

CHAPTER 28

SENIOR OFFICER LEGAL ORIENTATION

CIVILIANS ON THE BATTLEFIELD

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OUTLINE OF INSTRUCTION

I. REFERENCES

- A. DODD 1404.10, Emergency-Essential (E-E) DOD U.S. Citizen Civilian Employees, April 10, 1992
- B. DODD 1400.31, DOD Civilian Work Force Contingency and Emergency Planning and Execution, April 28, 1995
- C. DODI 1400.32, DOD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures, April 28, 1995
- D. AR 690-11, Mobilization Planning and Management, 14 September 1990
- E. DA Pam 690-47, DA Civilian Employee Deployment Guide, 1 November 1995
- F. Civilian Personnel Management Guide for Management Officials During Contingencies and Emergencies, March 2003, available at http://www.cpms.osd.mil/civ_prep/ManagementGuide.pdf
- G. DA Pam 715-16, Contractor Deployment Guide, 27 February 1998
- H. AR 715-9, Contractors Accompanying the Force, 29 October 1999
- I. FM 100-21 (also numbered FM 3-100.21), Contractors on the Battlefield, 3 January 2003
- J. Contingency Contracting and Contractor on the Battlefield Policy, Guidance, Doctrine, and Other Relevant Information: <http://www.amc.army.mil/amc/rda/rda-ac/ck/ck-prime.htm>

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II. INTRODUCTION

- A. "It is DOD policy that the DOD civilian workforce shall be prepared to respond rapidly, efficiently, and effectively to meet mission requirements for all contingencies and emergencies." DoDI 1400.32, para 4 (April 24, 1995)

III. DESIGNATING EMERGENCY ESSENTIAL POSITIONS

A. Identify E-E Positions

- 1. Include civilian positions overseas or in the United States that would be transferred overseas in a crisis situation.
 - a. The specific crisis situation duties and responsibilities and physical requirements of each E-E position must be identified and documented to ensure that E-E employees know what is expected of them.
 - b. Documentation can be:
 - (1) Annotation of E-E duties in existing peacetime position descriptions;
 - (2) Brief statements of crisis situation duties attached to position descriptions if materially different than peacetime duties;
 - (3) Separate E-E position descriptions.
 - c. Record E-E Position Designation. A statement shall be included in the position description of each E-E identified position.

- (1) Example: "This position is emergency-essential (E-E). In the event of a crisis situation, the incumbent, or designated alternate, must continue to perform the E-E duties until relieved by proper authority. The incumbent or the designated alternate may be required to take part in readiness exercises. This position cannot be vacated during a national emergency or mobilization without seriously impairing the capability of the organization to function effectively; therefore, the position is designated "key," which requires the incumbent, or designated alternate, to be screened from military recall status."
2. Ensure that civilian positions are designated "E-E" only when civilians are required for direct support to combat operations, or to combat systems support functions that must be continued and that could not otherwise be immediately met by using deployed military possessing the skills in the number and in the functions expected to be needed to meet combat operations or systems support requirements in a crisis situation.
3. Ensure that employees are identified to perform the duties of E-E positions, including the identification of alternates to cover vacant E-E positions or those in which the incumbents are unable to perform the duties or have not signed the E-E position agreement.
4. Issue E-E employees, or employees occupying positions determined to be E-E, the DD Form 489, "Geneva Convention Identity Card for Civilians Who Accompany the Armed Forces," or DD Form 1934, "Geneva Convention Identity Card for Medical and Religious Personnel Who Serve In or Accompany the Armed Forces," as appropriate.
5. Advise applicants for E-E positions that individuals selected to fill these positions are required to sign written agreements (DD Form 2365), "DoD Civilian Employee Overseas Emergency-Essential Position Agreement."

