and Spill Prevention, Control and Countermeasures Program at 40 CFR part 112; state regulations or standards, such as state incorporation of National Fire Protection Association Standard 58, LP-Gas Code; or standards, protocols, or guidelines issued by industry organizations or consensus-standards organizations.

5. In § 177.834, the section heading is revised to read as follows, and paragraph (i) is removed and reserved:

**§ 177.834 Additional general requirements.**

\* \* \* \* \*

Issued in Washington, DC, on March 1, 2011, under authority delegated in 49 CFR part 106.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 2011-5335 Filed 3-10-11; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 203 and 252

**RIN 0750-AG98**

#### Defense Federal Acquisition Regulation Supplement; Display of DoD Inspector General Fraud Hotline Posters (DFARS Case 2010-D026)

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to issue a rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to

display the DoD fraud hotline poster in common work areas.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 10, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2010-D026, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010-D026" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010-D026." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010-D026" on your attached document.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2010-D026 in the subject line of the message.

- *Fax:* 703-602-0350.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Clare Zebrowski, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare Zebrowski, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 703-602-0289; facsimile 703-602-0350. Please cite DFARS Case 2010-D026.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This rule proposes to implement the recommendations of the DoD Inspector General (IG), by providing a DFARS clause to use in lieu of the FAR clause 52.203-14, Display of Hotline Poster(s).

GAO Report GAO-09-591, Regarding the Display of DoD Inspector General Fraud Hotline Posters by DoD Contractors, recommended that the DoD IG determine the need for defense contractors' display of the DoD IG's fraud hotline poster, including directing a contractor to display the DoD IG hotline poster in common work areas for performance of DoD contracts.

The DoD IG determined that DoD contractors, including contractors who have an ethics and compliance program that includes a reporting mechanism such as a hotline poster, need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites.

FAR 52.203-14(c) states that "If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters, other than any required DHS posters."

The DoD IG finds that this exemption has the potential to make the DoD hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. Some contractor's posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the fraud program. The DoD IG is also revising the DoD IG fraud hotline poster to inform contractor employees of their Federal whistleblower protections.

The new DFARS clause therefore provides no exception to the use of the DoD hotline poster for contractors that have implemented a business ethics and conduct awareness program, including a reporting mechanism such as a hotline poster. The clause also provides for display of any applicable Department of Homeland Security hotline poster identified by the contracting officer.

## II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Executive Order 13563

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD has determined that this rule is not excessively burdensome to the public, and is consistent with requirements to report fraud, waste, and abuse under the protection of Federal whistleblower protection laws.

## IV. 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 requirement to

display posters has minimal economic impact and the rule only applies to contracts and subcontracts that exceed \$5 million in value, so many small business concerns are not impacted at all. Nevertheless, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is in response to a study by the General Accountability Office (GAO-09-591), which recommended that the DoD IG determine the need for defense contractors' display of the DoD IG's fraud hotline poster, including directing a contractor to display the DoD IG hotline poster in common work areas for performance of DoD contracts.

The DoD IG determined that DoD contractors, including contractors who have an ethics and compliance program that includes a reporting mechanism such as a hotline poster (currently exempt), need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites.

The objective of the proposed rule is to remove this exemption for contractors that post their own posters, and require all DoD contractors with contracts that exceed \$5 million to post the DoD IG fraud hotline poster. The DoD IG finds that this exemption has the potential to make the DoD hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. Some contractors' posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the fraud program. The DoD IG is also revising the DoD IG fraud hotline poster to inform contractor employees of their Federal whistleblower protections. The legal basis for the rule is 41 U.S.C. 1303 and 48 CFR chapter 1.

The rule applies to all contractors with DoD contracts that exceed \$5 million. Many small businesses are, therefore, not impacted at all. The FAR currently provides that "If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters, other than any required DHS posters." Therefore, even those contractors with contracts that exceed \$5 million are not significantly impacted, because they are already required to post either their own fraud hotline poster or the DoD fraud hotline

poster. This rule just removes the exemption for contractors that post their own fraud hotline posters.

There is no information collection requirement associated with this proposed rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule that would achieve the objectives of the rule.

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 2010-D026) in correspondence.

## V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

## List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 203 and 252 as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. In section 203.1004, revise paragraph (b)(2)(ii) to read as follows:

\* \* \* \* \*

(b) Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, if the contract exceeds \$5 million, use the clause at 252.203-700X, Display of Fraud Hotline Poster(s), in lieu of the clause at FAR 52.203-14, Display of Hotline Poster(s).

