

under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Leonardo S.p.a.**: Docket No. FAA-2021-0375; Project Identifier MCAI-2020-01245-R.

##### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 9, 2021.

##### (b) Affected ADs

None.

##### (c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category, with an emergency flotation system (EFS) control panel part number (P/N) 3G9560V00556 (for use with night vision goggle) or 3G9560V00557 (standard) installed.

##### (d) Subject

Joint Aircraft Service Component (JASC) Code: 3212, Emergency Flotation Section.

##### (e) Unsafe Condition

This AD was prompted by two events of uncommanded EFS deployment during flight. The FAA is issuing this AD to address improper design of certain EFS control panels. The unsafe condition, if not addressed, could result in reduced control of the helicopter.

##### (f) Compliance

Comply with this AD within the compliance times specified, unless already done.

##### (g) Required Actions

- (1) At the following compliance time, replace EFS control panel P/N 3G9560V00556 or 3G9560V00557 with EFS control panel P/N 3G9560V00559 or 3G9560V00558, respectively:

(i) For helicopters with EFS P/N 3G9560F00111 or 3G9560F00113, with Aerosekur floats with “pyrotechnical” inflation system P/N 3G9560V01051 installed, within 94 hours time-in-service

(TIS) or 3 months after the effective date of this AD, whichever occurs first.

(ii) For helicopters with EFS P/N 3G9560F00111 or 3G9560F00113, with Aerosekur floats with “SMA” inflation system P/N 3G9560V01052 installed, within 377 hours TIS or 12 months after the effective date of this AD, whichever occurs first.

(iii) For helicopters with EFS P/N 3G9560F00212 with Aerosekur floats with “fuse disk” inflation system P/N 3G9560V02051 installed, within 565 hours TIS or 18 months after the effective date of this AD, whichever occurs first.

(2) As of the effective date of this AD, do not install EFS control panel P/N 3G9560V00556 or 3G9560V00557 on any helicopter.

##### (h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

##### (i) Related Information

(1) For more information about this AD, contact Ronnea Derby, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 E 68th Ave., Mail Stop: Room 214; Denver, CO 80249; telephone (303) 342-1093; email [Ronnea.L.Derby@faa.gov](mailto:Ronnea.L.Derby@faa.gov).

(2) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://www.leonardocompany.com/en/home>. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(3) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2015-0172, dated August 21, 2015. You may view the EASA AD at <https://www.regulations.gov> in Docket No. FAA-2021-0375.

Issued on May 18, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021-10908 Filed 5-24-21; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

#### 32 CFR Part 159

[Docket ID: DoD-2020-OS-0016]

RIN 0790-AK87

#### Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises

**AGENCY:** Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The DoD is proposing updates to this part to incorporate changes from the National Defense Authorization Act (NDAA) that were not available when the rule was last published on August 11, 2011. These proposed changes include administrative updates and clarifications to PSCs performing duties while under contract to DoD in support of a contingency operations, humanitarian or peace operations, or other military operations or exercises.

**DATES:** Comments must be received by July 26, 2021.

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

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number or 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:** Ms. Donna M. Livingston, 703-692-3032, [donna.m.livingston.civ@mail.mil](mailto:donna.m.livingston.civ@mail.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. Purpose of the Existing Rule

The DoD may contract for private security functions to fulfill non-combat

requirements for security in contingency operations, humanitarian or peace operations, and other military operations or exercises. Private security functions include guarding of personnel, facilities, designated sites, or property of a Federal agency, a contractor or subcontractor, or a third party. It is DoD policy that PSCs must be established, registered, well regulated, rigidly disciplined, and properly staffed with carefully selected operating personnel. This policy reflects U.S. law and is implemented through this rule, DoD Directives, DoD Instructions, and acquisition policies and regulations, to include the use of rigorous and verifiable business and operational standards.

#### *B. Summary of Major Provisions of This Regulatory Action*

This regulatory action proposes changes to the current rule in order to provide clarification to PSCs supporting DoD in support of contingency operations, humanitarian or peace operations, or other military operations or exercises outside of the U.S. The proposed changes include additional citations for guidance on inherently governmental functions and PSC compliance with DoD approved national and international recognized quality assurance management standards. PSCs must also cooperate with DoD on all government investigations. DoD is responsible for providing the appropriate contract administration oversight of PSCs. Finally, for clarification, this regulatory action proposes to add the definitions on total force and arming authorities to ensure compliance with statutory requirements.

#### *C. Legal Authority for This Program*

The proposed updates to this rule are required to meet the mandate of Section 862 of the 2008 NDAA, as amended by Section 813 of the 2010 NDAA and Section 832 of the 2011 NDAA.

### **II. Regulatory History**

The rule was initially published as an interim final rule in the **Federal Register** (74 FR 34691) on July 17, 2009, because there was insufficient policy and guidance regulating the actions of DoD and other governmental PSCs and their employees' movements in operational areas. The final rule, published in the **Federal Register** (74 FR 49650) on September 11, 2011, established policy, assigned responsibilities and provided 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, combat operations, or other significant military operations. It also assigned responsibilities and established 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.

The corresponding internal DoD policy is captured in DoD Instruction 3020.50, "Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises," published on July 22, 2009, and last updated on August 31, 2018. For additional information, DoD Instruction 3020.50 can be accessed at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302050.pdf>.

### **III. Regulatory Analysis**

#### *A. Regulatory Planning and Review*

##### *a. Executive Orders*

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive orders. This rule has been designated a "not significant regulatory action," and determined not to be economically significant, under section 3(f) of Executive Order 12866. It has been determined that 32 CFR part 159 does not 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.