- a. The agreements document that incumbents of E-E positions accept certain conditions of employment arising out of crisis situations wherein they shall be sent on temporary duty, shall relocate to duty stations in overseas areas, or continue to work in overseas areas after the evacuation of other U.S. citizen employees who are not in E-E positions.
 - b. All individuals selected for E-E positions must be exempted from recall to the military Reserves or recall to active duty for retired military.
6. Encourage incumbents of positions that become E-E to sign DD Form 2365 as soon as reasonably practicable and consistent with the needs of the military mission.
 - a. Those employees who decline to sign the agreement should be detailed or reassigned to non-E-E positions as soon as reasonably practicable given the exigencies of the military situation. If that is not possible, no further tour extension should be approved.
7. Attempt to fill E-E positions with employees who volunteer to occupy such positions and sign the E-E agreement or direct the involuntary assignment of civilian employees to E-E positions as may be necessary to meet the exigencies of the circumstances and when unforeseen contingencies prevent prior identification of those positions as being "E-E."
8. If an employee declines to sign the agreement, but possesses special skills and expertise, which in management's view renders it necessary to send that employee on the assignment without signing the agreement, the employee may be directed on involuntary temporary duty to the location where the employee's skills are required. EE employees may be separated from employment for failure to remain in an EE position or to relocate on temporary duty or permanent change of station to an EE position. All civilian employees deploying to combat operations/crisis situations are considered EE regardless of volunteer status or the signing of the EE position agreement.

9. Notification of Anthrax Immunization Requirements. Title 10, U.S. Code, as amended by § 751 of the National Defense Authorization Act for FY 2001, requires SECDEF to prescribe regulations to ensure E-E civilians required to participate in the anthrax vaccine program are notified of the requirement and of the consequences of a decision not to participate.
 - a. Written notice is required. E-E civilians must sign acknowledging receipt of notification. A copy of the acknowledgement must be filed with the signed DD Form 2365 (E-E Position Agreement).
 - b. Notice of anthrax immunization requirements must be included in all vacancy announcements for E-E positions.
 - c. See Memorandum dated June 25, 2001, Assistant SECDEF for Force Management, SUBJECT: Notifying Emergency-Essential Employees Regarding Anthrax Immunization Requirements-- contains sample notification and vacancy announcement statement as follows:
 - (1) “This is to notify you that your position has been designated as emergency essential. You may be required, as a condition of employment, to take the series of anthrax vaccine immunizations to include annual boosters. This may also include other immunizations that may in the future be required for this position, or for a position you may fill as an emergency essential alternate. Failure to take the immunizations may lead to your removal from this position or separation from Federal service.

Acknowledgement: This is to acknowledge that I have read and fully understand the potential impact of the above statement” {employee signature and date}.

IV. DEPLOYMENT PREPARATIONS

A. E-E employees shall be provided protective equipment, work related training, law of war training, and training in the Uniform Code of Military Justice, commensurate with the anticipated threat and theater policy.

1. Protective Equipment Training Requirements

a. Civilian employees should be issued, and trained in the use of the same protective gear as is issued to military personnel in theater, to include lens inserts, if required.

2. Training for civilian employees on their responsibilities; e.g. standards of conduct, as well as coping skills if they become Prisoners Of War.

3. Civilian employees shall receive the same immunizations as given to military personnel in theater.

4. Civilian employees shall be provided appropriate cultural awareness training for the theater if such training is being provided to military personnel.

5. Civilian employees shall be issued passports, visas, and country clearances.

6. Civilian employees shall be issued any required security clearances expeditiously.

7. Civilian employees will fill out DD Form 93, "Record of Emergency Data." Components will establish procedures to store and access civilian DD 93s that are the same as or parallel to those for military personnel.

a. Components will set up procedures for civilian casualty notification and assistance that parallel those for military personnel.

8. Provisions shall be made for medical care of civilian employees in a theater of operations.
 - a. They shall be HIV-tested before deployment, if the country of deployment requires it.
 - (1) DA policy (DA DCSPER/ OTJAG decision) is that in those isolated situations when a requirement exists for mandatory HIV screening, and the test is positive, a civilian can be deployed in support of a contingency operation as long as the host country is notified and the individual is able to perform assigned duties.
 - b. All DOD-sponsored non-military personnel PCS or TDY outside the United States and its Territories shall have panarex or DNA samples taken for identification purposes.
 - (1) Dental x-rays may be substituted when the ability to take panarex or DNA samples is not available.
 - c. Civilians may also be issued " dog tags" for identification purposes.
 - (1) Components shall establish procedures to store and access such identification data that are the same as or parallel to those for military personnel.
 - d. Civilians shall receive medical and dental examinations and, if warranted, psychological evaluations to ensure fitness for duty in the theater of operations to support the military mission.
 - (1) During a contingency or emergency, civilian employees returning to the United States and its Territories from a theater of operations shall receive cost-free military physical examinations within 30 days if the medical community decides it is warranted, or required for military personnel.

