**Public Law 110-181,** *January 28, 2008, The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 --* **SEC 862,** *“Contractors Performing Private Security Functions in Areas of Combat Operations”*

**Public Law 110-417,** *October 14, 2008, The Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 -- SEC. 853, “Additional Matters Required to be Reported by Contractors Performing Security Functions in Areas of Combat Operations” amended PL 110-181, Section 862.*

**Public Law 111-383,** *January 7, 2011, The Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 -- SEC 831, “Oversight and Accountability of Contractors Performing Private Security Functions in Areas of Combat Operations” and SEC 832, “Extension of Regulations on Contractors Performing Private Security Functions to Areas of Other Significant Military Operations” amended PL 110-181, Section 862.*

**Section 862 as in 10 USC SEC 2302, w/all Amendments follows**

SEC. 862. <<NOTE: 10 USC 2302 note.>> CONTRACTORS PERFORMING PRIVATE

 SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS OR OTHER

 SIGNIFICANT MILITARY OPERATIONS.

 (a) Regulations on Contractors Performing Private Security

Functions.--

 (1) <<NOTE: Deadline.>> In general.--Not later than 120

 days after the date of the enactment of this Act, the Secretary

 of Defense, in coordination with the Secretary of State, shall

 prescribe regulations on the selection, training, equipping, and

 conduct of personnel performing private security functions under

 a covered contract in an area of combat operations or other significant military operations.

 (2) Elements.--The regulations prescribed under subsection

 (a) shall, at a minimum, establish--

 (A) a process for registering, processing,

 accounting for, and keeping appropriate records of

 personnel performing private security functions in an

 area of combat operations or other significant military

 operations;

 (B) a process for authorizing and accounting for

 weapons to be carried by, or available to be used by,

 personnel performing private security functions in an

 area of combat operations or other significant military

 operations;

 (C) a process for the registration and

 identification of armored vehicles, helicopters, and

 other military vehicles operated by contractors performing

 private security functions in an area of combat operations or

 other significant military operations;

 (D) a process under which contractors are required

 to report all incidents, and persons other than

 contractors are permitted to report incidents, in

 which--

 (i) a weapon is discharged by personnel

 performing private security functions in an area

 of combat operations or other significant military

 operations;

 (ii) personnel performing private security

 functions in an area of combat operations or other

 significant military operations are killed or injured;

 (iii) persons are killed or injured, or

 property is destroyed, as a result of conduct by

 contractor personnel;

 (iv) a weapon is discharged against

 personnel performing private security functions in

 an area of combat operations or other significant

 military operations or personnel performing such

 functions believe a weapon was so discharged; or

 (v) active, non-lethal countermeasures

 (other than the discharge of a weapon) are

 employed by the personnel performing private

 security functions in an area of combat operations or

 other significant military operations

 in response to a perceived immediate threat to

 such personnel; and

 (E) a process for the independent review and, if

 practicable, investigation of--

 (i) incidents reported pursuant to

 subparagraph (D); and

 (ii) incidents of alleged misconduct by

 personnel performing private security functions in

 an area of combat operations or other significant

 military operations;

 (F) requirements for qualification, training,

 screening (including, if practicable, through background

 checks), and security for personnel performing private

 security functions in an area of combat operations or other

 significant military operations;

 (G) guidance to the commanders of the combatant

 commands on the issuance of--

 (i) orders, directives, and instructions to

 contractors performing private security functions

 relating to equipment, force protection, security,

 health, safety, or relations and interaction with

 locals;

 (ii) predeployment training requirements for

 personnel performing private security functions in

 an area of combat operations or other significant

 military operations, addressing the requirements

 of this section, resources and assistance available

 to contractor personnel, country information and

 cultural training, and guidance on working with

 host country nationals and military; and

 (iii) rules on the use of force for personnel

 performing private security functions in an area

 of combat operations or other significant military

 operations;

 (H) a process by which a commander of a combatant

 command may request an action described in subsection

 (b)(3); and

 (I) a process by which the training requirements

 referred to in subparagraph (G)(ii) shall be

 implemented.

 (3) Availability of orders, directives,

 and instructions.--The regulations prescribed under subsection

 (a) shall include mechanisms to ensure the provision and

 availability of the orders, directives, and instructions

 referred to in paragraph (2)(G)(i) to contractors referred to in

 that paragraph, including through the maintenance of a single

 location (including an Internet website, to the extent

 consistent with security considerations) at or through which

 such contractors may access such orders, directives, and

 instructions.

 (b) Contract Clause on Contractors Performing Private Security

Functions.--

 (1) Requirement under far.--Not later

 than 180 days after the date of the enactment of this Act [Jan. 28,

 2008], the

 Federal Acquisition Regulation issued in accordance with section

 25 of the Office of Federal Procurement Policy Act (41 U.S.C.

 421) shall be revised to require the insertion into each covered

 contract (or, in the case of a task order, the contract under

 which the task order is issued) of a contract clause addressing

 the selection, training, equipping, and conduct of personnel

 performing private security functions under such contract.

