

Standard Form 119, Statement of Contingent or Other Fees; and the associated requirements in FAR Subpart 3.4 relating to review and evaluation of contingent fees. This interim rule makes the associated DFARS changes related to contingent fees for foreign military sales. Immediate publication of an interim rule is necessary because compliance with the existing requirements of DFARS 225.7302 and 225.7303 is no longer feasible. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

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

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

225.7302 [Amended]

2. Section 225.7302 is amended by removing paragraph (a)(1), and by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4).

3. Section 225.7303-4 is revised to read as follows:

225.7303-4 Contingent fees.

(a) Contingent fees are allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable contingent fees (as defined in FAR subpart 3.4) is limited to \$50,000.

(b) Under DoD 5105.38-M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer prohibit the payment of contingent fees unless the payments have been identified and payment approved in writing by the foreign

customer before contract award. (See 225.7308(a).)

4. Section 225.7308 is amended by revising paragraph (a) to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, in all solicitations and contracts for foreign military sales.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.212-7001 is amended by revising the clause date to read "(JAN 1997)", and by removing the entry "252.225-7027 Limitation on Sales Commissions and Fees (12 U.S.C. 2779)" and inserting in its place the entry "252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779)".

6. Section 252.225-7027 is revised to read as follows:

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

Restriction on Contingent Fees for Foreign Military Sales (Jan 1997)

Contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are not an allowable cost, and the contract price (including any subcontracts) shall not include any direct or indirect cost of contingent fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract, unless—

(a) The amount of contingent fee per foreign military sale does not exceed \$50,000; and

(b) For sales to the Government(s) of _____, the contingent fees have been identified and payment approved in writing by the named Government(s) before contract award.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-283]

Organization and Delegation of Powers and Duties, Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104-324. This amendment adds a new paragraph 1.66(x) to reflect this delegation of authority.

EFFECTIVE DATE: This rule becomes effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR-318, Room 7301, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366-2811 or Gwyneth Radloff, Office of General Counsel (C-50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590, (202) 366-9305.

SUPPLEMENTARY INFORMATION: Under sections 1008, 1009, and 1013 of Public Law 104-324, the Secretary of Transportation (Secretary) may convey the right, title, and interest of the United States Government in certain specified vessels, equipment, and materials to specified recipients or for specified purposes. This amendment to 49 CFR Part 1 delegates the Secretary's authorities related to the above responsibilities to the Maritime Administrator.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101-552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by inserting a new paragraph (x), to read as follows:

§ 1.66 Delegation to Maritime Administrator.

* * * * *

(x) Carry out the responsibilities and exercise the authorities of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104-324;

* * * * *

Issued at Washington, DC this 31st day of December 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97-1252 Filed 1-16-97; 8:45 am]

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Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-118; Amendment 192-80]

RIN 2137-AB97

Excess Flow Valve—Performance Standards

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

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This action concerns a petition from the American Gas Association (AGA) to reconsider and clarify certain provisions of the excess flow valve (EFV) performance standards regulations. AGA's request to clarify the rule by deleting language in the regulation concerning sizing of the EFV and locating the EFV beyond the hard surface is granted because some operators are apparently misinterpreting this language. AGA's request to delete the recommended installation standards from the performance standards rule and include them in the notification rulemaking is denied because such standards are applicable to an EFV's safe and reliable operation. AGA's request to allow an operator to determine how to identify the presence of an EFV in the service line is denied because the final rule already allows the operator this flexibility.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366-4571, regarding this final rule or the Dockets Unit, (202) 366-5046, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 1996 (61 FR 31449), RSPA published regulations (49 CFR 192.381) prescribing performance standards for EFVs used to protect single-residence service lines. In a petition for reconsideration and request for clarification dated July 17, 1996, AGA asked RSPA to reconsider several provisions of this final rule on EFV performance standards. On July 30, 1996, OPS and AGA met to discuss the issues in the petition.

AGA Petition for Reconsideration

I. AGA contended that the marking requirement (§ 192.381(c)) and recommendations concerning where to locate the EFV (§ 192.381(d)) and whether to install an EFV in certain circumstances (§ 192.381(e)) are installation standards and should not have been included in the final rule on EFV performance standards. AGA maintained that these requirements should have been included in RSPA's notice of proposed rulemaking on EFV customer notification (61 FR 33476; June 27, 1996), and subject to notice and comment.

Response: RSPA disagrees that the marking requirement and the recommendations on locating and installing an EFV are misplaced and were not subject to notice and comment. RSPA established the EFV performance standards as minimum requirements for an EFV to perform safely and reliably when installed in a gas piping system. The marking requirement and the recommendations on locating and installing an EFV were included in the rule because RSPA considers them integral to an EFV's performance.

RSPA recommended the circumstances in which an operator should not install an EFV and where the operator should locate the EFV to address concerns raised during the EFV rulemaking process. Because these recommendations addressed comments that were made during the EFV rulemaking process, although not specifically proposed, RSPA considered them to be within the scope of the EFV rulemaking. To address commenters' concern about placing an EFV in a system where contaminants could cause a malfunction, RSPA included a recommendation that operators consider this factor when installing an EFV. Similarly, to address concerns about protecting the maximum length of service line, as well as comments about logistical and economic difficulties in installing or removing an EFV beneath a hard surface, RSPA recommended that

an operator locate the EFV beyond the hard surface and as near the gas supply main as practical. Both recommended standards affect an EFV's operation and reliability, and are better suited to the performance standards rule than the notification rulemaking. The proposed notification rule proposes to require operators to notify customers about the availability, safety benefits, and cost associated with EFV installation, issues not related to an EFV's operation.

The requirement to identify the presence of an EFV in a service line by marking or other means is intended to alert personnel servicing the line to its presence. Although not technically a performance standard, the requirement is better placed in the performance standards rule because it helps to ensure that a service line with an EFV is properly serviced.

Accordingly, for the reasons discussed, RSPA does not adopt AGA's suggestion to amend the final rule by deleting these sections. However, AGA's additional concerns about the recommendation to locate an EFV beyond the hard surface are addressed in section III of this document.

II. AGA requested RSPA to clarify the requirement to mark, or otherwise identify, the presence of an EFV in a service line (§ 192.381(c)). AGA expressed concern that marking would notify the public of the valve's existence to the detriment of the public's safety. AGA suggested that RSPA amend this requirement to allow each operator to determine the method to identify the presence of an EFV in the service line.

Response: By requiring an operator to mark or otherwise identify the presence of an EFV in a service line, the final rule intended for each operator to determine how to identify the presence of an EFV to personnel servicing the line. The language in the rule left to the operator's discretion whether to identify the EFV's presence by marking the line, by indicating on maps and records, or by using some other method. When, during the meeting, OPS explained that this language was not intended to limit an operator, AGA agreed that further clarifying language was not needed. Thus, we do not see any necessity for modifying the rule.

III. The final rule (§ 192.381 (d)) recommended that an operator locate an EFV beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply. In its petition AGA said that the language specifying that an EFV *should be located beyond the hard surface* could increase the costs of installation and reduce the safety benefits of EFVs. AGA explained that