- e. Civilians shall carry with them a minimum of a 90-day supply of any medication they require.
- f. Civilians with dependents who are in or deploying to a theater of operations are encouraged to make Family Care Plans.
 - (1) As a condition of employment, single parents or families where both parents are emergency-essential civilians are required to prepare a family care plan. This plan will be equivalent to that required of the military located in the same geographical area. AR 690-11, para. 1-4k(11)(c).
- g. Civilians killed in a theater of operations shall be processed by Graves Registration personnel with procedures parallel to those for the military personnel.
 - (1) An escort officer for the remains of civilians killed is authorized; and a flag shall be purchased for the casket at Government expense.
- h. Legal assistance relating to matters of deployment is available to Army civilians, notified of deployment, as well as their families. Legal assistance will be available for the period of deployment and is limited to matters related to deployment as determined by the on-site supervising attorney.
 - (1) Civilians deploying to or in a theater of operations shall be furnished the opportunity and assistance with making wills and any necessary powers of attorney.

B. Weapons Certification and Training

- 1. Under certain conditions Army civilians may be issued military firearms for their personal self-defense, subject to military regulations regarding training in proper use and safe handling of firearms. Acceptance of a military firearm is voluntary by the emergency-essential civilian. DA PAM 690-47 (para. 1-12).

- a. Authority to carry military firearms is contingent upon the approval and guidance of the supported Combatant Commander. The Army Component Commander must make the decision early in the operation as to whether or not civilians may be armed.
- b. Only government issued military firearms/ammunition are authorized. Familiarization training will be conducted IAW FM 23-35.

C. Clothing and Equipment Issue

- 1. Organization Clothing and Individual Equipment (OCIE) will be issued to emergency-essential personnel and other civilians who may be deployed in support of military operations.
 - a. Kevlar Helmets, load bearing equipment, and chemical defensive equipment will be worn in a tactical environment in accordance with supported unit procedures.
 - b. Maintenance and accountability of EE clothing and equipment is the responsibility of the employee to whom the items were issued.
 - c. Items of personal clothing and personal care are the responsibility of the individual. Civilian employees should bring work clothing required by their particular job.

V. COMMAND AND CONTROL DURING DEPLOYMENTS

- A. During a crisis situation or deployment, civilian employees are under the direct command and control of the on-site supervisory chain. Therefore, the on-site supervisory chain will perform the normal supervisory functions; for example, those related to performance evaluations, task assignments and instructions, and initiating and effecting recognition and disciplinary actions.

1. During contingencies and emergencies, when normal administrative procedures may not be feasible and the Defense Civilian Personnel Data System (DCPDS) may not be accessible, managers must ensure that personnel actions are appropriately documented and recorded, either in handwritten format or in recoverable electronic format. Personnel actions will be processed electronically in DCPDS once normal operations are restored. DODD 3020.26, Continuity of Operations Policy and Planning; Modern DCPDS Contingency Management Manual, March 26, 2001.

- B. The on-site commander may impose special rules, policies, directives, and orders based on mission necessity, safety, and unit cohesion. These restrictions need only be considered reasonable in the circumstance of the deployment to be enforceable.

VI. PAY AND ALLOWANCES DURING DEPLOYMENTS

- A. Civilian employees receive the same pay and allowances to which they were entitled prior to deploying, and to which they would become entitled thereafter (i.e., within grade increases).
 1. There is no tax exclusion for civilian employees similar to the combat tax exclusion for military members.

- B. Tour of Duty. 5 U.S.C. § 6101; 5 C.F.R. § 610.121; 5 U.S.C. § 6131. The administrative workweek constitutes the regularly scheduled hours for which a deployed employee must receive basic and premium pay. Under some conditions, hours worked beyond the administrative workweek may be considered to be irregular and occasional, and compensatory time may be authorized in lieu of overtime/premium pay.
 1. The authority for establishing and changing the tours of duty for civilian employees is delegated to the in-theater commander or his representative. The duration of the duty is dependent upon the particular operation and will be established by the in-theater commander.

C. Overtime. GS employees whose basic rates of pay do not exceed that of a GS-10 step 1, will be paid at a rate of one and one-half times their basic hourly pay rate for each hour of work authorized and approved over the normal 8 hour day or 40 hour week. Employees whose rate exceeds that of a GS-10, step 1, will be paid at the rate of one and one-half times the basic hourly rate of a GS-10, step 1.

