

**FAR Case 1998-020  
Hazardous Material Safety Data  
Draft Final Rule**

*Sep 23, 2004*

Changes to the baseline are represented by **[bold print in brackets]** for new language and ~~striketrough~~ for deleted language. Changes made to the second proposed rule are indicated by underlining.

**PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND  
DRUG-FREE WORKPLACE**

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**Subpart 23.3—Hazardous Material Identification and Material Safety Data**

**23.300** Scope of subpart.

**23.301** ~~Definition~~ **[General]**.

**23.302** ~~Policy~~ **[Procedures]**.

**23.303** **[Solicitation provision and c]**~~Contract clause.~~

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**Subpart 23.3—Hazardous Material Identification and Material Safety Data**

**23.300** Scope of subpart.

This subpart[—

(a) ~~P]~~prescribes policies and procedures for **[acquisitions]** ~~acquiring deliverable items,~~ other than **[for]** ammunition and explosives, that require the furnishing of data involving hazardous materials **[as defined in Federal Standard 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities]**[-]; and

(b) **Applies if hazardous material is expected to be—**

(1) **Delivered under the contract; or**

(2)(i) **Incorporated into end items to be delivered under the contract; and**

(ii) **Incorporation into the end items does not eliminate their hazardous nature throughout the life cycle of the end items.**

(c) Agencies may prescribe special procedures for ammunition and explosives.

~~**23.301—Definition.**~~

~~"Hazardous material" is defined in the latest version of Federal Standard No. 313 (Federal Standards are sold to the public and Federal agencies through—~~

~~General Services Administration  
Specifications Unit (3FBP-W)  
7th & D Sts. SW  
Washington, DC 20407~~

**23.30[1]2 Policy [General].**

(a) ~~[Federal Standard 313, issued and maintained by GSA—~~

~~(1) Includes criteria for identification of hazardous materials; and~~

~~(2) Establishes requirements for the preparation and submission of Material Safety Data Sheets (MSDSs) by contractors that provide hazardous materials to the Government; and~~

~~(3) Can be obtained via the Internet at: <http://www.dsp.dla.mil> under 'Online Specs.' Select 'Quick Search' and enter FED-STD for 'Document ID' and 313 for 'Document Number.'~~

~~(b) Agencies must obtain MSDSs on hazardous materials delivered under Government contracts to—~~

~~(1) Provide for safe handling, storage, use, transportation, and environmentally acceptable disposal of hazardous materials; and~~

~~(2) Apprise employees, in accordance with regulations issued by t]The Occupational Safety and Health Administration (OSHA), of [information, such as—] is responsible for issuing and administering regulations that require Government activities to apprise their employees of—~~

~~(1)(i) All hazards to which they may be exposed;~~

~~(2)(ii) Relative [Signs and] symptoms [of exposure] and appropriate emergency treatment; and~~

~~(3)(iii) Proper conditions and precautions [appropriate protective measures] for safe use and [handling] exposure.~~

~~(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.~~

~~(c) [OSHA Standards (29 CFR 1910.1200) or Environmental Protection Agency regulations (40 CFR 350), as applicable, provide policy when the MSDS indicates that the specific chemical identity of the hazardous material is being withheld as a trade secret.~~

**23.302 Procedures. The contracting officer shall—**

**(a) Require the apparently successful offeror or quoter to submit MSDSs]**  
Hazardous material data (Material Safety Data Sheets (MSDS)) are required—  
(1) ~~As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);~~  
(2) ~~For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.~~  
(d) ~~MSDS's must be submitted—~~  
(1) ~~By the apparent successful offeror prior to [before] contract award[; and] if hazardous materials are expected to be used during contract performance.~~  
(2) ~~For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery~~  
(e**[b]**) ~~The contracting officer shall [P]provide [the safety officer or other designated individual with] a copy of all MSDS's received to the safety officer or other designated individual.~~

**23.303 [Solicitation provision and c]Contract clause.**

(a) **[Insert the provision at 52.223-XX, Hazardous Materials, in solicitations that include the clause at 52.223-3, Hazardous Material Identification and Material Safety Data).**

(b)(1) ~~The contracting officer shall [I]insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts [for supplies] if the contract [unless the contracting officer determines that the contract will[not] require the delivery of[—~~

(i) ~~A] hazardous materials[; or~~  
(ii) **An end item that may include a hazardous material that does not lose its hazardous nature throughout the life cycle of the end item.]** ~~as defined in 23.301.~~

(b)(2) ~~If the contract is awarded by an agency [awarding the contract is not] other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its Alternate I.~~

**[(3)(i) The use of the clause at 52.223-3 as prescribed in paragraphs (b)(1) and (b)(2) of this section may be waived for complex end items if the Head of the Contracting Activity determines that it is in the best interest of the Government to use an alternate means of obtaining the necessary material safety data.**

**(ii) For purposes of this section, an end item is complex if it includes multiple components which may include many different hazardous materials (e.g., an aircraft).**

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**[52.223-XX Hazardous Materials.**

**As prescribed in 23.303(a), insert the following provision:**

**HAZARDOUS MATERIALS (DATE)**

**(a) *Definition.* "Hazardous material," as used in this provision, means any material defined as hazardous in the version of Federal Standard No. 313, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities, in effect on the date of issuance of the solicitation.**

