

## Regulatory Flexibility Act

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

## Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

## Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

## List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

## The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

## PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.80 by revising paragraph (o) to read as follows:

## § 2.80 Guidelines for DC Code Offenders.

\* \* \*

(o)(1) A prisoner who is eligible under the criteria of paragraph (o)(2) may receive a parole determination using the 1987 guidelines of the former District of Columbia Board of Parole (hereinafter “the 1987 guidelines”).

(2) A prisoner must satisfy the following criteria to obtain a determination using the 1987 guidelines:

(i) The prisoner committed the offense of conviction after March 3, 1985 and before August 5, 1998;

(ii) The prisoner is not incarcerated as a parole violator;

(iii) The prisoner received his initial hearing after August 4, 1998; and

(iv) The prisoner does not have a parole effective date, or a presumptive parole date before January 1, 2010.

(3) If an eligible prisoner applies for a hearing under the 1987 guidelines, a hearing examiner shall review the case on the record. If the hearing examiner recommends that the prisoner receive a parole effective date and the Commission concurs in the recommendation, the case shall not be scheduled for a hearing. If the hearing examiner does not recommend a parole effective date, the examiner shall recommend a hearing on an appropriate hearing docket.

(4) At the hearing, the hearing examiner shall evaluate the prisoner’s case using the 1987 guidelines as if the prisoner were receiving an initial hearing shortly before the date of parole eligibility. If the prisoner has passed the rehearing date that the examiner determines is appropriate under the circumstances presented by the case, the examiner shall also evaluate the case under the rehearing guidelines. The Commission shall also use the former Board’s policy guidelines in making its determinations under this paragraph, according to the policy guideline in effect at the time of the prisoner’s offense.

(5) If the Commission denies parole after the hearing, and the prisoner received a presumptive parole date under the parole determination that preceded the hearing under this paragraph, the prisoner shall not forfeit the presumptive parole date unless the presumptive date is rescinded for institutional misconduct, new criminal conduct, or for new adverse information.

(6) Decisions resulting from hearings under this paragraph may not be appealed to the Commission.

Dated: July 8, 2009.

**Isaac Fulwood,**

*Chairman, United States Parole Commission.*  
[FR Doc. E9–16969 Filed 7–16–09; 8:45 am]

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 159

[DOD–2008–OS–0125/RIN 0790–AI38]

## Private Security Contractors (PSCs) Operating in Contingency Operations

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This part establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract during contingency operations. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel. For the Department of Defense, this IFR supplements DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” which provides guidance for all DoD contractors operating in contingency operations.

This part is of critical importance. It is being published as an Interim Final Rule because there is insufficient policy and guidance regulating the actions of DoD and other governmental PSCs and their movements in the operational area. It will procedurally close existing gaps in the oversight of Private Security Contractors (PSCs), ensure compliance with laws and regulations pertaining to Inherently Governmental functions, and ensure proper performance by armed contractors. The expansion of troops in Afghanistan will result in a corresponding increase in the number of PSCs performing in that Area of Operations. This part is required to ensure implementation of necessary guidance for all U.S.G. PSCs across the CENTCOM area of responsibility. Further, the publication of this IFR is required to meet the mandate of Section 862 of the 2008 National Defense Authorization Act. The Congress has expressed continuing concern that

regulations for the oversight of PSCs are not yet in place.

**DATES:** This rule is effective July 17, 2009. Comments must be received by August 31, 2009.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Taylor, (703) 692-3032.

**SUPPLEMENTARY INFORMATION:** This Interim Final Rule is required to meet the mandate of Section 862 of the FY 2008 National Defense Authorization Act. Section 862 of the 2008 NDAA lays out two requirements:

(i) That 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; and

(ii) That the FAR shall be revised to require the insertion into each covered contract of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.

This Interim Final Rule meets requirement (i). There will be a separate and subsequent **Federal Register** action to meet requirement (ii) to update the FAR.

#### **Executive Order 12866, "Regulatory Planning and Review"**

It has been certified that 32 CFR part 159 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Public Law 104-121, "Congressional Review Act" (5 U.S.C. 801)**

It has been determined that 32 CFR part 159 is not a "major" rule under 5 U.S.C. 801, enacted by Public Law 104-121, because it will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### **Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

It has been certified that 32 CFR part 159 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that 32 CFR part 159 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule will apply only to a specific sector of defense industry and a limited number of small entities.

#### **Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been certified that 32 CFR part 159 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These requirements have been approved by OMB and assigned OMB Control Numbers 0704-0460, "Synchronized Predeployment and Operational Tracker (SPOT) System" and 0704-0461, "Qualification to Possess Firearms or Ammunition."