1. If overtime is not approved in advance, the employee's travel orders should have this statement in the remarks column:
"Overtime authorized at TDY site as required by the Field Commander. Time and attendance reports should be sent to (name and address)." The field commander should then submit to the employee's home installation a DA Form 5172-R, or local authorization form (with a copy of the travel orders), documenting the actual premium hours worked by each employee for each day of the pay period as soon as possible after the premium hours are worked.

2. Premium Pay Limitations. Normally, the aggregate rate of pay (including base and premium pay) for any pay period is limited to the greater of the biweekly rate of pay for GS-15, Step 10 or Level V of the Executive Schedule. 5 U.S.C. § 5547. This biweekly limitation does not apply to work performed in connection with an emergency that involves a direct threat to life or property or work that is critical to the agency's mission. General Schedule employees may receive premium pay as long as the annual total (basic plus premium pay) does not exceed the greater of the annual rate for GS-15, step 10 or Level V of the Executive Schedule. By administrative extension, this emergency authority to apply the annual limitation also applies to NAF payband employees. Within DOD, the authority to determine the existence of an emergency has been delegated to officials who exercise personnel appointing authority (normally the head of an installation or activity). DOD 1400.25-M, SC 550, § 551.501(d). Wage Grade employees are not subject to the premium pay limitations described above.

D. On Call Employees. During crisis situations, the nature of the work may make it necessary to have employees "on-call" because of emergencies or administrative requirements that might occur outside the established work hours.

1. On-site commanders may designate employees to be available for such a call during off-duty times. Designation of employees for this purpose will follow these guidelines:

- a. There should be a definite possibility that the services of the designated employee might be required;
 - b. On-call duties required of the employees will be brought to the attention of all employees concerned;
 - c. If more than one employee could be used for on-call service, the designation should be made on a rotating basis;
 2. The designation of employees to be "on-call" or in an "alert" posture will not, in itself, serve as a basis for additional compensation (i.e., overtime or compensatory time). If an employee is called in, the employee must be compensated for a minimum of two hours.
- E. Leave Accumulation. Any annual leave in excess of the maximum permissible carry over is automatically forfeited at the end of the leave year. 5 U.S.C. § 6304. Annual leave forfeited during a combat or crisis situation, which has been determined by appropriate authority to constitute an exigency of the public business, may be restored for future use. 5 U.S.C. § 6304(d)(1)(B). The employee must file for leave carry over.
- F. Foreign Post Differential. 5 U.S.C. § 5925. Employees assigned to work in foreign areas where the environmental conditions either differ substantially from CONUS conditions or warrant added compensation as a recruiting and retention incentive are eligible for Foreign Post Differential (FPD) after being stationed in the area in excess of 41 days.
1. FPD is exempt from the pay cap and is paid as a percentage of the basic pay rate not to exceed 25% of the basic pay.
 - a. The Department of State determines areas entitled to receive FPD and the FPD rate for the area. The Department of State also determines the length of time the rate is in effect. Different areas in the same country can have different rates.

- G. **Danger Pay.** 5 U.S.C. § 5928. Civilian employees serving at or assigned to foreign areas designated for danger pay by the Secretary of State, because of civil insurrection, civil war, terrorism or wartime conditions which threaten physical harm or imminent danger to the health or well being of a majority of employees stationed or detailed to that area, will receive a danger pay allowance (DPA).
1. The allowance will be a percentage of the employee's basic compensation at the rates of 15, 20, or 25 percent as determined by the Secretary of State. This allowance is in addition to any foreign post differential prescribed for the area but in lieu of any special incentive differential authorized the post prior to its designation as a danger pay area.
 - a. The foreign post differential may be reduced by any part attributable to political violence. The combined danger pay and post differential must be at least 5 percent above the previous combined post differential and special incentive differential at the post, if any, in effect at the post prior to its designation as a danger pay area.
 2. The DPA commences for employees already in the area on the date of the area's designation for danger. For employees later assigned or detailed to the area, DPA commences upon arrival in the area. For employees returning to the post after a temporary absence it commences on the date of return.
 3. DPA will terminate with the close of business on the date the Secretary of State removes the danger pay designation for the area or on the day the employee leaves the post for any reason for an area not designated for the DPA.
 - a. The DPA paid to Federal civilian employees should not be confused with the Imminent Danger Pay (IDP) paid to the military. The IDP is triggered by different circumstances and is not controlled by the Secretary of State.
- H. **Hostile Fire Pay.** 5 U.S.C. § 5949. Allows payment of \$150 per month, but not payable to employees already receiving danger pay allowance.