**(b) The offeror or quoter shall—**

**(1) Submit a list of hazardous materials to be—**

**(i) Delivered under the contract; or**

**(ii) (A) Incorporated into end items to be delivered under the contract; and**

**(B) Incorporation into the end items does not eliminate their hazardous nature**

**throughout the life cycle of the end items; and**

**(2) Properly identify the hazardous materials and include any applicable identification numbers, such as the National Stock Numbers or the Special Item Numbers.**

**Hazardous Materials**

**(If none, insert "None") Identification Nos.**

_____	_____
_____	_____
_____	_____

**(c) Material Safety Data Sheets.**

**(1) The apparently successful offeror or quoter shall submit on or before the date specified by the Contracting Officer a Material Safety Data Sheet (MSDS) meeting the**

requirements of the version of Federal Standard No. 313 in effect on the date of issuance of the solicitation, for all hazardous materials identified in paragraph (b) of this provision, even if the apparently successful offeror or quoter is not the actual manufacturer.

(2) Failure to submit the MSDS prior to award may result in the apparently successful offeror or quoter being considered nonresponsible.

(End of provision)]

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**52.223-3 Hazardous Material Identification and Material Safety Data.**

As prescribed in 23.303[(b)(1)], insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (Jan-1997[DATE])

(a) [Definition.]

"Hazardous material," as used in this clause, ~~includes~~ [means] any material defined as hazardous [in the version of] ~~under the latest version of~~ Federal Standard No. 313[, **Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities, in effect at the time of award of the contract, except that when the term in Federal Standard No. 313 references a chemical defined by the Occupational, Safety and Health Administration (OSHA) as hazardous in 29 CFR 1910.1200, Hazard communication, the term includes any changes to the OSHA regulation definition that occur after contract award.**] ~~(including revisions adopted during the term of the contract).~~

(b) ~~The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.~~

Material

(If none, insert "None") Identification No.

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~~(e)~~ *[Hazardous material identification. The Contractor shall—*

**(1) Update the list of hazardous materials provided under FAR 52.223-XX, Hazardous Materials.]** This list must be updated during performance of the contract whenever the Contractor determines that any other **[hazardous]** material ~~to~~**[will]** be~~—~~

**(i) D**~~]~~delivered under this~~[e]~~ contract is ~~hazardous~~~~;~~ or

**(ii) (A) Incorporated into an end item to be delivered under the contract; and**

**(B) Incorporation into the end item does not eliminate its hazardous nature throughout the life cycle of the end item; and**

**(2) Provide the updated list to the Contracting Officer.]**

~~(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.~~

~~(e)~~ *[(c) Material Safety Data Sheets. The Contractor shall—*

**(1) For any MSDS previously submitted under FAR 52.223-XX or this clause, promptly notify and submit a revised MSDS to the Contracting Officer whenever—**

**(i) T**~~he Contractor has knowledge, or reasonably should have knowledge, of—(i) N~~**new information on the health hazards of a chemical or ways to protect the employee** that renders the MSDS incomplete or inaccurate; or

**(ii) If, after award, t**~~[T]here is [A] a change in the composition of the [an] item(s) or a revision to Federal Standard No. 313, [that] which renders [the MSDS] incomplete or inaccurate[;] the data submitted under paragraph (d) of this clause[;], the Contractor shall promptly notify the Contracting Officer and resubmit the data.~~

**[(2) Submit an MSDS if the Contractor determines that any other material to be delivered under this contract is hazardous, even if the Contractor is not the actual manufacturer;**

**(3) Make MSDSs available to the Government when using any hazardous materials in areas where Government employees, civilian, military, or contractor personnel may be exposed, including MSDSs for hazardous materials not included on the list of hazardous materials (see paragraph (b)(1) of this clause).]**

~~(#d) Neither [T]the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.~~

~~(g) Nothing contained in this clause shall [not] relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) [concerning] in connection with hazardous material.~~

~~(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:~~

~~(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—~~

~~(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;~~

~~(ii) Obtain medical treatment for those affected by the material; and~~

~~(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.~~

~~(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.~~

~~(3) The Government is not precluded from using similar or identical data acquired from other sources.~~

(End of clause)

Alternate I (July 1995[DATE]). If the contract is awarded by an agency other than the Department of Defense [As prescribed in 23.303(b)(2)], add the following paragraph (i[e]) to the basic clause:

~~(i[e]) [The Contractor shall—] Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.~~

~~(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.~~

~~(2[1]) For items [that are] shipped to consignees identified by mailing address as agency depots, distribution centers[,] or customer supply centers, [place] the Contractor shall provide one copy of the MSDS's in[—~~

~~(i) or on [E]each shipping container.[:; or~~

~~(ii) A weather resistant envelope] If affixed to the outside of [each shipping] each container, the MSDS's must be placed in a weather resistant envelope.[:; and~~

~~(2) For other consignees—~~

- (i) Include a copy of the MSDS with the packing list or other suitable shipping document accompanying each shipment; or**
- (ii) If authorized in writing by the Contracting Officer, transmit the MSDSs to consignees in advance of shipment.]**

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