 (2) Clause requirement.--The contract clause required by

 paragraph (1) shall require, at a minimum, that the contractor

 concerned shall--

 (A) ensure that the contractor and all employees of the

 contractor or any subcontractor who are responsible for

 performing private security functions under such contract

 comply with regulations prescribed under subsection (a),

 including any revisions or updates to such regulations, and

 follow the procedures established in such regulations for--

 (i) registering, processing, accounting for,

 and keeping appropriate records of personnel

 performing private security functions in an area

 of combat operations or other significant military

 operations;

 (ii) authorizing and accounting of weapons to

 be carried by, or available to be used by,

 personnel performing private security functions in

 an area of combat operations or other significant

 military operations;

 (iii) registration and identification of

 armored vehicles, helicopters, and other military

 vehicles operated by contractors and

 subcontractors performing private security

 functions in an area of combat operations or other

 significant military operations; and

 (iv) the reporting of incidents in which--

 (I) a weapon is discharged by

 personnel performing private security

 functions in an area of combat

 operations;

 (II) personnel performing private

 security functions in an area of combat

 operations are killed or injured; or

 (III) persons are killed or injured,

 or property is destroyed, as a result of

 conduct by contractor personnel;

 (B) ensure that the contractor and all employees of the

 contractor or any subcontractor who are responsible for

 performing private security functions under such contract

 comply with--

 (i) qualification, training, screening

 (including, if practicable, through background

 checks), and security requirements established by

 the Secretary of Defense for personnel performing

 private security functions in an area of combat

 operations;

 (ii) applicable laws and regulations of the

 United States and the host country, and applicable

 treaties and international agreements, regarding

 the performance of the functions of the

 contractor;

 (iii) orders, directives, and instructions

 issued by the applicable commander of a combatant

 command relating to equipment, force protection,

 security, health, safety, or relations and

 interaction with locals; and

 (iv) rules on the use of force issued by the

 applicable commander of a combatant command for

 personnel performing private security functions in

 an area of combat operations or other significant

 military operations;

 (C) cooperate with any investigation conducted by

 the Department of Defense pursuant to subsection

 (a)(2)(E) by providing access to employees of the

 contractor and relevant information in the possession of

 the contractor regarding the incident concerned and;

 (D) ensure that the contract clause is included in

 subcontracts awarded to any subcontractor at any tier

 who is responsible for performing private security

 functions under the contract.

 (3) Noncompliance of personnel with clause.--The contracting

 officer for a covered contract may direct the contractor, at its

 own expense, to remove or replace any personnel performing

 private security functions in an area of combat operations or other

 significant military operations who

 violate or fail to comply with applicable requirements of the

 clause required by this subsection. If the violation or failure

 to comply is a gross violation or failure or is repeated, the

 contract may be terminated for default.

 (4) Applicability.--The contract clause required by this

 subsection shall be included in all covered contracts awarded on

 or after the date that is 180 days after the date of the

 enactment of this Act. Federal agencies shall make best efforts

 to provide for the inclusion of the contract clause required by

 this subsection in covered contracts awarded before such date.

 (5) Inspector general report on pilot program on imposition

 of fines for noncompliance of personnel with clause.--Not later

 than March 30, 2008, the Inspector General of the Department of

 Defense shall submit to Congress a report assessing the

 feasibility and advisability of carrying out a pilot program for

 the imposition of fines on contractors for personnel who violate

 or fail to comply with applicable requirements of the clause

 required by this section as a mechanism for enhancing the

 compliance of such personnel with the clause. The report shall

 include--

 (A) an assessment of the feasibility and

 advisability of carrying out the pilot program; and

 (B) if the Inspector General determines that

 carrying out the pilot program is feasible and

 advisable--

 (i) recommendations on the range of contracts

 and subcontracts to which the pilot program should

 apply; and

 (ii) a schedule of fines to be imposed under

 the pilot program for various types of personnel

 actions or failures.

 (c) Oversight.--It shall be the responsibility of the head of the

contracting activity responsible for each covered contract to ensure

that the contracting activity takes appropriate steps to assign

sufficient oversight personnel to the contract to--

 (1) ensure that the contractor responsible for performing

 private security functions under such contract comply with the

 regulatory requirements prescribed pursuant to subsection (a)

 and the contract requirements established pursuant to subsection

 (b); and

 (2) make the determinations required by subsection (d).

 (d) Remedies.--The failure of a contractor under a covered

contract to comply with the requirements of the regulations prescribed

under subsection (a) or the contract clause inserted in a covered

contract pursuant to subsection (b), as determined by the contracting

officer for the covered contract--

 (1) shall be included in appropriate databases of past

 performance and considered in any responsibility determination

 or evaluation of the past performance of the contractor for the

 purpose of a contract award decision, as provided in section

 6(j) of the Office of Federal Procurement Policy Act (41 U.S.C.

 405(j));

 (2) in the case of an award fee contract--

 (A) shall be considered in any evaluation of

 contract performance by the contractor for the relevant

 award fee period; and

 (B) may be a basis for reducing or denying award

 fees for such period, or for recovering all or part of

 award fees previously paid for such period; and

 (3) in the case of a failure to comply that is severe,

 prolonged, or repeated--

 (A) shall be referred to the suspension or

 debarment official for the appropriate agency; and

 (B) may be a basis for suspension or debarment of

 the contractor.

