

Dated: November 17, 2010.

W.C. Early,

Acting Regional Administrator, EPA Region III.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Definition of Sexual Assault (DFARS Case 2010-D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS), regarding Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, to ensure contractor employees are aware of the DoD definition of “sexual assault” as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program. In addition to ensuring an awareness of the definition, the proposed change will inform contractors that, for contractor employees accompanying U.S. Armed Forces, such offenses are covered under the Uniform Code of Military Justice.

DATES: Comments on this proposed rule should be submitted in writing to the address shown below on or before January 31, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2010-D023, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2010-D023 in the subject line of the message.
- *Fax:* 703-602-0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

• Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

• To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703-602-0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD Inspector General audit D-2010-052, entitled “Efforts to Prevent Sexual Assault/Harassment Involving DoD Contractors During Contingency Operations,” dated April 16, 2010, provided recommendations for the Under Secretary of Defense for Acquisition, Technology, and Logistics to develop requirements in all DoD contracts supporting contingency operations to ensure contractor employees accompanying U.S. Armed Forces are aware of the definition of “sexual assault,” as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program (<http://www.dtic.mil/whs/directives/corres/pdf/649501p.pdf>).

This proposed change will add a new item for compliance with laws and regulations at DFARS 252.225-7040(d)(3). This change would require that contractor employees accompanying U.S. Armed Forces are aware of the DoD definition of “sexual assault” as defined in DoD Directive 6495.01, Sexual Assault Prevention and Response Program. It would also inform contractor employees accompanying U.S. Armed Forces, that such offenses are covered under the Uniform Code of Military Justice, Title 10, Chapter 47 (<http://www.constitution.org/mil/ucmj19970615.htm>).

II. Executive Order 12866

This is a significant regulatory action and therefore was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 20, 1993. This is not a major rule under 5 U.S.C. 804.

III. 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 does not impose any additional requirements on small businesses. DFARS 252.225-7040(e)(2)(iv) already informs contractors that contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the

jurisdiction of the Uniform Code of Military Justice. This proposed change clarifies that sexual assault is an offense covered under the Uniform Code of Military Justice. Therefore, DoD has not performed an Initial Regulatory Flexibility Analysis.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS case 2010-D023) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

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

2. Amend section 252.225-7040 by adding paragraph (d)(3), to read as follows:

252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

* * * * *

(d) * * *

(3) The Contractor shall ensure contractor employees accompanying U.S. Armed Forces are aware of the DoD definition of “sexual assault” in DoDD 6495.01, Sexual Assault Prevention and Response Program, at <http://www.dtic.mil/whs/directives/corres/pdf/649501p.pdf>, and advise them that such offenses are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause).

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