

## Defense Federal Acquisition Regulation Supplement

### Part 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

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*(Created May 5, 2011)*

#### SUBPART 223.73—MINIMIZING THE USE OF MATERIALS CONTAINING HEXAVALENT CHROMIUM

##### **223.7300 Definition.**

“Legacy system,” as used in this subpart, means any program that has passed Milestone A in the defense acquisition management system, as defined in DoD Instruction 5000.02.

##### **223.7301 Policy.**

It is DoD policy to minimize hexavalent chromium (an anti-corrosive) in items acquired by DoD (deliverables and construction material), due to the serious human health and environmental risks related to its use. Executive Order 13423, section 3, paragraph (a) requires that the heads of agencies reduce or eliminate the acquisition and use of toxic or hazardous chemicals. Executive Order 13514 requires that the heads of agencies are responsible for “reducing and minimizing the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of.”

##### **223.7302 Authorities.**

(a) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(b) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

##### **223.7303 Prohibition.**

(a) Except as provided in [223.7304](#) and [223.7305](#), no contract may include a specification or standard that results in a deliverable or construction material containing more than 0.1 percent hexavalent chromium by weight in any homogeneous material in the deliverable or construction material where proven substitutes are available that provide acceptable performance for the application.

(b) This prohibition is in addition to any imposed by the Clean Air Act regardless of the place of performance.

##### **223.7304 Exceptions.**

The prohibition in [223.7303](#) does not apply to—

(a) Legacy systems and their related parts, subsystems, and components that already contain hexavalent chromium. However, alternatives to hexavalent chromium

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shall be considered by the appropriate official during system modifications, follow-on procurements of legacy systems, or maintenance procedure updates; and

(b) Additional sustainment related contracts (e.g., parts, services) for a system in which use of hexavalent chromium was previously approved.

#### **223.7305 Authorization and approval.**

(a) The prohibition in [223.7303](#) does not apply to critical defense applications if no substitute can meet performance requirements. The DoD policy of April 8, 2009, “Minimizing the Use of Hexavalent Chromium,” contains requirements for weighing hexavalent chromium versus substitutes. DoD Program Managers must consider the following factors—

- (1) Cost effectiveness of alternative materials or processes;
- (2) Technical feasibility of alternative materials or processes;
- (3) Environment, safety, and occupational health risks associated with the use of the hexavalent chromium or substitute materials in each specific application;
- (4) Achieving a DoD Manufacturing Readiness Level of at least eight for any qualified alternative;
- (5) Materiel availability of hexavalent chromium and the proposed alternatives over the projected life span of the system; and
- (6) Corrosion performance difference of alternative materials or processes as determined by agency corrosion subject matter experts.

(b) However, unless an exception in [223.7304](#) applies, the incorporation of hexavalent chromium in items acquired by DoD shall be specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service from the Program Executive Office or equivalent level, in coordination with the component Corrosion Control and Prevention Executive. Follow the procedures in PGI [223.7305](#).

#### **223.7306 Contract clause.**

Unless an exception in [223.7304](#) applies, or use has been authorized in accordance with [223.7305](#), use the clause at [252.223-7008](#), Prohibition of Hexavalent Chromium, in solicitations and contracts for supplies, maintenance and repair services, or construction.