 (e) Rule of Construction.--The duty of a contractor under a

covered contract to comply with the requirements of the regulations

prescribed under subsection (a) and the contract clause inserted into a

covered contract pursuant to subsection (b), and the availability of the

remedies provided in subsection (d), shall not be reduced or diminished

by the failure of a higher or lower tier contractor under such contract

to comply with such requirements, or by a failure of the contracting

activity to provide the oversight required by subsection (c).''.

 (f) Areas of Combat Operations or Other Significant Military Operations.--

 (1) Designation.--The Secretary of

 Defense shall designate the areas constituting either an area of

 Combat operations or other significant military operations for

 purposes of this section by not later than 120 days after the date

 of the enactment of this Act. In making designations under this

 paragraph, the Secretary shall ensure that an area is not designated

 in whole or part as both an area of combat operations and an area of

 other significant military operations.

 (2) Other significant military operations.--

 For purposes of this section, 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.

 (3) Particular areas.--Iraq and Afghanistan shall be

 included in the areas designated as an area of combat operations or

 other significant military operations under paragraph (1).

 (4) Additional areas.--The Secretary may designate any

 additional area as an area constituting an area of combat

 operations or other significant military operations for purposes of

 this section if the Secretary determines that the presence or

 potential of combat operations or other significant military

 operations in such area warrants designation of such area as an area

 of combat operations or other significant military operations for

 purposes of this section.

 (5) Modification or elimination of designation.--The

 Secretary may modify or cease the designation of an area under

 this subsection as an area of combat operations or other significant

 military operations if the Secretary determines that combat

 operations or other significant military operations are no longer

 ongoing in such area.

 (g) Limitation.--With respect to an area

of other significant military operations, the requirements of this

section shall apply only upon agreement of the Secretary of Defense and

the Secretary of State. An agreement of the Secretaries under this

subsection may be made only on an area-by-area basis. With respect to an

area of combat operations, the requirements of this section shall always

apply.

 (h) Exceptions.--

 (1) Intelligence activities.-- The requirements of this section

 shall not apply to contracts entered into by elements of the

 intelligence community in support of intelligence activities.

 (2) Nongovernmental organizations.--The requirements of

 this section 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.

**Section Notes Follow**

**SECTION 831 Additional Note**

 (b) Revised Regulations and Contract Clause.--

 (1) Deadline for regulations.--Not later than 60 days after

 the date of the enactment of this Act, the Secretary of Defense

 shall revise the regulations prescribed pursuant to section 862

 of the National Defense Authorization Act for Fiscal Year 2008

 (Public Law 110-181; 10 U.S.C. 2302 note) to incorporate the

 requirements of the amendments made by subsection (a).

 (2) Commencement of applicability of revisions.--The

 revision of regulations under paragraph (1) shall apply to the

 following:

 (A) Any contract that is awarded on or after the

 date that is 120 days after the date of the enactment of

 this Act.

 (B) Any task or delivery order that is issued on or

 after the date that is 120 days after the date of the

 enactment of this Act pursuant to a contract that is

 awarded before, on, or after the date that is 120 days

 after the date of the enactment of this Act.

 (3) Commencement of inclusion of contract clause.--A

 contract clause that reflects the revision of regulations

 required by the amendments made by subsection (a) shall be

 inserted, as required by such section 862, into the following:

 (A) Any contract described in paragraph (2)(A).

 (B) Any task or delivery order described in

 paragraph (2)(B).

**SECTION 832 Additional Notes**

 (b) Additional Areas Considered for Designation.--

 (1) <<NOTE: Deadline.>> Determination required for certain

 areas.--Not later than 150 days after the date of the enactment

 of this Act, the Secretary of Defense shall make a written

 determination for each of the following areas regarding whether

 or not the area constitutes an area of combat operations or an

 area of other significant military operations for purposes of

 designation as such an area under section 862 of the National

 Defense Authorization Act for Fiscal Year 2008 (Public Law 110-

 181; 10 U.S.C. 2302 note), as amended by this section:

 (A) The Horn of Africa region.

 (B) Yemen.

 (C) The Philippines.

 (2) <<NOTE: Deadline.>> Submission to congress.--Not later

 than 180 days after the date of the enactment of this Act, the

 Secretary of Defense shall submit to the congressional defense

 committees a copy of each written determination under paragraph

 (1), together with an explanation of the basis for such

 determination.

 (d) Report on Implementation.--Not later than 180 days after a

designation of an area as an area of combat operations or an area of

other significant military operations pursuant to subsection (b)(2), the

Secretary of Defense, in coordination with the Secretary of State, shall

submit to Congress a report on steps taken or planned to be taken to

implement the regulations prescribed under section 862 of the National

Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10

U.S.C. 2302 note) in such area. In the case of any agreement by the

Secretaries to limit the applicability of such section or exempt

nongovernmental organizations from such section, pursuant to subsections

(g) or (h)(1) of such section (as added by subsection (c)), the report

shall document the basis for such agreement.