

## SUPPORTING STATEMENT

### 0704-0549, Defense Contractors Performing Private Security Functions Outside the United States

#### Summary of Changes from Previously Approved Collection

- The number of respondents and responses are reduced slightly for this renewal period. See paragraph 15.

#### A. JUSTIFICATION

##### 1. Need for the Information Collection

Section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended,<sup>1</sup> establishes requirements and limitations for contractors performing private security functions outside the United States. Section 862, as amended, is implemented at 32 CFR part 159, Private Security Contractors Operating in Contingency Operations, and DoD Instruction (DoDI) 3020.50, Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises, which require geographic combatant commanders to establish procedures and assign responsibilities for ensuring that contractors and contractor personnel report certain security incidents when performing private security functions in covered operational areas.<sup>2</sup>

The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, (see the final rule for DFARS Case 2015-D021) requires contractors and subcontractors performing private security functions in designated operational areas outside the United States to comply with 32 CFR part 159 and any orders, directives, and instructions contained in the contract on reporting the following types of incidents to the geographic combatant commander if and when they occur:

- (a) A weapon is discharged by personnel performing private security functions.
- (b) Personnel performing private security functions are attacked, killed, or injured.
- (c) Persons are killed or injured or property is destroyed as a result of conduct by contractor personnel.
- (d) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged.

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<sup>1</sup> Section 862 of FY 2008 NDAA was amended by sections 853 of the FY 2009 NDAA, 813(b) of the FY 2010 NDAA, and 832 of the FY 2011 NDAA.

<sup>2</sup> See paragraph (a)(1)(v) of 32 CFR 159.6 and paragraph 1.a.(5) of Enclosure 3 of DoDI 3020.50.

(e) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat.

## 2. Use of the Information

Geographic combatant commanders use the information reported by private security contractors on security incidents in order to properly account for and track contractor personnel and assets in theater and to respond to security incidents as deemed necessary.

## 3. Use of Information Technology

Contractors are required to report in accordance with orders and instructions established by the applicable combatant commander. Improved information technology is used to the maximum extent practicable.

## 4. Non-duplication

As a matter of policy, DoD reviews the Federal Acquisition Regulation (FAR) to determine if adequate language already exists. The clause at FAR 52.225-26, Contractors Performing Private Security Functions, was amended (see FAR case 2014-018) to remove all references to DoD-specific requirements for private security contractors performing outside the United States, to include the above-described security incident reporting requirement. The DoD-specific requirements were consolidated under the clause at DFARS 252.225-7039. There is no duplication of data collection.

## 5. Burden on Small Business

The burden applied to small business is the minimum consistent with applicable laws, regulations, executive orders, and prudent business practices.

## 6. Less Frequent Collection

In order to meet the requirements of 32 CFR part 159, contractors are required to provide timely notification, in accordance with orders and instructions established by the geographic combatant commander when an incident occurs. Reporting of incidents is necessary for the geographic combatant commander to respond, as deemed necessary, to security incidents in designated operational areas. Non-reporting of an incident could lead to administrative action or the removal, as appropriate, of PSCs and PSC personnel.

## 7. Paperwork Reduction Act Guidelines

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

## 8. Consultation and Public Comments

(a) No additional consultation apart from soliciting public comments through the Federal Register was conducted for this submission. Subject matter experts within DoD were consulted to verify burden estimates. Collection is consistent with the guidelines in 5 CFR 1320.6.

(b) A 60-day notice was published in the *Federal Register* on June 22, 2022, at [87 FR 37315](#). No public comments were received.

(c) A 30-day was published in the *Federal Register* on September 7, 2022, at [87 FR 54679](#).

#### 9. Gifts or Payment

No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

#### 10. Confidentiality

The information collected will be disclosed only to the extent consistent with statutory requirements, current regulations, and prudent business practices.

#### 11. Sensitive Questions

Questions of a sensitive nature are not involved.

#### 12. Respondent Burden, and its Labor Costs

##### a. Estimates of Public Burden

The estimated annual cost to the public for the subject reporting requirement is as follows:

Estimation of Respondent Burden Hours: 252.225-7039	
Number of respondents	10
Number of responses per respondent	4
Number of total annual responses (a)	40
Hours per response (b)	0.5
Annual respondent burden hours (total annual responses multiplied by hours per response)	20
Cost per hour (hourly wage) (c)	\$49
Labor burden per response	\$24.50
Annual labor burden	\$980

#### Notes:

(a) The OSD subject matter experts on contractors performing private security functions have estimated an average of 4 incidents per month or 32 incidents (responses) per year from 8

respondents. This estimate of 8 respondents is revised upwards to 10 to reflect the minimum number of respondents to invoke the Paperwork Reduction Act and to ensure OMB clearance should the number of respondents reach or exceed 10 during the renewal period.

(b) Based on the nature of the task, the subject matter experts determined that it takes approximately 30 minutes for each contractor to retrieve, prepare, and submit the information for each incident report.

(c) Based on our assessment, the complexity of the work is equivalent to that of a General Schedule (GS) grade 11. The hourly rate is calculated by adding an overhead factor of 36.25% (taken from OMB Memo M-08-13, which provides standard cost factors for agency use) to the calendar year 2022 Office of Personnel Management rate for the Rest of the U.S. for a GS-11, step 5 as follows:

<u>Cost per hour</u>	
GS-11, step 5	\$35.96
OMB burden @ 36.25%	<u>\$13.04</u>
	\$49.00
Rounded to the nearest dollar:	\$49.00

13. Respondent Costs Other Than Burden Hour Costs

DoD does not estimate any annual cost burden apart from the hour burden in Item 12.

14. Cost to the Federal Government

The estimated annual cost to the Government for receiving, reviewing, analyzing, and forwarding the information submitted by the contractor is as follows:

Estimation of Federal Government Burden Hours: 252.225-7039	
Number of total annual responses (a)	40
Hours per response (b)	0.5
Cost per hour (c)	\$49
Cost per response	\$24.50
Total cost (Total annual responses multiplied by cost per response)	\$980

Notes:

(a) Per paragraph 12(a), we estimate that the Government receives approximately 40 contractor incident reports each year.

(b) According to OSD subject matter experts on contractors performing private security functions, it takes approximately 30 minutes for the Government to receive, review, and analyze the information for each incident reported by a contractor.

(c) Based on our assessment, the complexity of the work is equivalent to that of a GS-11, step 5. See the rate calculation in paragraph 12(c) above.

15. Reason for Changes in Burden

Due to change in operations in Afghanistan and continued use in other operational areas, the estimated number of incidents (responses) per year have reduced from 48 to 40 and the number of respondents from 12 to 10. This reduced the estimated hours from 24 to 20. Using the current 2022 labor rate of \$49, the public and Government burden have reduced from \$1,080 to \$980.

Change in Burden 0704-0549	2019	2022	Difference
Number of respondents	12	10	-2
Total annual responses	48	40	-8
Total Hours	24	20	-4
Cost per hour	\$45	\$49	+\$4
Total Cost	\$1,080	\$980	-\$100

16. Publication of Results

Results of this collection will not be published.

17. Non-Display of OMB Expiration Date

DoD does not seek approval to not display of the expiration date for OMB approval of the information collection.

18. Exceptions to “Certification for Paperwork Reduction Submissions”

There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.