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(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

(b) No funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) or subsequent DoD appropriations acts may be expended unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any agreement, as described in paragraph (a) of this section, with respect to any employee or independent contractor performing work related to such subcontract.

[75 FR 27947, May 19, 2010. Redesignated at 75 FR 76297, Dec. 8, 2010; 76 FR 38048, June 29, 2011]

222.7403 Applicability.

This requirement does not apply to the acquisition of commercial products or commercial services (including commercially available off-the-shelf items).

[75 FR 76297, Dec. 8, 2010, as amended at 88 FR 6583, Jan. 31, 2023]

222.7404 Waiver.

(a) The Secretary of Defense may waive, in accordance with paragraphs (b) through (d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.

(b) The waiver determination shall set forth the grounds for the waiver with specificity, stating any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures and PGI 222.7404(c).

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(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the FEDERAL REGISTER, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

[75 FR 76297, Dec. 8, 2010, as amended at 78 FR 36113, June 17, 2013]

222.7405 Contract clause.

Use the clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task orders or delivery orders and bilateral modifications adding new work) valued in excess of \$1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) or subsequent DoD appropriations acts, except in contracts for the acquisition of commercial products, including commercially available off-the-shelf items, or commercial services.

[76 FR 38048, June 29, 2011, as amended at 88 FR 6583, Jan. 31, 2023]

PART 223—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

Subpart 223.1—Sustainable Products and Services

Sec.

223.107-1 Products containing recovered materials.

223.107-4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

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- 223.7400 Scope of subpart.
- 223.7401 Definition.
- 223.7402 Prohibition.
- 223.7403 Procedures.
- 223.7404 Contract clause.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

Subpart 223.1—Sustainable Products and Services

SOURCE: 89 FR 66284, Aug. 15, 2024, unless otherwise noted.

223.107-1 Products containing recovered materials.

(e) *Procedures.* Follow the procedures at PGI 223.107-1(e).

223.107-4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with section 326, Public Law 102-484 (10 U.S.C. 3201 note prec.). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

Subpart 223.3—Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials

223.302 Hazardous material identification and notice of material safety data.

(e) The contracting officer shall also provide hazard warning labels, that are received from apparent successful offerors, to the cognizant safety officer.

[70 FR 73150, Dec. 9, 2005, as amended at 89 FR 66284, Aug. 15, 2024]

223.304 Contract clauses.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

[56 FR 67215, Dec. 30, 1991. Redesignated at 89 FR 66284, Aug. 15, 2024]

223.370 Safety precautions for ammunition and explosives.

223.370-1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

- (1) Development;
- (2) Testing;
- (3) Research;

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(4) Manufacturing;
(5) Handling or loading;
(6) Assembling;
(7) Packaging;
(8) Storage;
(9) Transportation;
(10) Renovation;
(11) Demilitarization;
(12) Modification;
(13) Repair;
(14) Disposal;
(15) Inspection; or
(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

- (1) Inert components containing no explosives, propellants, or pyrotechnics;
- (2) Flammable liquids;
- (3) Acids;
- (4) Oxidizers;
- (5) Powdered metals; or
- (6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.

(b) This policy is implemented by DoD Manual 4145.26, DoD Contractors' Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26, as long as the contract cites the ammuni-

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tion and explosives regulation of the DoD component or installation.

[56 FR 36365, July 31, 1991, as amended at 70 FR 73150, Dec. 9, 2005; 88 FR 80466, Nov. 17, 2023]

223.370-4 Procedures.

Follow the procedures at PGI 223.370-4.

[70 FR 73151, Dec. 9, 2005]

223.370-5 Contract clauses.

Use the clauses at 252.223-7002, Safety Precautions for Ammunition and Explosives, and 252.223-7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

Subpart 223.4 [Reserved]

Subpart 223.5 [Reserved]

Subpart 223.70 [Reserved]

Subpart 223.71—Storage, Treatment, and Disposal of Toxic or Hazardous Materials

SOURCE: 79 FR 58697, Sept. 30, 2014, unless otherwise noted.

223.7101 Definitions.

As used in this subpart, the terms *storage* and *toxic or hazardous materials* are defined in the clause at 252.223-7006, Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.

223.7102 Policy.

(a) 10 U.S.C. 2692 prohibits storage, treatment, or disposal on DoD installations of toxic or hazardous materials that are not owned either by DoD or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation, unless an exception in 223.7104 applies.

(b) When storage of toxic or hazardous materials is authorized based on an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no

longer exists. In all other cases of storage or disposal, the storage or disposal shall be terminated as determined by the Secretary of Defense.

223.7103 Procedures.

(a)(1) Storage, treatment, or disposal of toxic or hazardous materials not owned by DoD on a DoD installation is prohibited unless—

(i) One or more of the exceptions set forth in 223.7104(a) is met including requisite approvals; or

(ii) Secretary of Defense authorization is obtained under the conditions set forth in 223.7104(b).

