

and suggest alternative new provisions, if any, that they believe would be more appropriate. Any suggested FAR revisions should be accompanied by a rationale that explains the potential benefit of the revision for customers and taxpayers.

Dated: March 17, 2004.

**Ralph de Stefano,**

*Acting Director, Acquisition Policy Division.*

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 207, 212, 225, and 252

[DFARS Case 2003-D087]

#### Defense Federal Acquisition Regulation Supplement; Contractors Accompanying a Force Deployed

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address issues related to contract performance outside the United States. The proposed rule contains a clause for use in contracts that require contractor employees to accompany a force engaged in contingency, humanitarian, peacekeeping, or combat operations.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 24, 2004, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@osd.mil](mailto:dfars@osd.mil). Please cite DFARS Case 2003-D087 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D087.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

This rule proposes amendments to the DFARS to add policy relating to contracts that require contractor employees to accompany a force engaged in contingency, humanitarian, peacekeeping, or combat operations outside the United States. The proposed changes will enable the uniform treatment of contractors that accompany a deployed force, and will enable combatant commanders to rapidly adjust contract requirements in response to changing conditions on the battlefield.

In addition, as a result of the DFARS Transformation initiative, this rule proposes to move text from DFARS 225.802-70 to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>. A draft version of the PGI text referenced in this proposed rule is available at <http://www.acq.osd.mil/dpap/dfars/changes.htm>.

DoD particularly seeks comment on the following aspects of the proposed rule:

- Paragraphs (p) and (q) of the proposed clause, which permit the Combatant Commander to provide direction to the contractor.
- The authority and liability of the Government for providing support services, such as medical or legal services, to contractor personnel (section 225.7402-1 of the proposed rule).

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

#### B. Regulatory Flexibility Act

DoD does not expect this rule to 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 applies only to contracts that require contractor employees to accompany a force engaged in contingency, humanitarian, peacekeeping, or combat operations outside the United States. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C.

610. Such comments should be submitted separately and should cite DFARS Case 2003-D087.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Although the proposed clause requires contractors to maintain (1) a current plan on file showing how the contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment, and (2) a current list of all employees in the area of operations in support of the military force, DoD believes that these requirements are usual and customary and do not exceed what a contractor would maintain in the normal course of business. DoD invites comment on whether these requirements constitute an information collection requirement that imposes a burden as defined at 5 CFR 1320.3(b).

#### List of Subjects in 48 CFR Parts 207, 212, 225, and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Parts 207, 212, 225, and 252 as follows:

1. The authority citation for 48 CFR Parts 207, 212, 225, and 252 continues to read as follows:

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

#### PART 207—ACQUISITION PLANNING

2. Section 207.105 is amended by adding paragraph (b)(19)(E) to read as follows:

##### 207.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*

(19) \* \* \*

(E) Ensure that the requirements of DoD Instruction 3020.37, Continuation of Essential DoD Contractor Services During Crises, are addressed.

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(vii) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(f) \* \* \*

(vii) Use the clause at 252.225–70XX, Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations, as prescribed in 225.7402–2.

**PART 225—FOREIGN ACQUISITION**

4. Section 225.802–70 is revised to read as follows:

**225.802–70 Contracts for performance outside the United States and Canada.**

Follow the procedures at PGI 225.802–70 when placing a contract requiring performance outside the United States and Canada. Also see Subpart 225.74, Defense Contractors Outside the United States.

5. Subpart 225.74 is revised to read as follows:

**Subpart 225.74—Defense Contractors Outside the United States**

Sec.

225.7401 General.

225.7402 Contractors accompanying a force deployed for contingency, humanitarian, peacekeeping, or combat operations.

225.7402–1 Government support of contractor personnel accompanying a force.

225.7402–2 Contract clause.

225.7403 Antiterrorism/force protection.

225.7403–1 General.

225.7403–2 Contract clause.

**225.7401 General.**

(a) If the acquisition requires performance of work in a foreign country by U.S. personnel or a third country contractor, follow the procedures at PGI 225.7401(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures in Army in Europe Regulation 715–9, available at <http://www.chrma.hqusareur.army.mil/docper>.

**225.7402 Contractors accompanying a force deployed for contingency, humanitarian, peacekeeping, or combat operations.**

**225.7402–1 Government support of contractor personnel accompanying a force.**

(a) Contractors shall generally provide their own in-country support for their personnel.