#### **Executive Order 13132, "Federalism"**

It has been certified that 32 CFR part 159 does not have federalism

implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

#### **List of Subjects in 32 CFR Part 159**

Contracts, Security measures.

■ Accordingly 32 CFR Part 159 is added to read as follows:

### **PART 159—PRIVATE SECURITY CONTRACTORS OPERATING IN CONTINGENCY OPERATIONS**

Sec.

- 159.1 Purpose.
- 159.2 Applicability and scope.
- 159.3 Definitions.
- 159.4 Policy.
- 159.5 Responsibilities.
- 159.6 Procedures.

**Authority:** Public Law 110-181; Pub. L. 110-417.

#### **§ 159.1. Purpose.**

This part establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, 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. 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 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.

(b) Prescribes policies applicable to all:

(1) DoD PSCs and PSC personnel performing private security functions during contingency operations outside the United States.

(2) USG-funded PSCs and PSC personnel performing private security functions in an area of combat 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: a. 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 force; or b. Is created by definition of law. Under 10 U.S.C. 101(a)(13)(B), a contingency operation exists if a military operation results in the (1) call-up to (or retention on) active duty of members of the uniformed Services under certain enumerated statutes (10 U.S.C. 688, 12301(a), 12302, 12304, 12305, 12406, or 331–335); and (2) the call-up to (or retention on) active duty of members of the uniformed Services under any other (non-enumerated) provision of law during war or national emergency declared by the President or Congress. These may include humanitarian or peacekeeping operations or other military operations or exercises.

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

*Covered contract.* A DoD contract for performance of services in an area of contingency operations or a contract of a non-DoD Federal agency for performance of services in an area of combat 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.

Also includes contracts or subcontracts funded under grants and sub-grants by a Federal agency for performance in an area of combat operations as designated by the Secretary of Defense. 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.

*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>1</sup>

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

(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>3</sup> and the Defense Federal Acquisition Regulation Supplement (DFARS).<sup>4</sup>

(c) In a designated area of combat 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 has the option to instruct non DoD PSCs and their personnel to follow the guidance and procedures developed by the Geographic Combatant Commander and/or Subordinate Commander.

(d) The requirements of this part shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

### § 159.5. Responsibilities.

(a) The Assistant Deputy Under Secretary of Defense for Program Support, under the authority, direction, and control of the Deputy Under Secretary of Defense for Logistics and Materiel Readiness, shall monitor the registering, processing, and accounting of PSC personnel in an area of contingency operations.

(b) The Director, Defense Procurement and Acquisition Policy, under the authority, direction, and control of the Deputy Under Secretary of Defense for Acquisition and Technology (DUSD(AT)), shall ensure that the DFARS and (in consultation with the other members of the FAR Council) the FAR provide appropriate guidance and contract clauses consistent with this part and paragraph (b) of section 862 of Public Law 110–181.

(c) The Director, Defense Business Transformation Agency, under the authority, direction, and control of the Deputy Chief Management Officer of the Department of Defense, through the DUSD(AT), shall ensure that information systems effectively support the accountability and visibility of contracts, contractors, and specified equipment associated with private security functions.

(d) The Chairman of the Joint Chiefs of Staff shall ensure that joint doctrine is consistent with the principles established by DoD Directive 3020.49 “Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and

<sup>1</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>2</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf>.

<sup>3</sup> Published in Title 48 of the Code of Federal Regulations.

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

Its Operational Execution,”<sup>5</sup> DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” and this part.

(e) The geographic Combatant Commanders in whose AOR a contingency operation is occurring, and within which PSCs and PSC personnel perform under covered contracts, shall:

(1) Provide guidance and procedures, as necessary and consistent with the principles established by DoD Directive 3020.49, “Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution,” DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,”<sup>6</sup> and this part, for the selection, training, accountability and equipping of such PSC personnel and the conduct of PSCs and PSC personnel within their AOR. Individual training and qualification standards shall meet, at a minimum, one of the Military Departments’ established standards.

Within a geographic Combatant Command, Subordinate Commanders shall be responsible for developing and issuing implementing procedures as warranted by the situation, operation, and environment, in consultation with the relevant Chief of Mission in designated areas of combat operations.

(2) Through the Contracting Officer, ensure that PSC personnel acknowledge, through their PSC, their understanding and obligation to comply with the terms and conditions of their covered contracts.

(3) Issue written authorization to the PSC identifying individual PSC personnel who are authorized to be armed. Rules for the use of force, developed in accordance with Chairman of the Joint Chief of Staff Instruction 3121.01B, “Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces,”<sup>7</sup> shall be included with the written authorization.

