

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 209**

RIN 0750-AF97

**Defense Federal Acquisition Regulation Supplement; Clean Air Act and Clean Water Act Exemptions (DFARS Case 2007-D022)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the procedures that apply when it is necessary to award to a contractor that is otherwise excluded from Federal procurement programs due to a violation of the Clean Air Act or the Clean Water Act.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-8384; facsimile 703-602-7887. Please cite DFARS Case 2007-D022.

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

The List of Parties Excluded from Federal Procurement and Nonprocurement Programs, maintained by the General Services Administration, identifies contractor facilities where no part of a Federal contract or subcontract may be performed due to a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368). In accordance with Executive Order 11738, the head of a Federal agency may grant an exemption permitting award to a contractor using an otherwise ineligible facility, if the head of the agency determines that the exemption is in the paramount interest of the United States. This final rule amends the procedures specified in the DFARS for processing such an exemption, to more closely align with the requirements of Executive Order 11738.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This rule will not have a significant cost or administrative impact on

contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007-D022.

**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.*

**List of Subjects in 48 CFR Part 209**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 209 is amended as follows:

**PART 209—CONTRACTOR QUALIFICATIONS**

■ 1. The authority citation for 48 CFR part 209 continues to read as follows:

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

■ 2. Section 209.405 is amended by revising paragraph (b) to read as follows:

**209.405 Effect of listing.**

\* \* \* \* \*

(b)(i) The Procurement Cause and Treatment Code "H" annotation in the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs identifies contractor facilities where no part of a contract or subcontract may be performed because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of Section 8 of Executive Order 11738, the agency head may grant an exemption permitting award to a contractor using a Code "H" ineligible facility if the agency head determines that such an exemption is in the paramount interest of the United States.

(A) The agency head may delegate this exemption authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exemption—

(1) Shall promptly notify the Environmental Protection Agency suspending and debaring official of the exemption and the corresponding justification; and

(2) May grant a class exemption only after consulting with the Environmental Protection Agency suspending and debaring official.

(C) Exemptions shall be for a period not to exceed one year. The continuing necessity for each exemption shall be reviewed annually and, upon the making of a new determination, may be extended for periods not to exceed one year.

(D) All exemptions must be reported annually to the Environmental Protection Agency suspending and debaring official.

(E) See PGI 209.405 for additional procedures and information.

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 209**

RIN 0750-AG20

**Defense Federal Acquisition Regulation Supplement; Responsible Prospective Contractors (DFARS Case 2008-D022)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address use of the Past Performance Information Retrieval System (PPIRS) in determining contractor responsibility. PPIRS is a Web-based application that stores information regarding contractor performance on Government contracts.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2008-D022.

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

This final rule adds text at DFARS 209.105-1 to address use of PPIRS (available at <http://www.ppirs.gov>) in meeting requirements for determining contractor responsibility. The rule emphasizes that use of PPIRS information regarding contract