- I. Life Insurance. Federal civilian employees are eligible for coverage under the Federal Employees Group Life Insurance (FEGLI) program. Death benefits (under basic and all forms of optional coverage) are payable regardless of cause of death.
 - 1. The Office of Personnel Management (OPM) has confirmed that civilians who are deployed with the military to combat support roles during times of crises are not "in actual combat" and are entitled to accidental death and dismemberment benefits under FEGLI in the event of death. Similarly, civilians carrying military firearms for personal protection are not "in actual combat."

VII. CONTRACTOR EMPLOYEES

- A. "In all countries engaged in war, experience has sooner or later pointed out that contracts with private men of substance and understanding are necessary for the subsistence, covering, clothing, and moving of any Army." Robert Morris, Superintendent of Finance, 1781.
- B. Command and Control. The command and control of contractor employees is significantly different than that of DA civilians.
 - 1. For contractor employees command and control is tied to the terms and conditions of the government contract. Contractor employees are not under the direct supervision of military personnel in the chain of command. The Contracting Officer is the designated liaison for implementing contractor performance requirements.
 - 2. While the government does not directly command and control contractor employees, key performance requirements should be reflected in the contract. For example, Combatant Commander directives, orders and essential standard operating procedures can be incorporated into the government contract. If those requirements should change, the contract can be modified by the contracting officer to satisfy the commander's new requirements.

- a. Contractor employees will be expected to adhere to all guidance and obey all instructions and general orders issued by the Commander. All instructions and guidance will be issued based upon the need to ensure mission accomplishment, personal safety, and unit cohesion. If the instructions and orders of the Combatant Commander are violated, the Combatant Commander may limit access to facilities and/or revoke any special status that a contractor employee has as an individual accompanying the force.
 - b. The contracting officer may also direct that the contractor remove from the theater of operations any contractor employee whose conduct endangers persons or property or whose continued employment is inconsistent with the interest of military security.
- C. Legal Assistance. Contractor employees in the U.S. preparing to deploy abroad, or already deployed overseas, to perform work pursuant to any contract or subcontract with DA, generally will not be eligible to receive legal assistance from military or DA civilian lawyers.
1. Contractor employees should satisfy all legal requirements that they deem necessary, such as a last will and testament, guardianship arrangements for children and estate planning, with privately retained attorneys before deployment. Payment of legal fees is a private matter between the contractor employee and the lawyer retained. The Army has no involvement.
 2. Exceptions:
 - a. If contractor employees are accompanying the Armed Forces of the United States outside the United States, they may receive certain legal assistance from Army lawyers when DA or DOD is contractually obligated to provide this assistance as part of their logistical support.
 - (1) The specific terms of the contract under which contractor employees are deploying must be reviewed to verify if DA is obligated to provide legal service.

3. Where DA is under contractual obligation to provide legal assistance, the following rules apply:
 - a. If the legal assistance is to be provided overseas, it must be in accordance with applicable international agreements or approved by the host nation government in some way.
 - b. Legal assistance is limited to ministerial service (for example notarial services), legal counseling (to include the review and discussion of legal correspondence and documents), and legal document preparation (limited to powers of attorney and advanced medical directives) and help on retaining civilian lawyers.
 - c. NOTE: Contract employee status is irrelevant if the person is an authorized recipient of legal assistance services, e.g. Retiree or family member otherwise authorized legal assistance services.

- D. Identification Cards. Contractor employees will receive the following three distinct forms of identification:
 1. DD Form 1173 (Uniformed Services Identification and Privilege Card). This card is required for access to facilities and use of privileges afforded to military, government civilians and/or military dependents.
 2. DD Form 489 (Geneva Conventions Identity Card for Persons who Accompany the Armed Forces). This card identifies one's status as a contractor employee accompanying the U.S. Armed Forces. This card must be carried at all times when in the theater of operations. Pursuant to the Geneva Convention Relative to the Treatment of Prisoners of War, article 4(4), if captured, contractors accompanying the force are entitled to prisoner of war status.
 3. Personal identification tags. The identification tags will include the following information: full name, social security number, blood type and religious preference. These tags should be worn at all times when in the theater of operations.

4. In addition, other identification cards, badges, etc., may be issued depending upon the basis for the operation. For example, when U.S. forces participate in United Nations (U.N.) or multinational peace-keeping operations, contractor employees may be required to carry items of identification that verify their relationship to the U.N. or multinational force.
5. If their employer processes contractor employees for deployment, it is the responsibility of the employer to ensure its employees receive required identification prior to deployment.

