

“funds appropriated by Congress.” This is also reflected in the House Report, which provides:

Section 5 is not intended to have the effect of de-funding an entire program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

House Report at 19–20. This distinction is particularly important for recipients in the State of Oregon, where the law now permits assisted suicide. If recipients in Oregon undertake any of the activities prohibited by this part, they must be able to demonstrate that no LSC funds supported the activities.

In addition, recipients may have other Federal grants restricted by various provisions of the Assisted Suicide Act. This paragraph does not affect the recipient's obligation to comply with all the terms of such a grant. Although this rule restricts only the use of LSC grant funds, a recipient's other funds are still subject to any restrictions that are included in other grant agreements.

#### *Section 1643.5 Recipient Policies and Recordkeeping*

The proposed rule required recipients to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule and to maintain sufficient documentation to demonstrate compliance with this part. ATTAC urged the Corporation to revise this section to minimize the recordkeeping burden of recipients and noted that the preamble to the proposed rule stated that “the type of recordkeeping necessary to demonstrate compliance with this rule would be documentation that only non-LSC funds were used for any activities prohibited by this rule.” ATTAC interpreted this statement as requiring recipients to create new records to ensure compliance. The Board did not revise the recordkeeping requirement because it is not new to recipients. To comply with this requirement, recipients need only follow their normal accounting standards and procedures.

The Board did, however, delete the requirement that recipients adopt procedures because no procedures should be necessary for an activity in which the recipients must not engage. It is sufficient for recipients to establish a policy prohibiting engagement in the prohibited activities.

#### **List of Subjects in 45 CFR Part 1643**

Grants, Lobbying, Health care, Legal Services.

For reasons set forth in the preamble, LSC amends CS Chapter XVI of Title 45 by adding part 1643 as follows:

#### **PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING**

Sec.

- 1643.1 Purpose.
- 1643.2 Definitions.
- 1643.3 Prohibition.
- 1643.4 Applicability.
- 1643.5 Recipient policies and recordkeeping.

**Authority:** Pub. L. 105–12; 42 U.S.C. 2996f(b)(11).

##### **§ 1643.1 Purpose.**

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

##### **§ 1643.2 Definitions.**

(a) *Assisted suicide* means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) *Euthanasia (or mercy killing)* is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) *Suicide* means the act or instance of taking one's own life voluntarily and intentionally.

##### **§ 1643.3 Prohibition.**

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

##### **§ 1643.4 Applicability.**

(a) Nothing in § 1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion;

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall § 1643.3 be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

##### **§ 1643.5 Recipient policies and recordkeeping.**

The recipient shall adopt written policies to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: December 23, 1997.

**Victor M. Fortunio,**  
*General Counsel.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

**48 CFR Parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252**

### **Amendment of Department of Transportation Acquisition Regulations**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Transportation Acquisition Regulation (TAR) to reflect the changes to the Federal Acquisition Regulation through the Federal Acquisition Circular 90–46 and to delete certification requirements. **DATES:** This rule is effective January 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Hackley, Office of Acquisition and Grant Management, M–60, 400 Seventh Street SW., Washington, DC 20590: (202) 366–4267.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Department of Transportation has determined that changes to the

Transportation Acquisition Regulation (TAR) are necessary to implement and align it with 48 CFR Chapter Circulars 90-43 through 90-46, to delete certification requirements, amend part 1211 to insert language inadvertently omitted in 61 FR 50248, September 25, 1996, to implement statutory requirements, and to make minor editorial revisions and corrections.

**B. Regulatory Analysis and Notices**

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department does not believe that there would be significant Federalism implications to warrant the preparation of a Federalism assessment.

**C. Regulatory Flexibility Act**

The Department certifies that this final rule does not 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 merely restates previous TAR coverage, deletes certification requirements which do not significantly alter the amount of information currently required, and makes minor editorial revisions.

**D. Paperwork Reduction Act**

There are no new information collection requirements that require clearance previously approved under OMB Control No. 2105-0517.

**List of Subjects in 48 CFR Parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252**

Government procurement.

The Final rule is issued under the delegated authority of 49 CFR part 1.59(p). This authority is redelegated to the Senior Procurement Executive, issued this 18th day of December 1997, at Washington, DC.