(b) If the use of Government-provided support is to be authorized or required

when the contractor is accompanying a force, the exact support to be authorized or required shall be set forth in each contract or in the operation order of the combatant commander. For examples of such support, see PGI 225.7402–1(b).

**225.7402–2 Contract clause.**

Use the clause at 252.225–70XX, Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations, in solicitation and contracts for services, construction, or supplies, when contract performance requires that contractor employees accompany, or be available to accompany, a force engaged in contingency, humanitarian, peacekeeping, or combat operations outside the United States.

**225.7403 Antiterrorism/force protection.**

**225.7403–1 General.**

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the following offices:

(a) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 24; telephone, DSN 228–9113 or commercial (202) 433–9113.

(b) For Army contracts: HQDA (DAMO–ODL)/ODCSOP; telephone, DSN 225–8491 or commercial (703) 695–8491.

(c) For Marine Corps contracts: CMC Code POS–10; telephone, DSN 224–4177 or commercial (703) 614–4177.

(d) For Air Force contracts: HQ AFSFC/SFPA; telephone, DSN 945–7035/36 or commercial (210) 925–7035/36.

(e) For Combatant Command contracts: The appropriate Antiterrorism Force Protection Office at the Command Headquarters.

(f) For defense agency contracts: The appropriate agency security office.

(g) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD(SOLIC); telephone, DSN 255–0044 or commercial (703) 695–0044.

**225.7403–2 Contract clause.**

Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that require performance or travel outside the United States, except for contracts with—

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Section 252.225–70XX is added to read as follows:

**252.225–70XX Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations.**

As prescribed in 225.7402–2, use the following clause:

**Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations (XXX 2004)**

(a) *Definitions.* As used in this clause—  
*Combatant Commander* is the commander of a unified or specified combatant command established pursuant to 10 U.S.C. 161, or any subordinate commander given authority by that Combatant Commander to issue direction to contractors in a specified geographical area or for a specific functional area.

*Contingency operation* means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C., or any other provision of law during a war or during a national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)).

*Humanitarian or peacekeeping operation* means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)).

(b) *General.* (1) Performance of this contract may require deployment of contractor personnel in support of deployed military forces involved in humanitarian, peacekeeping, contingency, or combat operations.

(2) Contract performance in support of such forces is inherently dangerous. The Contractor accepts the risks associated with required contract performance in such operations.

(c) *Support.* (1) Unless specified elsewhere in the contract or as provided in paragraph (c)(2) of this clause, the Contractor is responsible for all support required for contractor personnel engaged in this contract.

(2) The Government at its sole discretion may authorize or may require the use of certain Government-provided logistical or in-country support.

(d) *Compliance with laws and regulations.* The Contractor shall comply with and ensure that its employees are familiar with and comply with all—

(1) United States, host country, and local laws;

(2) Treaties and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreements, and Defense Technical Agreements);

(3) United States regulations, directives, instructions, policies, and procedures that are applicable to the Contractor in the area of operations;

(4) Orders, directives, and instructions issued by the Combatant Commander relating to force protection, security, health, safety, or relations and interaction with local nationals; and

(5) The Uniform Code of Military Justice where applicable.

(e) *Contractor personnel.* (1) The Contracting Officer may direct the Contractor to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements under this clause.

(2) The Contractor shall have a current plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The plan shall identify all personnel who are subject to military mobilization and shall detail how the position would be filled if the individual were mobilized. In addition, the plan shall identify all personnel who occupy a position that is designated as mission essential by the Contracting Officer. This plan shall be available for review by the Contracting Officer's representative.

(f) *Personnel data.* (1) The Contractor shall maintain with the designated Government official a current list of all employees in the area of operations in support of the military force. The Contracting Officer will designate the Government official to receive this data and the appropriate automated system(s) to use for this effort.

(2) The Contractor shall ensure that all employees on this list have at all times a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(g) *Pre-deployment requirements.* The Contractor shall ensure that the following requirements are met prior to deploying an employee in support of deployed forces. Specific requirements for each category may be set forth in the statement of work or contract annex to the operation order. The Contractor shall ensure that—

(1) All applicable specified security and background checks are completed;

(2) All deploying personnel are medically and physically fit to endure the rigors of deployment in support of military operations and have received all required vaccinations;

(3) Deploying personnel possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations;

(4) Deploying personnel have all necessary passports, visas, and other documents required for contractor personnel to enter and exit an area of operations; and

(5) Country and theater clearance is obtained for personnel.