E. Organizational Clothing and Equipment.

1. Contractors may be issued some protective Organizational Clothing and Individual Equipment (OCIE) according to the theater to which deployed, but they will not be issued Battle Dress Uniforms (BDUs) or Desert Camouflage Uniforms (DCUs), boots, etc. without a Department of the Army waiver. Requests for exception will be submitted to the Office of the Deputy Chief of Staff, G-4 (DALO-PLS), 500 Army Pentagon, Washington, D.C., 20310-0500 for consideration. The contractor is encouraged to require a uniform appearance among their employees, but the use of current U.S. Armed Forces uniforms is prohibited. These policies are in place for their protection, to distinguish them from combatants. (From revised AR 715-9, publication *pending*).
2. The decision of contractor personnel to wear any issued OCIE is voluntary, however, the Combatant Commander, subordinate JFC and/or ARFOR Commander may require contractor employees to *be prepared* to wear Chemical, Biological, and Radiological Element (CBRE) and High-Yield Explosive defensive equipment. Other examples of equipment the government may provide are communications equipment, firefighting equipment, and medical and chemical detection equipment.
3. The contract must specify that the contractor is responsible for storage, maintenance, accountability, and checking and performing routine inspection, of Government furnished property and procedures. The contract must also specify contractor responsibilities for training and must specify the procedures for accountability of Government furnished property.

4. Contractor employees will be responsible for maintaining all issued items and must return them to the issuer upon redeployment. In the event that issued clothing and/or equipment is lost or damaged due to negligence, a report of survey will be initiated IAW AR 735-5, Chapters 13 and 14. According to the findings of the Survey Officer, the government may require reimbursement from the contractor.
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- F. **Medical Screening.** As part of the predeployment process, Individual Deployment Sites (IDS) or CONUS Replacement Centers (CRC) medical and dental personnel verify that all requirements for deployment are met. Screening will include HIV testing, pre- and post-deployment evaluations, dental screenings, and TB skin test. A military physician will determine if the contract employee is qualified for deployment to the AO and will consider factors such as age, medical condition, job description, medications, and requirement for follow-up care. FM 100-21, para. 3-39.
 - G. **Force Protection.** Pursuant to FM 00-21, Paragraph 6-4, “Protecting contractors and their employees on the battlefield is the commander’s responsibility. When contractors perform in potentially hostile or hazardous areas, the supported military forces must assure the protection of their operations and employees. The responsibility for assuring that contractors receive adequate force protection starts with the combatant commander, extends downward, and includes the contractor.”
 1. **Weapons and Training.** Pursuant to FM 100-21, paragraph 6-29, “The general policy of the Army is that contractor employees will not be armed.” However, Individual Deployment Sites (IDS) or CONUS Replacement Centers (CRC) may issue sidearms to contractor employees for their personal self-defense. The issuance of such weapons must be authorized by the Combatant Commander and must comply with military regulations regarding firearms training and safe handling. Weapons familiarization is provided to contractor employees as part of the IDS/CRC deployment processing.
 - a. The acceptance of self-defense weapons by a contractor employee is voluntary and should be in accordance with the gaining theater and the contractor's company policy regarding possession and/or use of weapons.

- (1) Pursuant to FM 100-21, paragraph 6-29, “Contractor employees may only be issued military specification sidearms, loaded with military specification ammunition.”
- (2) Contractor employees will not possess privately owned weapons.

VIII. CONTRACTOR ISSUES DURING DEPLOYMENTS

- A. Vehicle and Equipment Operation. Deployed contractor employees may be required or asked to operate U.S. military, government owned or leased equipment such as generators and vehicles. Contractor personnel may also be required to obtain a local license for the country they are being deployed to, i.e. German driver's license.
 1. While operating a military owned or leased vehicle, a contractor employee is subject to the local laws and regulations of the country, area, city, and/or camp in which he/she is deployed. Traffic accidents or violations usually will be handled in accordance with the local laws, the Status of Forces Agreement, and/or Combatant Commander guidance.
 2. If a contractor employee does not enjoy special status under the Status of Forces Agreement, then he/she may be subject to criminal and/or civil liabilities. Therefore, the employee or contractor may be held liable for damages resulting from negligent or unsafe operation of government, military vehicles and equipment.
- B. Living under field conditions. Generally, a contractor employee's living conditions, privileges, and limitations will be equivalent to those of the units supported unless the contract with the Government specifically mandates or prohibits certain living conditions.
- C. Medical and Dental care. Military and/or host nation emergency medical and dental care will be available to contractors should the need arise, at a level commensurate with that afforded government employees and military personnel.