**David J. Litman,**  
*Director of Acquisition and Grant Management.*

**Adoption of Amendments**

For the reasons set out in the preamble, 48 CFR Chapter 12 is amended as follows:

1. The authority citation for 48 CFR chapter 12, parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252 continues to read as follows:

**Authority:** 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

**PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM [AMENDED]**

2. Section 1201.105-2(b)(1)(i) is amended by revising "(FAR) 48 CFR 1.104-2(b)" to read "(FAR) 48 CFR 1.105-2."

2a. Section 1201.105-3 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

**§ 1201.105-3 Copies.**

\* \* \* \* \*

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the internet. See part 1202, appendix A, for the internet address.

2b. Section 1201.106(a) is amended by revising "April 30, 1997" to read "May 31, 2000."

**PART 1202—DEFINITIONS OF WORDS AND TERMS**

3. Section 1202.1 paragraphs (b) through (j) are redesignated as

paragraphs (c) through (k); paragraph (b) is added and newly designated paragraphs (i), (j)(1) and (j)(7) are revised to read as follows:

**§ 1202.1 Definitions.**

\* \* \* \* \*

(b) *Chief Information Officer (CIO)* means the Director of the Office of the CIO (S-80).

\* \* \* \* \*

(i) *Head of the operating administration (HOA)* means the individual appointed by the President to manage the operating administration. (For acquisition related matters, the Director, Transportation Administrative Service Center (TASC) is the HOA for TASC.)

(j) \* \* \*

(1) Federal Aviation Administration (FAA). (FAA is exempt from the TAR (48 CFR chapter 12) and TAM in accordance with the "Department of Transportation and Related Appropriations Act for FY 1996");

\* \* \* \* \*

(7) Transportation Administrative Service Center (TASC);

\* \* \* \* \*

3a. Subpart 1202.70 is added as follows:

**Subpart 1202.70—Internet Links**

**§ 1202.7000 General.**

Throughout the (TAR) 48 CFR chapter 12, referenced documents which can be found on the internet will cite the applicable internet address. These addresses are located in Appendix A of this part.

3b. Appendix A to part 1202 is added to read as follows:

**APPENDIX A TO PART 1202.—LIST OF INTERNET ADDRESSES FOR TAR DOCUMENTS**

TAR part	Document name	Internet address
1201 .....	TAR .....	http://www.dot.gov/ost/m60/tamtar/part1201.htm
	TAC .....	http://www.dot.gov/ost/m60/tamtar/part1201.htm
1205 .....	DOT Procurement Forecast .....	http://osdbuweb.dot.gov/consolic.htm
1234 .....	Major Acquisition Policies and Procedures.	http://www.dot.gov/ost/m60/tamtar/chap1234.htm

**PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 1203.1—Safeguards**

**§ 1203.104-11 [Amended]**

4. The heading of section 1203.104-11 is revised to read "Criminal and civil

penalties, and further administrative remedies."

**PART 1205—PUBLICIZING CONTRACT ACTIONS**

5. In part 1205, subpart 1205.90 is added to read as follows:

**Subpart 1205.90—Publicizing Contract Actions For Personal Services Contracting**

**Authority:** 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

### Subpart 1205.90—Publicizing Contract Actions for Personal Services Contracting

#### § 1205.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104–91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104–106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the requirements of (FAR) 48 CFR part 5.

### PART 1206—COMPETITION REQUIREMENTS

6. In part 1206, subpart 1206.90 is added to read as follows:

#### Subpart 1206.90—Competition Requirements for Personal Services Contracting

**Authority:** 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

#### Subpart 1206.90—Competition Requirements for Personal Services Contracting

#### § 1206.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104–91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104–106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

### PART 1209—CONTRACTOR QUALIFICATIONS

7. Subpart 1209.4 is added to read as follows:

#### Subpart 1209.4—Debarment, Suspension, and Ineligibility

#### § 1209.408–70 Denial of funds.

(a) In accordance with Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and Section 206 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), no funds available under appropriations acts for any fiscal year for DOT may (with respect to recruiting) be provided by contract to any institution of higher education that has a policy or practice, regardless of when implemented, that either prohibits or in effect prevents the Secretary of Defense from obtaining for military recruiting purposes:

- (1) Entry to campuses or access to students on campuses; or
- (2) Access to directory information on students.