(4) Ensure that the procedures, orders, directives and instructions prescribed § 159.6(a) of this part are available through a single location (to include an Internet Web site, consistent with

security considerations and requirements).

(f) The Heads of the DoD Components shall:

(1) Ensure that all private security-related requirement documents are in compliance with the procedures listed in § 159.6 of this part and the guidance and procedures issued by the geographic Combatant Command,

(2) Ensure private security-related contracts contain the appropriate clauses in accordance with the applicable FAR clause and include additional mission-specific requirements as appropriate.

#### **§ 159.6. Procedures.**

(a) *Standing Combatant Command Guidance and Procedures.* Each geographic Combatant Commander shall develop and publish guidance and procedures for PSCs and PSC personnel operating during a contingency operation within their AOR, consistent with applicable law; this part; applicable Military Department publications; and other applicable DoD issuances to include DoD Directive 3020.49, “Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution,” DFARS, DoD Directive 2311.01E, “DoD Law of War Program,”<sup>8</sup> DoD 5200.8-R, “Physical Security Program,”<sup>9</sup> CJCSI 3121.01B, “Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces,” and DoD Directive 5210.56, “Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties.”<sup>10</sup> The guidance and procedures shall:

(1) Contain, at a minimum, procedures to implement the following processes, and identify the organization responsible for managing these processes:

(i) Registering, processing, accounting for and keeping appropriate records of PSCs and PSC personnel in accordance with DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces.”

(ii) PSC verification that PSC personnel meet all the legal, training, and qualification requirements for authorization to carry a weapon in accordance with the terms and conditions of their contract and host country law. Weapons accountability procedures will be established and

approved prior to the weapons authorization.

(iii) Arming of PSC personnel.

Requests for permission to arm PSC personnel shall be reviewed on a case-by-case basis by the appropriate Staff Judge Advocate to the geographic Combatant Commander (or a designee) to ensure there is a legal basis for approval. The request will then be approved or denied by the geographic Combatant Commander or a specifically identified designee, no lower than the flag officer level. Requests to arm non-DOD PSC personnel shall be reviewed and approved in accordance with § 159.4(c) of this part. Requests for permission to arm PSC personnel shall include:

(A) A description of where PSC personnel will operate, the anticipated threat, and what property or personnel such personnel are intended to protect, if any.

(B) A description of how the movement of PSC personnel will be coordinated through areas of increased risk or planned or ongoing military operations, including how PSC personnel will be rapidly identified by members of the U.S. Armed Forces.

(C) A communication plan, to include a description of how relevant threat information will be shared between PSC personnel and U.S. military forces and how appropriate assistance will be provided to PSC personnel who become engaged in hostile situations. DoD contractors performing private security functions are only to be used in accordance with DoD Instruction 1100.22, “Guidance for Determining Workforce Mix,”<sup>11</sup> that is, they are limited to a defensive response to hostile acts or demonstrated hostile intent.

(D) Documentation of individual training covering weapons familiarization and qualification, rules for the use of force, limits on the use of force including whether defense of others is consistent with host nation Status of Forces Agreements or local law, the distinction between the rules of engagement applicable to military forces and the prescribed rules for the use of force that control the use of weapons by civilians, and the Law of Armed Conflict.

(E) Written acknowledgment by the PSC and its individual PSC personnel, after investigation of background of PSC personnel by the contractor, verifying such personnel are not prohibited under U.S. law to possess firearms.

<sup>5</sup> Available from <http://www.dtic.mil/whs/directives/corres/pdf/302040p.pdf>.

<sup>6</sup> Available from <http://www.dtic.mil/whs/directives/corres/html/302041.htm>.

<sup>7</sup> CJCSI 3121.01B provides guidance on the standing rules of engagement (SROE) and establishes standing rules for the use of force (SRUF) for DOD operations worldwide. This document is classified secret. CJCSI 3121.01B is available via Secure Internet Protocol Router Network at <http://js.smil.mil>. If the requester is not an authorized user of the classified network, the requester should contact Joint Staff J-3 at 703-614-0425.

<sup>8</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/231101.htm>.

<sup>9</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/520008r.pdf>.

<sup>10</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/521056.htm>.

<sup>11</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>.

(F) Written acknowledgment by the PSC and individual PSC personnel that:

(1) Potential civil and criminal liability exists under U.S. and local law or host nation Status of Forces Agreements for the use of weapons.<sup>12</sup>

(2) Proof of authorization to be armed must be carried by each PSC personnel.

(3) PSC personnel may possess only U.S.G.-issued and/or -approved weapons and ammunition for which they have been qualified according to paragraph (a)(1)(iii)(E) of this section.

(4) PSC personnel were briefed and understand limitations on the use of force.