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 252.203-700X to read as follows:

**252.203–700X Display of Fraud Hotline Poster(s).**

As prescribed in 203.1004(b), use the following clause:

**DISPLAY OF FRAUD HOTLINE POSTER(S) (DATE)***(a) Definition.*

*United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

*(b) Display of fraud hotline poster(s).* (1) The Contractor shall display prominently in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts—

(i) DoD fraud hotline posters prepared by the DoD Office of the Inspector General. DoD fraud hotline posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

(ii) Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(2) of this clause; and

(iii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Any required DHS posters may be obtained as follows:

<i>Poster(s)</i>	<i>Obtain from</i>
_____	_____
_____	_____

(Contracting Officer shall insert—

(i) Title of applicable Department of Homeland Security fraud hotline poster; and

(ii) The Web site(s) or other contact information for obtaining the poster(s).)

(3) Additionally, if the Contractor maintains a company Web site as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the Web site.

*(c) Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that exceed \$5 million except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

[FR Doc. 2011–5600 Filed 3–10–11; 8:45 am]

**BILLING CODE 5001–08–P**

**GENERAL SERVICES ADMINISTRATION****48 CFR Part 532**

[GSAR Case 2010–G509; Docket 2011–0009; Sequence 1]

RIN 3090–AJ13

**Reinstatement of Coverage Pertaining to Final Payment Under Construction and Building Services**

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to amend the GSAR to restore guidance on making final payments under construction and building service contracts to ensure contractors are paid in accordance with their contract requirements and not overpaid or receive improper payments for work performed. This guidance, which prescribed the use of GSA Form 1142, Release of Claims, for releases of claims under construction and building service contracts, was inadvertently deleted as part of the Rewrite of GSAR regulations on Contract Financing. GSA Contracting Officers have used this form to achieve uniformity and consistency in the release of claims process.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before May 10, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2010–G509 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2010–G509” under the heading “Enter Key Word or ID”. Follow the instructions provided to “Submit a Comment”. Please include your name, company name (if any), and “GSAR Case 2010–G509” on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat, 1275 First Street, NE., 7th Floor, ATTN: Hada Flowers, Washington, DC 20417.

*Instructions:* Please submit comments only and cite GSAR Case 2010–G509 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward N. Chambers at (202) 501–3221, or by e-mail at [edward.chambers@gsa.gov](mailto:edward.chambers@gsa.gov). For information pertaining to the status or publication schedules, contact the Regulatory Secretariat, 7th Floor, GS Building, Washington, DC 20417, (202) 501–4755. Please cite GSAR Case 2010–G509.

**SUPPLEMENTARY INFORMATION:****A. Background**

A release of claims is a requirement under GSAR clause 552.232–72, Final Payment, precedent to making final payment under construction and building service contracts. Prior to deleting the form, GSA Contracting Officers relied upon GSA Form 1142 to obtain the release of claims under these contracts. However, GSAR 532.905–71 which prescribed the use of GSA Form 1142 for releases of claims under construction and building service contracts was inadvertently deleted as part of the Rewrite of GSAR Part 532, Contract Financing published in the **Federal Register** at 74 FR 54915, on October 29, 2009, GSAR Case 2006–G515. GSAR 532.905–71 also provided guidance on deductions to final payments under construction and building service contracts.

GSA Form 1142, Release of Claims, uses standard language for contractors to attest that is has no claims, or no claims except for those they may set forth where indicated on the form. The form requires a signature from the contractor and a witness. Additionally, there is a location for the firm’s seal.

GSA believes that GSA Form 1142 provides great value and accountability in providing uniformity and consistency for the release of claims process.

Without the GSA Form 1142, GSA Contracting Officers will be required to verify that contractor release of claims letter includes appropriate wording before final payment is made, resulting in their devotion of considerable additional resources to this process. Further, the coverage on deductions under GSAR 532.905–71 was useful in preventing overpayments to contractors consistent with the Administration Improper Payments Elimination and Recovery Act and OMB efforts to eliminate improper payments.

Consequently, GSA proposes to amend the GSAR to restore the coverage at GSAR 532.905–71. Since the referenced GSAR Rewrite of Part 532 (74 FR 54915) also deleted GSAR 532.905–70, this coverage will be restored at GSAR 532.905–70 vice GSAR 532.905–71.