1. Deployed contractor personnel generally do not receive routine medical and dental care at military medical treatment facilities unless this support is specifically included in the contract with the government. In the absence of such agreements, contractors should make provisions for their employees' medical and dental care.
 2. The Army medical department may provide pharmaceutical support to deploying employees of system and external support contractors. See FM 100-21, para. 5-35 – 5-37. Contractor employees are required to bring a 90-day supply of personal medications in the AO.
- D. MWR Support. Contractor employees working within the theater of operations may be eligible to use some or all MWR facilities and activities subject to the installation or Combatant Commander's discretion and the terms of the contract.
1. U.S. citizen contractor employees may be eligible for use of Army and Air Force Exchange Service (AAFES) facilities for health and comfort items. Use of these facilities will be based on the installation or Combatant Commander's discretion, the terms of the contract with the government, and the terms of the applicable Status of Forces Agreement.
- E. Status of Forces Agreements (SOFAs). Contractor employee's status will depend upon the specific provisions of the SOFA, if any, that are applicable between the U.S. and the country of deployment at the time of deployment.
1. Contractor employees may or may not be subject to criminal and/or civil jurisdiction of the host country to which they are deploying.
 2. The North Atlantic Treaty Organization (NATO) SOFA is generally accepted as the model for bilateral and multilateral SOFAs between the U.S. Government and host nations around the world. The NATO SOFA covers three general classes of sending state personnel:

- a. Members of the "force," i.e., members of the armed forces of the sending state;
 - b. Members of the "civilian component," i.e., civilian employees of the sending state;
 - c. "Dependents," i.e., the spouse or child of a member of the force or civilian component that is dependent upon them for support.
 - d. Under the generally accepted view of the NATO SOFA, contractor employees are not considered members of the civilian component. Accordingly, special technical arrangements or international agreements generally must be concluded to afford contractor employees the rights and privileges associated with SOFA status.
- F. Discipline of Contractor Employees. Maintaining discipline of contractor employees is the responsibility of the contractor's management structure, not the military chain of command.
1. The process for removal of contractor employees from the theater of operations is dependent upon the policies issued by the Combatant Commander and the extent to which those policies are incorporated in the terms of the contract, and are exercised through the contracting officer.
 2. Commanders can indirectly influence the discipline of contractor personnel through revocation or suspension of clearances, restriction from installations or facilities, or revocation of exchange privileges.
 3. Criminal activity. Contractor employees are not subject to military law under the UCMJ when accompanying U.S. forces, except during a declared war. When a contractor is involved in criminal activity, international agreements and the host nation's laws take precedence. In the absence of host nation involvement, the commander may be able to use the Military Extraterritorial Jurisdiction Act to deal with felonies (see below).

- G. Tours of Duty and "On-Call" Requirements. A contractor employee's Tour of Duty is established by the employer and the terms and conditions of the contract between the employer and the government.
 - 1. On-call requirements, if any, will be included as special terms and conditions of an employer's contract with the Government.

- H. Mortuary Affairs. Contractors who are in direct support of military operations and who die in the line of duty are eligible to receive mortuary affairs support on a reimbursable basis. The nature and extent of that support is governed by OPLANs/OPORDs and contractual documents. FM 100-21, para. 5-46. If a contractor employee who is a U.S. citizen dies or is missing, next of kin notification is made by the military. In some cases, the military may affect notification through the employing contractor. When the contractor employee is a citizen of the host nation or a third-country national, the employer is responsible for next of kin notification. FM 100-21, para. 5-47.

**IX. MILITARY EXTRATERRITORIAL JURISDICTION ACT OF 2000
18 U.S.C. §3261**

- A. Background. Since the 1950s, the military has been prohibited from prosecuting by courts-martial civilians accompanying the Armed Forces overseas in peacetime who commit criminal offenses. Many Federal criminal statutes lack extraterritorial application, including those penalizing rape, robbery, burglary, and child sexual abuse. In addition, many foreign countries decline to prosecute crimes committed within their nation, particularly those involving another U.S. person as a victim or U.S. property. Furthermore, military members who commit crimes while overseas, but whose crimes are not discovered or fully investigated prior to their discharge from the Armed Forces are no longer subject to court-martial jurisdiction. The result is jurisdictional gaps where crimes go unpunished.