(h) *Military clothing and protective equipment.* (1) Contractor personnel accompanying the force are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. However, contractor personnel may wear specific items required for safety and security such as ballistic or nuclear, biological, or chemical protective clothing.

(2) The CONUS Replacement Center, or the theater commander, at his discretion, may provide to the contractor personnel military-unique organizational clothing and individual equipment (OCIE) and training to ensure contractor personnel security and safety.

(3) In accordance with Government-Furnished Property clauses specified elsewhere in this contract, the Contractor shall ensure that all issued OCIE is returned to the point of issue.

(i) *Weapons.* (1) Contractor personnel may not possess privately owned firearms when in support of deployed forces unless specifically authorized by the Combatant Commander. The Contractor shall ensure employee compliance with this requirement.

(2) If the Combatant Commander authorizes the carrying of firearms, the military may issue weapons and ammunition to the Contractor for issuance to specified contractor employees. The Contractor shall ensure that its personnel who receive weapons are adequately trained, are not barred from possession of a firearm by 18 U.S.C. 922(d)(9) or (g)(9), and adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition. Upon redeployment or revocation by the Combatant Commander of a contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(j) *Next of kin notification.* The Contractor shall be responsible for in-person notification of the employee designated next of kin of a deployed employee in the following circumstances:

(1) Death of the employee.

(2) An injury to the employee requiring evacuation.

(3) The employee is missing.

(4) The employee is captured.

(k) *Evacuation of bodies.* In the event of the death of a contractor employee, the Contractor is responsible for the evacuation of body from the point of identification to the location specified by the employee or next of kin, as applicable.

(l) *Evacuation.* If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance to the extent available to United States and third country employees. In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations under this contract.

(m) *Insurance.* The Contractor is responsible for all issues dealing with

exclusions contained in an employee's personal insurance policies that may be provided through its compensation package as negotiated with that employee.

(n) *Processing and departure points.* The Contractor and its employees will use a Government, contractor, or military unit processing and point of departure and transportation mode as directed by the Contracting Officer or the Contracting Officer's representative.

(o) *Purchase of scarce commodities.* If the Combatant Commander has established an organization for an area of operations whose function is to determine that certain items are scarce commodities, the Contractor shall obtain the approval of that organization prior to procuring the item(s).

(p) *Changes.* (1) When the Contractor, in order to meet a contractual obligation, must accompany or travel to an area where a force is deployed for contingency, humanitarian, peacekeeping, or combat operations, the Contractor shall comply with instructions of the Combatant Commander relating to all transportation, logistical, and support requirements.

(2) If there is a conflict between the instructions issued by the Combatant Commander under paragraph (p)(1) of this clause and the existing terms of the contract, the instructions issued by the Combatant Commander take precedence over any existing terms.

(3) The Contractor may submit a request for equitable adjustment for any additional effort required or any loss of contractor-owned equipment occasioned by such direction.

(q) *Changes in emergencies.* (1) Normally, the Contracting Officer or the Contracting Officer's representative provides direction to the Contractor, and the Contractor provides direction to its employees. However, when the Contractor is accompanying the force outside the United States, if the Contracting Officer or the Contracting Officer's representative is not available and emergency action is required because of enemy or terrorist activity or natural disaster that causes an immediate possibility of death or serious injury to contractor personnel or military personnel, the ranking military commander in the immediate area of operations may direct the Contractor or contractor employee to undertake any action as long as those actions do not require the contractor employee to engage in armed conflict with an enemy force.

(2) The Contractor may submit a request for equitable adjustment for any additional effort required or any loss of contractor-owned equipment occasioned by such direction.

(r) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (r), in all subcontracts that require subcontractor employees to accompany or to be available to accompany a force engaged in contingency, humanitarian, peacekeeping or combat operations outside the United States. (End of clause)

#### 252.225–7043 [Amended]

7. Section 252.225–7043 is amended in the introductory text by removing

“225.7402” and adding in its place “225.7403–2”.

[FR Doc. 04–6236 Filed 3–22–04; 8:45 am]

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 224

[DFARS Case 2003–D038]

#### Defense Federal Acquisition Regulation Supplement; Protection of Privacy and Freedom of Information; Correction

**AGENCY:** Department of Defense (DoD).

**ACTION:** Correction.

**SUMMARY:** DoD is issuing a correction to the preamble to the proposed rule published at 69 FR 8152–8153, February 23, 2004, pertaining to protection of privacy and freedom of information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

#### Correction

In the issue of Monday, February 23, 2004, on page 8153, in the first column, the second paragraph of the BACKGROUND section is corrected by revising the second sentence to read as follows: “The rule deletes DFARS 224.102, which specifies that the Privacy Act (5 U.S.C. 552a) does not apply to certain contractor records.”

