

justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Montana also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Montana's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: December 14, 1995.

Jack McGraw,

Acting Regional Administrator.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 90

[ET Docket 93-235; FCC 95-486]

Additional Frequencies for Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Final Rule; petition for reconsideration.

SUMMARY: By this action, the Commission denies the Petition for Reconsideration filed by the American Petroleum Institute (API). The cordless telephone rules are intended to improve the operation and convenience of cordless telephones. The Commission finds that API presents no new information in its petition that would justify a further change in our requirements for cordless telephones.

FOR FURTHER INFORMATION CONTACT: Anthony Serafini, Office of Engineering and Technology, (202) 418-2456.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, in ET Docket 93-235, Adopted December 1, 1995 and released December 12, 1995. The complete *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

1. On June 5, 1995, the American Petroleum Institute (API) filed a Petition for Reconsideration requesting that the Commission amend its cordless telephone rules adopted in the *Report and Order*, 60 FR 21984 (May 4, 1995), on April 5, 1995. API stated that the rules do not fully protect against interference to PLMRS and requested changes to the requirements for automatic channel selection in cordless telephones. Alternately, API requested that cordless telephones operating on the new frequencies be required to place a 2-inch by 3-inch label on both the exterior packaging and the actual equipment. The label, which would include specific language proposed by API, would warn consumers of possible interference from the PLMRS and inform them that they must accept interference.

2. In the *Report and Order*, the Commission found that it was neither necessary nor desirable to impose specific design standards for the automatic channel selection mechanism, and the Commission permitted manufacturers the flexibility to implement the requirement in a manner that best suits the design of their equipment. API has presented no new information in this regard, and we continue to believe that the concerns of API have been addressed. Commenters opposed API's petition stating that the

concerns raised by API have already been adequately addressed by the Commission and that any further action is unnecessary. Regarding API's alternative request for additional labelling, we note that our existing Part 15 rules already require cordless telephones to be labelled regarding potential interference.

3. Based on the comments, the Commission adopted the *Memorandum Opinion and Order* denying API's petition for reconsideration. Accordingly, IT IS ORDERED that the petition for reconsideration filed by the American Petroleum Institute IS DENIED. This action is taken pursuant to the authority contained in Sections 4(i), 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended.

List of Subjects

47 CFR Part 15

Communications equipment.

47 CFR Part 90

Communications equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-2168 Filed 1-31-96; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 228 and 252

Defense Federal Acquisition Regulation Supplement; Alternatives to Miller Act Bonds

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the interim rule which was published in the Federal Register on August 31, 1995, providing alternative payment protections for construction contracts between \$25,000 and \$100,000.

DATES: Effective Date: February 1, 1996.

Comments Date: April 1, 1996.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D305 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim DFARS rule revises the interim rule which was published in the Federal Register on August 31, 1995 (60 FR 45376). It provides alternative payment protections for construction contracts between \$25,000 and \$100,000, pending implementation of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) in the FAR. This rule has been revised to require that the contracting officer select two or more alternative payment protections, and encourages the contracting officer to include irrevocable letters of credit as one of the selected alternatives. In addition, this rule excludes payment bonds from the provisions authorizing the contracting officer to access funds under the payment protection.

B. Regulatory Flexibility Act

This interim rule may 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 rule provides alternatives to payment bonds as payment protection for construction contracts between \$25,000 and \$100,000. The objective of the rule is to make it easier for small businesses to provide payment protections under construction contracts. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D305 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The applicable OMB Control Number is 9000-0045.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for further public comment because it is necessary to revise the

payment protections for construction contracts between \$25,000 and \$100,000, based on comments received on the interim rule published in the Federal Register on August 31, 1995 (60 FR 45376). The wording of the initial interim rule regarding contracting officer access to funds under payment bonds erroneously resulted in a "forfeiture type" payment bond rather than a traditional type payment bond consistent with the terms and conditions of the Miller Act. However, comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 228 and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 228 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 228 and 252 continues to read as follows:

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

PART 228—BONDS AND INSURANCE

2. Section 228.171-1 is revised to read as follows:

228.171-1 General.

(a) For construction contracts greater than \$25,000, but not greater than \$100,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

- (1) A payment bond.
- (2) An irrevocable letter of credit.
- (3) A tripartite escrow agreement. The prime contractor establishes an escrow account in a Federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.
- (4) Certificates of deposit. The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable

form, executable by the contracting officer.

(5) A deposit of the types of security listed in FAR 28.204.

(b) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

3. Section 228.171-2 is amended by revising paragraph (a) to read as follows:

228.171-2 Amount required.

(a) The requirements at FAR 28.102-2(b), for the amount of payment bonds, also apply to the alternative payment protections described in 228.171-1.

* * * * *

4. Section 228.171-3 is revised to read as follows:

228.171-3 Contract clause.

Use the clause at 252.228-7007, Alternative Payment Protections, in solicitation and contracts for construction, when the estimated or actual value exceeds \$25,000 but does not exceed \$100,000. Complete the clause by specifying the payment protections selected (see 228.171-1(a)), the penal amount required, and the deadline for submission.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.228-7007 is amended by revising the clause date and by revising paragraphs (d) and (e) to read as follows:

252.228-7007 Alternative Payment Protections.

As prescribed in 228.171-3, use the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (FEB 1996)

* * * * *

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

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