(5) Authorization to possess weapons and ammunition may be revoked for non-compliance with established rules for the use of force.

(6) PSC personnel are prohibited from consuming alcoholic beverages or being under the influence of alcohol while armed.

(iv) Registration and identification in the Synchronized Predeployment and Operational Tracker (or its successor database) of armored vehicles, helicopters, and other vehicles operated by PSC personnel.

(v) Reporting alleged criminal activity or other incidents involving PSCs or PSC personnel by another company or any other person. All incidents involving the following shall be reported and documented:

(A) A weapon is discharged by an individual performing private security functions;

(B) An individual performing private security functions is killed or injured in the performance of their duties;

(C) A person other than an individual performing private security functions is killed or injured as a result of conduct by PSC personnel;

(D) Property is destroyed as a result of conduct by a PSC or PSC personnel;

(E) An individual performing private security functions has come under attack including in cases where a weapon is discharged against an individual performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(F) Active, non-lethal counter-measures (other than the discharge of a weapon) are employed by PSC personnel in response to a perceived immediate threat in an incident that could significantly affect U.S. objectives

with regard to the military mission or international relations.

(vi) The independent review and, if practicable, investigation of incidents reported pursuant to paragraphs (a)(1)(v)(A) through (a)(1)(v)(F) of this section and incidents of alleged misconduct by PSC personnel.

(vii) Identification of ultimate criminal jurisdiction and investigative responsibilities, where conduct of U.S.G.-funded PSCs or PSC personnel are in question, in accordance with applicable laws to include a recognition of investigative jurisdiction and coordination for joint investigations (i.e., other U.S.G. agencies, host nation, or third country agencies), where the conduct of PSCs and PSC personnel is in question.

(viii) A mechanism by which a commander of a combatant command may request an action by which PSC personnel who are non-compliant with contract requirements are removed from the designated operational area.

(ix) Interagency coordination of administrative penalties or removal, as appropriate, of non-DoD PSC personnel who fail to comply with the terms and conditions of their contract, as is applicable to this part.

(x) Implementation of the training requirements contained below in paragraph (a)(2)(ii) of this section.

(2) Specifically cover:

(i) Matters relating to authorized equipment, force protection, security, health, safety, and relations and interaction with locals in accordance with DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces."

(ii) Predeployment training requirements addressing, at a minimum, the identification of resources and assistance available to PSC personnel as well as country information and cultural training, and guidance on working with host country nationals and military personnel.

(iii) Rules for the use of force and graduated force procedures.

(iv) Requirements and procedures for direction, control and the maintenance of communications with regard to the movement and coordination of PSCs and PSC personnel, including specifying interoperability requirements. These include coordinating with the Chief of Mission, as necessary, private security operations outside secure bases and U.S. diplomatic properties to include movement control procedures for all contractors, including PSC personnel.

(b) *Availability of Guidance and Procedures.* The geographic Combatant Commander shall ensure the guidance

and procedures prescribed in paragraph (a) of this section are readily available and accessible by PSCs and their personnel (e.g., on a Web page and/or through contract terms), consistent with security considerations and requirements.

(c) *Subordinate Guidance and Procedures.* The Subordinate Commander, in consultation with the Chief of Mission, will issue guidance and procedures implementing the standing combatant command publications specified in paragraph (a) of this section, consistent with the situation and operating environment.

(d) *Consultation and Coordination.* The Chief of Mission and the geographic Combatant Commander/Subordinate Commander shall make every effort to consult and coordinate responses to common threats and common concerns related to oversight of the conduct of U.S.G.-funded PSC and their personnel. The Memorandum of Agreement between the Department of Defense and Department of State on U.S.G. Private Security Contractors<sup>13</sup> shall provide the framework for the development of guidance and procedures without regard to the specific locations identified therein.

Dated: July 14, 2009.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. E9-17059 Filed 7-16-09; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD-2007-HA-0127; RIN 0720-AB18]

#### **TRICARE: Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Changes Included in the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; Authorization of Forensic Examinations**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 701 of the John Warner National Defense Authorization Act for FY 2007, Public Law 109-364. Section 701 amends Title 10 of the United States Code (U.S.C.), Chapter 55, Section 1079(a) by authorizing coverage for

<sup>13</sup> Available at [http://www.acq.osd.mil/log/PS/p\\_vault.html](http://www.acq.osd.mil/log/PS/p_vault.html).

<sup>12</sup> This requirement is specific to arming procedures. Such written acknowledgement should not be construed to limit civil and criminal liability to conduct arising from "the use of weapons." PSC personnel could be held criminally liable for any conduct that would constitute a federal offense (see MEJA, 18 USC 3261(a)).