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 04–6240 Filed 3–22–04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 575

[Docket No. NHTSA–99–5100]

RIN 2127–AG49

#### Consumer Information Regulations; Seat Belt Positioners

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Withdrawal of rulemaking.

**SUMMARY:** This document withdraws a notice of proposed rulemaking

published in 1999 in response to a petition for rulemaking from the American Academy of Pediatrics. After considering the comments on the NPRM and the advancements that have been attained in the testing of child passenger protection devices, the agency has decided not to proceed with the NPRM’s proposed labeling requirement. Before taking further action in this area, the agency would like to expand its knowledge base with data from up-to-date tests of current belt positioners, using the advanced test protocols and child test dummies available today. Because NHTSA will not be able to conclude its analysis of the issues of this rulemaking in the near future, we have decided to withdraw the August 1999 NPRM.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mike Huntley, NHTSA Office of Rulemaking, at (202) 366–0029.

For legal issues, you may call Deirdre Fujita, Office of Chief Counsel, (202) 366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document withdraws a rulemaking that began in response to a January 31, 1996 petition from the American Academy of Pediatrics (AAP) that requested that the agency regulate aftermarket seat belt positioners under Federal Motor Vehicle Safety Standard (FMVSS) No. 213, “Child Restraint Systems” (49 CFR 571.213). AAP stated in its petition that, because seat belt positioners are generally marketed as child occupant protection devices, the products should be subject to the same scrutiny and testing that child restraint systems undergo. AAP was concerned that some seat belt positioners “appear to interfere with proper lap and shoulder harness fit by positioning the lap belt too high on the abdomen, the shoulder harness too low across the shoulder, and by allowing too much slack in the shoulder harness.” Accordingly, AAP believed that the devices should be subject to a safety standard so that they would be required to meet a minimum level of performance.

On August 13, 1999 (64 FR 44164, Docket No. 99–5100), NHTSA granted the petition and published a notice of proposed rulemaking (NPRM) that sought to regulate seat belt positioners by way of a consumer information regulation. The NPRM discussed the

results of a study<sup>1</sup> that the agency had conducted in 1994 on three seat belt positioners that were then on the market. In the study, the agency dynamically tested the belt positioning devices under the conditions then-specified for testing child restraints under FMVSS No. 213. A Hybrid II 3-year-old and 6-year-old dummy were used (which, in 1994, were the state-of-the-art dummies used to test child restraints), and a Hybrid III 5th percentile female adult dummy. NHTSA restrained the dummies in lap/shoulder belts with, and without, the devices, and compared the results. In many of the tests with the 3-year-old dummy, the positioners reduced belt performance and contributed toward excessive head injury criterion (HIC) measurements (HIC values were greater than 1000). In one case, the measured chest acceleration exceeded the FMVSS No. 213 limit of 60 g’s. The devices generally performed adequately with the 6-year-old dummy with respect to HIC, in that the performance criteria of FMVSS No. 213 were not exceeded. However, one positioner had chest g measurements exceeding the FMVSS No. 213 limit in both frontal and offset tests. In each case, there was some reduction in the performance of the vehicle belt system restraining the dummy.<sup>2</sup> After reviewing these results, the agency proposed to require seat belt positioners to be labeled as not suitable for children under age 6.

The NPRM requested comments on four issues. The first issue was whether there was a safety need for the rulemaking action. There were no real-world data indicating that positioners were causing or exacerbating injuries. The second issue pertained to whether the devices should be labeled with a warning against using them with children under age 6. Third was whether the devices should be regulated by FMVSS No. 213. Then-existing child test dummies were not instrumented to measure abdominal loads, and there was no injury criterion developed that delineated between acceptable and unacceptable abdominal loading. The fourth issue related to the feasibility of adopting a performance requirement for seat belt positioners and the performance criteria that would distinguish between acceptable and unacceptable performance.

NHTSA received approximately 14 comments to the NPRM. Commenters

<sup>1</sup> “Evaluation of Devices to Improve Shoulder Belt Fit,” DOT HS 808 383, Sullivan and Chambers, August 1994.

<sup>2</sup> HIC values greater than 1000 were observed with two of the devices during 5 of 6 tests with the 5th percentile female dummy.