- B. Solution. The Military Extraterritorial Jurisdiction Act (MEJA) closes the jurisdictional gaps by extending Federal criminal jurisdiction to civilians overseas and former military members.

- C. What Is Covered.

1. 1. Conduct that is a crime under U.S. law in special maritime and territorial jurisdiction.
2. 2. Felony-level offenses, i.e., offenses punishable by imprisonment for more than 1 year.
3. 3. Conduct committed outside the United States.

D. Who Is Covered.

1. Civilians while “Employed by the Armed Forces.” This includes:
 - a. Those present or residing outside the U.S. in connection with such employment who are (a) civilian employees of the DoD, (b) DoD contractors (including subcontractors at any tier), or (c) employees of a DoD contractor (including subcontractors at any tier.
 - b. But NOT a national or ordinarily resident in the host nation.
2. Civilians “Accompanying the Armed Forces.” This includes:
 - a. Those who are residing outside the U.S. and are dependents of:
 - (1) Any of the above civilian employees/contractors.
 - (2) Any member of the Armed Forces.
 - b. But NOT a national or ordinarily resident in the host nation.
3. Former military members who commit such crimes while a member of the Armed Forces overseas, but who cease to be subject to UCMJ court-martial jurisdiction (e.g., discharged from the service) and have not previously been court-martialed for such offenses.

E. Limitations.

1. Foreign Criminal Jurisdiction. If a foreign government, in accordance with jurisdiction recognized by the U.S., has prosecuted or is prosecuting the person, the U.S. will not prosecute the person for the same offense, absent approval by the Attorney General or Deputy Attorney General.
2. Military Member as Co-Actor/Conspirator. Military members subject to the UCMJ will not be prosecuted under this Act, unless the member ceases to be subject to the UCMJ, or the indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to the UCMJ (i.e., this Act provides a limited exception to exclusive military UCMJ jurisdiction).
3. Juveniles. Juveniles are subject to the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031-5042). Juvenile delinquency is an adjudication of status, not a crime. In limited cases, juveniles over 13 may be tried as an adult.
 - a. Federal courts cannot proceed against juveniles without Attorney General certification to the U.S. District Court that:
 - (1) State courts do not have jurisdiction (e.g. overseas offense).
 - (2) Offense is a crime of violence or violates the Controlled Substances Act, AND
 - (3) There is a substantial federal interest in the case or the offense to warrant the exercise of federal jurisdiction.

F. Removal to the U.S. and Initial Proceedings.

1. SECDEF is authorized to designate any DoD law enforcement person to make a probable cause arrest of persons for such U.S. felonies and promptly deliver these persons to the custody of U.S. civilian law enforcement for removal to the U.S. for judicial proceedings.
2. Limitations on Removal. The person arrested shall not be removed to another foreign country, other than where the offense was committed, or to the U.S., except when ordered by a Federal magistrate judge for:
 - a. Presence in the U.S. at a detention hearing;
 - b. Pretrial detention;
 - c. Preliminary examination, when person is entitled to one and does not waive it; or
 - d. When otherwise ordered by the Federal magistrate judge.
3. Overseas Transfer. When SECDEF determines that military necessity requires waiver of limitations on removal, then person may be removed to the nearest U.S. military installation outside the U.S. adequate to detain the person and facilitate the initial appearance required by the Act.

G. Initial Proceedings.

1. Federal magistrate judge will conduct initial appearance proceeding, which may be carried out by telephone or other voice communication means, including counsel representation.
2. Federal magistrate judge will also determine probable cause that crime was committed and person committed it, and conditions of release if government counsel does not make a motion seeking pretrial detention.

3. Federal magistrate judge will also conduct any detention hearing required under federal law, which at the request of the person may be carried out overseas by telephonic means, including any counsel representing the person.
4. The Federal magistrate judge may appoint military counsel for limited purpose of overseas initial appearance proceedings.
5. SECDEF, after consultation with the Secretary of State and Attorney General, shall prescribe regulations governing apprehension, detention, delivery, and removal of persons to the U.S.
6. These regulations are not to take effect before a report containing such regulation, to be uniform throughout the DoD, is submitted to the Senate and House Judiciary Committees.

X. CONCLUSION.