(b) Directory information means the student's name, address, telephone listing, date and place of birth, level of education, academic major, degrees received, and the most recent educational institution in which the student was enrolled.

(c) Students referred to in paragraph (a)(1) of this section are individuals who are 17 years of age or older and are enrolled at a covered school.

(d) Covered school means an institution of higher education, or a subelement of an institution of higher education.

### PART 1214—SEALED BIDDING

8. Section 1214.303 is removed.

### PART 1216—TYPES OF CONTRACTS

9. Section 1216.405 is redesignated as section 1216.406 and paragraphs (a) through (c) are redesignated as (e)(1)(i) through (iii), respectively.

### PART 1217—SPECIAL CONTRACTING METHODS

10. Subpart 1217.1 (1217.102 and 1217.102–1) is removed.

### PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

11. Subpart 1222.6 (1222.608 and 1222.608–4) is removed.

### PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION:

12. Section 1224.202 is redesignated as section 1224.203.

### PART 1225—FOREIGN ACQUISITION

13. Part 1225 (FAA Supplement) is removed and reserved.

### PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

14. Section 1236.602–1 is amended by removing paragraphs (a), (a)(1) through (a)(5)(iii), and (c).

### PART 1237—SERVICE CONTRACTING

15. Section 1237.104–90 is revised and 1237.104–91 is added to read as follows:

#### § 1237.104–90 Delegation of authority. (USCG)

(a) Section 733(a) of Pub. L. 104–106, the DOD Authorization Act of 1996, amended Title 10 of the United States Code to include a new provision which authorizes the Secretary, with respect to the Coast Guard, to enter into personal

services contracts at medical treatment facilities (10 U.S.C. 1091).

(b) The authority of the Secretary of Transportation under Pub. L. 104–106 to award personal services contracts for medical services at facilities for the Coast Guard is delegated to the HCA with the authority to redelegate to contracting officers under procedures established by the HCA, who will address applicable statutory limitations under Section 1091A of Title 10 U.S.C.

#### § 1237.104–91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).

(a) Personal services contracts for health care services are authorized by 10 U.S.C. 1091 for the Coast Guard. Sources for contracts for health care services under the authority of 10 U.S.C. 1091 shall be selected through procedures established in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from (TAR) 48 CFR part 1206 competition requirements (see (TAR) 48 CFR 1206.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication which serves the area of the facility. Acquisitions for health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking in accordance with the evaluation procedures. Individuals must be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

**PART 1246—QUALITY ASSURANCE**

16. Section 1246.705 is amended by revising paragraph (a)(3) to read as follows:

**§ 1246.705 Limitations.**

(a) \* \* \*

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

**PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

17. Section 1252.223-70, 1252.228-70, 1252.228-72 are revised to read as follows and 1252.225-90 and 1252.225-91 are removed

**§ 1252.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.**

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Dec. 1997)

The Contractor must have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within \_\_\_ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract. (End of clause)

**§ 1252.228-70 Loss of or damage to leased aircraft.**

As prescribed in (TAR) 48 CFR 1228.306-70 (a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (Dec. 1997)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228-71, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

**§ 1252.228-72 Risk and indemnities.**

As prescribed in (TAR) 48 CFR 1228.306-70(a) and (d), insert the following clause:

Risk and Indemnities (Dec. 1997)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer. (End of clause)

**TAR MATRIX**

18. In Part 1253, subpart 1253.3, is amended by removing the entries for "FAA 1252.225-90" and "FAA 1252.225-91" from the TAR matrix.

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 595**

[Docket No. NHTSA-97-3111]

RIN 2127-AG61

**Air Bag On-Off Switches**

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

**ACTION:** Final rule, correcting amendment.

**SUMMARY:** This document amends a final rule which allows motor vehicle dealers and repair businesses to install retrofit manual on-off switches for air bags in motor vehicles. The rule requires the on-off switch to be key operated and requires a telltale that indicates the operating status of the air bag. NHTSA has determined that the language of the regulatory text could be mistakenly interpreted to require a key specifically matched to the on-off switch and that the rule was ambiguous as to how the readiness indicator should function when one or both air bags have been deactivated by means of the on-off