

**Public Law 110-181, Sect 862 as amended by PL 110-417, Sect 853 & PL 111-383, Sect 831 & 832**

**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.*



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.