

## Office of the Secretary of Defense

## § 159.3

rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel.

### § 159.2 Applicability and scope.

This part:

(a) Applies to:

(1) The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to as the “DoD Components”).

(2) The Department of State and other U.S. Federal agencies insofar as it implements the requirements of section 862 of Public Law 110-181, as amended. Specifically, in areas of operations which require enhanced coordination of PSC and PSC personnel working for U.S. Government (U.S.G.) agencies, the Secretary of Defense may designate such areas as areas of combat operations or other significant military operations for the limited purposes of this part. In such an instance, the standards established in accordance with this part would, in coordination with the Secretary of State, expand from covering only DoD PSCs and PSC personnel to cover all U.S.G.-funded PSCs and PSC personnel operating in the designated area. The requirements of this part shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

(b) Prescribes policies applicable to all:

(1) DoD PSCs and PSC personnel performing private security functions dur-

ing contingency operations outside the United States.

(2) USG-funded PSCs and PSC personnel performing private security functions in an area of combat operations or, with the agreement of the Secretary of State, other significant military operations as designated by the Secretary of Defense.

### § 159.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

*Area of combat operations.* An area of operations designated as such by the Secretary of Defense for the purpose of this part, when enhanced coordination of PSCs working for U.S.G. agencies is required.

*Contingency operation.* A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law (10 U.S.C. 101(a)(13)). It is a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, 12406, of 10 U.S.C., chapter 15 of 10 U.S.C. or any other provision of law during a war or during a national emergency declared by the President or Congress.

*Contractor.* The contractor, subcontractor, grantee, or other party carrying out the covered contract.

*Covered contract.* (1) A DoD contract for performance of services and/or delivery of supplies in an area of contingency operations outside the United States or a contract of a non-DoD Federal agency for performance of services and/or delivery of supplies in an area of combat operations or other significant military operations, as designated by the Secretary of Defense; a subcontract at any tier under such a contract; or a task order or delivery order issued under such a contract or subcontract.

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(2) Also includes contracts or subcontracts funded under grants and subgrants by a Federal agency for performance in an area of combat operations or other significant military operations as designated by the Secretary of Defense.

(3) Excludes temporary arrangements entered into by non-DoD contractors or grantees for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company. Such arrangements must still be in compliance with local law.

*Other significant military operations.* For purposes of this part, the term ‘other significant military operations’ means activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.<sup>1</sup>

*Private security functions.* Activities engaged in by a contractor under a covered contract as follows:

(1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.<sup>2</sup>

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of their contract. For the DoD, DoDI Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,”<sup>3</sup> prescribes policies related to

personnel allowed to carry weapons for self defense.

*PSC.* During contingency operations “PSC” means a company employed by the DoD performing private security functions under a covered contract. In a designated area of combat operations or other significant military operations, the term “PSC” expands to include all companies employed by U.S.G. agencies performing private security functions under a covered contract.

*PSC personnel.* Any individual performing private security functions under a covered contract.

### § 159.4 Policy.

(a) Consistent with the requirements of paragraph (a)(2) of section 862 of Public Law 110–181, the selection, training, equipping, and conduct of PSC personnel including the establishment of appropriate processes shall be coordinated between the DoD and the Department of State. Coordination shall encompass the contemplated use of PSC personnel during the planning stages of contingency operations so as to allow guidance to be developed under paragraphs (b) and (c) of this section and promulgated under section 159.5 of this part in a timely manner that is appropriate for the needs of the contingency operation.

(b) Geographic Combatant Commanders will provide tailored PSC guidance and procedures for the operational environment in their Area of Responsibility (AOR) in accordance with this part, the Federal Acquisition Regulation (FAR)<sup>4</sup> and the Defense Federal Acquisition Regulation Supplement (DFARS).<sup>5</sup>

(c) In a designated area of combat operations or other significant military operations, the relevant Chief of Mission will be responsible for developing and issuing implementing instructions for non-DoD PSCs and their personnel consistent with the standards set forth by the geographic Combatant Commander in accordance with paragraph (b) of this section. The Chief of Mission

<sup>1</sup>With respect to an area of other significant military operations, the requirements of this part shall apply only upon agreement of the Secretary of Defense and the Secretary of State. Such an agreement of the Secretaries may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this part shall always apply.

<sup>2</sup>Contractors performing private security functions are not authorized to perform inherently governmental functions. In this regard, they are limited to a defensive response to hostile acts or demonstrated hostile intent.

<sup>3</sup>Available at <http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf>.

<sup>4</sup>Published in Title 48 of the Code of Federal Regulations.

<sup>5</sup>Published in Title 48 of the Code of Federal Regulations.