

Preference for Certain Domestic Commodities (Feb 2003)

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(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced, except that this clause does apply to fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States;

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DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2002-D042]

Defense Federal Acquisition Regulation Supplement; Contractor Performance of Security-Guard Functions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 332 of the National Defense Authorization Act for Fiscal Year 2003. Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities in excess of those in place on September 10, 2001.

DATES: Effective date: February 14, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 15, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002-D042 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: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D042.

At the end of the comment period, interested parties may view public

comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602-0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS subpart 237.1 to implement section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 332 authorizes DoD to waive the prohibition at 10 U.S.C. 2465(a) related to security-guard functions at military installations or facilities. It permits contractor performance of security-guard functions to meet the increased requirements for such services since September 11, 2001. This authority extends only to the increased requirements; therefore, existing security-guard services not performed by contractors are unaffected. The authority expires on December 2, 2005. Recruiting and training standards for contractor personnel who are to perform security-guard functions pursuant to this authority will be comparable to the standards in place for DoD personnel currently performing those functions.

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 the procurement of security-guard services over and above the level of such services being performed on September 10, 2001. The amount of such additional services is not expected to be significantly large, in comparison to the total amount of services procured by DoD. 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 subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D042.

C. 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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities to meet the increased requirements for such services since September 11, 2001. Section 332 became effective upon enactment on December 2, 2002. The authority provided by section 332 expires on December 2, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

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

PART 237—SERVICE CONTRACTING

2. Section 237.101 is added to read as follows:

237.101 Definitions.

Increased performance of security-guard functions, as used in this subpart, means—

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

3. Section 237.102-70 is amended by adding paragraph (d) to read as follows:

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(d) Under section 332 of Pub. L. 107-314, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

(1) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(2) The agency has determined that—

(i) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(ii) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(iii) Performance of such functions will not result in a reduction in the security of the installation or facility; and

(3) Contract performance will not extend beyond December 1, 2005.

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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

Prohibited Items

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule provides guidance to the public on the types of property Transportation Security Administration (TSA) considers to be weapons, explosives, and incendiaries prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations. This interpretation also provides guidance on the types of items permitted in sterile areas, the cabins of passenger aircraft, and in passengers' checked baggage.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Vicky Skelly, Aviation Security Specialist, Air Carrier Division, Office of Aviation Security Policy, TSA-9, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (571) 227-2641, e-mail Vicky.skelly@tsa.dot.gov. Legal questions may be directed to Ellen

Siegler, Attorney, TSA-2, Chief Counsel; telephone (571) 227-2723, e-mail ellen.siegler@tsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can obtain an electronic copy of this interpretive rule and other TSA rulemaking documents using the Internet by:

(1) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html; or

(3) Visiting the TSA's Laws and Regulations web page at <http://www.tsa.dot.gov/public/index.jsp>.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section.

Statutory and Regulatory Background

Following the terrorist attacks on the United States on September 11, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) on November 19, 2001 (49 U.S.C. 40101 *et seq.*), establishing TSA. TSA is an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. TSA is responsible for security in all modes of transportation regulated by DOT, including civil aviation. See 49 U.S.C. 114(d). Accordingly, ATSA transferred the responsibility for civil aviation security from the Federal Aviation Administration (FAA) to the TSA.

On February 22, 2002, TSA published a final rule transferring the bulk of FAA's aviation security regulations to TSA. See 67 FR 8340. Among these was FAA's regulation governing the carriage of weapons, explosives, and incendiaries by individuals into sterile areas and into the cabins of passenger aircraft for which screening is conducted. This regulation now is codified at § 1540.111 of Title 49 of the Code of Federal Regulations (CFR). See 67 FR 8340 at 8354. See also 67 FR 41635 at 41639 (June 19, 2002).

Section 1540.111 Carriage of Weapons, Explosives, and Incendiaries by Individuals. The rule provides, in part, that an individual (other than a law enforcement or other authorized individual) "may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or

§ 1546.201 of this chapter (TSA's regulations on acceptance and screening of individuals and accessible property);

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter."

Section 1540.111(b) establishes certain exceptions to this rule for law enforcement officers and other persons authorized to carry weapons. These exceptions, however, do not apply to the general public.

For purposes of § 1540.111(a), "accessible property" is property that is accessible to the individual at the screening checkpoint, in the sterile area, or in the cabin of the aircraft. It includes carry-on baggage and property an individual carries on his or her person. A "sterile area" is a portion of an airport that provides passengers access to boarding aircraft and to which the access is generally controlled through the screening of persons and property. See 49 CFR 1540.5.

Penalties for Prohibited Items.

Individuals who carry weapons, explosives, or incendiaries into a sterile area or the cabin of a passenger aircraft are subject to civil and criminal penalties. See, for instance, 49 U.S.C. 46301 and 46314. These penalties also apply to individuals who place loaded firearms in checked baggage. See also 49 U.S.C. 46505.

Today's Interpretative Rule. This interpretation provides guidance to the public as to the types of property TSA considers to be "weapons, explosives, and incendiaries" that, if carried by an individual not authorized to carry such items, are prohibited in sterile areas and in the cabins of aircraft under 49 CFR 1540.111(a). TSA refers to these items collectively as prohibited items because they are prohibited from these areas. There are many items that are not created for use as weapons, explosives, or incendiaries, but may be used as such items. Today's regulatory interpretation includes examples of these so-called "dual use items," which also are prohibited. Congress specifically directed TSA to identify dual use items for purposes of passenger screening. See 49 U.S.C. 44935(h)(3).

This interpretation also provides guidance on items that are permitted in a sterile area and in the cabin of a passenger aircraft even though they may appear to fall into the broad categories of items on the prohibited items list. These items generally are personal care, medical, and assistive items, examples of which are set forth below. In