(2) When storage, treatment, or disposal of toxic or hazardous materials not owned by DoD is authorized in accordance with this subpart, the contract shall specify the types and quantities of toxic or hazardous materials that may be temporarily stored, treated, or disposed of in connection with the contract or as a result of the authorized use of a DoD facility or space launch facility. All solicitations and contracts shall specify the conditions under which storage, treatment, or disposal is authorized.

(b) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7104, the contracting officer should seek advice from the cognizant office of counsel.

223.7104 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to any of the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of DoD or in connection with a service to be performed on a DoD installation for the benefit of DoD.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement

between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of DoD, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any toxic or hazardous materials not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(i) Is consistent with the best interest of national defense and environmental security; and

(ii) Provides for the prospective user's continued financial and environmental responsibility and liability with regard to the material.

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(11) The storage of any material that is not owned by DoD if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on a DoD installation or on other land controlled by the United States.

(b) The Secretary of Defense may grant an exception to the prohibition in 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

223.7105 Reimbursement.

The Secretary of Defense may assess a charge for any storage or disposal provided under this subpart. If a charge is to be assessed, then such assessment shall be identified in the contract with payment to the Government on a reimbursable cost basis.

223.7106 Contract clause.

Use the basic or the alternate of the clause at 252.223-7006, Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor access to a DoD installation.

(a) Use the basic clause, unless a determination is made under 223.7104(a)(10).

(b) Use the alternate I clause when the Secretary of the military department issues a determination under the exception at 223.7104(a)(10).

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

SOURCE: 61 FR 7743, Feb. 29, 1996, unless otherwise noted.

223.7200 Definition.

As used in this subpart—
Arms, ammunition, and explosives (AA&E) means those items within the scope of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

[88 FR 80466, Nov. 17, 2023]

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223.7201 Policy.

(a) The requirements of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD Manual 5100.76 need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial product within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD Manual 5100.76 shall apply.

[61 FR 7743, Feb. 29, 1996, as amended at 88 FR 6583, Jan. 31, 2023; 88 FR 80466, Nov. 17, 2023]

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD Manual 5100.76 apply.

[61 FR 7743, Feb. 29, 1996, as amended at 88 FR 80466, Nov. 17, 2023]

223.7203 Contract clause.

Use the clause at 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD Manual 5100.76 applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996; 88 FR 80466, Nov. 17, 2023]

Subpart 223.73—Minimizing the Use of Materials Containing Hexavalent Chromium

SOURCE: 76 FR 25575, May 5, 2011, unless otherwise noted.

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.

In accordance with the DoD policy memorandum of April 8, 2009, Minimizing the Use of Hexavalent Chromium, 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.

[86 FR 27280, May 20, 2021]

223.7302 [Reserved]

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 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, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that

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are for supplies, maintenance and repair services, or construction.

[76 FR 25575, May 5, 2011, as amended at 78 FR 37986, June 25, 2013; 88 FR 6583, Jan. 31, 2023]

Subpart 223.74—Prohibition on Procurement of Certain Items Containing Perfluoroalkyl or Polyfluoroalkyl Substances

SOURCE: 88 FR 67606, Sept. 29, 2023, unless otherwise noted.

223.7400 Scope of subpart.

This subpart implements section 322(b), (c), and (d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

223.7401 Definition.

As used in this subpart—
Ocean-going vessel means a vessel over 59 feet in length owned or operated by DoD or the U.S. Coast Guard, other than vessels that are chartered by the Armed Forces on a time or voyage basis.

223.7402 Prohibition.

Do not procure any fire-fighting agent that contains in excess of one part per billion perfluoroalkyl substances or polyfluoroalkyl substances. Procurements of fire-fighting agent for use solely onboard ocean-going vessels are exempt from this prohibition.

[89 FR 20871, Mar. 26, 2024]

223.7403 Procedures.

Contracting officers shall not issue a solicitation for any fire-fighting agent that contains perfluoroalkyl or polyfluoroalkyl substances in excess of one part per billion, unless the requiring activity provides documentation of the exemption at 223.7402. The contracting officer shall maintain the documentation in the contract file.

[89 FR 20871, Mar. 26, 2024]

223.7404 Contract clause.

Use the clause at 252.223–7009, Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations, in solicitations and contracts, including solicitations and

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contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, relating to fire-fighting on military installations.

[88 FR 67606, Sept. 29, 2023, as amended at 89 FR 20871, Mar. 26, 2024]

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 224.1—Protection of Individual Privacy

Sec.
224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.203 Policy.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

Subpart 224.1—Protection of Individual Privacy

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoDI 5400.11, DoD Privacy and Civil Liberties Programs; DoD 5400.11–R, Department of Defense Privacy Program; and DoDM 5400.11, DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan.

[88 FR 37794, June 9, 2023]

Subpart 224.2—Freedom of Information Act

224.203 Policy.

(a) DoD implementation is in DoDD 5400.7, DoD Freedom of Information Act Program, and DoD 5400.7–R, DoD Freedom of Information Act Program.

[56 FR 36367, July 31, 1991. Redesignated at 62 FR 34122, June 24, 1997]

PART 225—FOREIGN ACQUISITION

Sec.
225.001 General.
225.003 Definitions.