**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.