##### *b. Summary*

This proposed rule provides clarification and updates for PSCs

supporting DoD in contingency operations, humanitarian or peace operations, or other military operations or exercises outside of the U.S. The clarification and updates are derived from statute and regulations requiring PSCs not to perform inherently governmental functions, obtain third party quality assurance standards, and cooperate with DoD on all Government investigations.

#### *c. Affected Population*

This proposed rule provides information relevant to commercial sector contractors and their personnel who may provide contracted support to the DoD during applicable operations outside the United States.

- Contractor employees—Provides information and describes the requirements DoD imposes on employees of private security companies who may be employed in support of DoD operating in contingency operations, humanitarian or peace operations, or other military operations or exercises.

- Companies or organizations—Provides information and describes the requirements for private security companies who may be employed in support of DoD operating in contingency operations, humanitarian or peace operations, or other military operations or exercises.

##### *d. Costs*

The proposed updates to the rule will not result in an increased burden to PSCs. PSCs are already implementing these changes based on the current 32 CFR part 159 and contract clauses outlined in Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7039, "Defense Contractors Performing Private Security Functions Outside the United States." The changes in the proposed rule are a clarification or update to the current rule.

##### *e. Benefits*

The proposed rule will clarify the guidance to the public when considering providing private security contracting support to the DoD while operating in a contingency operation, humanitarian or peace operations, or other military operations or exercises. This updated rule consolidates guidance into one document, which will improve the public planning for providing contract support to DoD. The consolidation will ensure the public is aware of all statutory requirements to compete for and perform private security contracts in support of DoD outside of the U.S.

#### f. Alternative

DoD has considered the following alternative approaches:

- No action. If no action is taken, the public will continue to use the current rule for PSCs supporting DoD outside of the U.S. DoD has improved its oversight of PSCs and Operational Contract Support through lessons learned since the current rule was published. The proposed rule, once accepted, will provide clearer guidance to the public on the contractor and government responsibilities.

- Publish proposed rule. This updated rule consolidates guidance into one document which will improve the public planning for providing contract support to DoD. The consolidation will ensure the public is aware of all statutory requirements to compete for and perform private security contracts in support of DoD outside of the U.S.

#### B. Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this proposed rule 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. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

#### C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### D. Sec. 202, Public Law 104–4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. This proposed rule will not mandate any requirements

for State, local, or tribal governments, nor will it affect private sector costs.

#### E. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 159 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. This collection has been reviewed and approved by the OMB under OMB Control Number 0704–0549 (expires October 31, 2022), “Defense Contractors Performing Private Security Functions Outside the United States.” It included a total cost of \$1,080 annually for PSC companies to report to the Geographic Combatant Commander the following incidents if and when they occur:

- A weapon is discharged by PSC personnel performing private security functions.
- PSC personnel performing private security functions are attacked, killed, or injured.
- PSC personnel are killed or injured or property is destroyed as a result of conduct by contractor personnel.
- A weapon is discharged against PSC personnel performing private security functions or personnel performing such functions believe a weapon was so discharged.

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

The changes proposed by this regulatory action neither increases nor decreases the public burden associated with this collection of information.

#### F. Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on State and local governments.

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

Government contracts, Reporting and recordkeeping requirements, Security measures.

Accordingly, 32 CFR part 159 is proposed to be amended as follows:

## PART 159—PRIVATE SECURITY CONTRACTORS (PSCs) OPERATING IN CONTINGENCY OPERATIONS, HUMANITARIAN OR PEACE OPERATIONS, OR OTHER MILITARY OPERATIONS OR EXERCISES

- 1. The authority citation for part 159 is revised to read as follows:

**Authority:** Sec. 862, Pub. L. 110–181, 122 Stat. 253; Sec. 832, Sec. 853, Pub. L. 110–417, 122 Stat. 4535; Sec. 831–833, Pub. L. 111–383, 124 Stat. 4276.

- 2. Revise the heading for part 159 to read as set forth above.
- 3. Amend § 159.2 by:
  - a. In paragraph (a)(1):
    - i. Adding “[CJCS]” after “Office of the Chairman of the Joint Chiefs of Staff.”
    - ii. Adding “[DoD]” after “the Office of the Inspector General of the Department of Defense.”
    - iii. Removing “organizational entities in the Department of Defense” and adding in its place “organizational entities in the DoD.”
  - b. Revising paragraph (a)(2).
  - c. Adding paragraph (a)(3).
  - d. Revising paragraph (b)(1).
  - e. In paragraph (b)(2), removing “[USG-funded]” and adding in its place “[U.S.G.-funded.]”

The revisions and additions read as follows:

#### § 159.2 Applicability and scope.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(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, as amended. Specifically, in areas of operations which require enhanced coordination of PSC and PSC personnel working for United States Government (U.S.G.) agencies, the Secretary of Defense may designate such areas as areas of combat operations or other significant military 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.

(3) The requirements of this part 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 (a)(3) 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.

(b) \* \* \*

(1) DoD PSCs and PSC personnel on contract and subcontract, at any tier, performing private security functions in support of contingency operations, humanitarian or peace operations, or other military operations or exercises outside the United States.

\* \* \* \* \*

**■ 4. Amend § 159.3 by:**

- a. Adding the definition of “Arming authority” in alphabetical order.
- b. Revising the definition of “Contingency operation,” “Covered contract,” “Other significant military operations,” and “Private security functions.”
- c. Removing the definition of “PSC.”
- d. Adding the definitions of “Private Security Contractor (PSC)” and “Total Force” in alphabetical order.

The revisions and additions read as follows:

**§ 159.3 Definitions.**

\* \* \* \* \*

*Arming authority.* The GCC, or a person or persons designated by the GCC, who can authorize the arming of civilians under their authority or supervision for security functions or to permit the carrying of firearms for personal protection in support of operations outside the United States.

*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 as defined in 10 U.S.C. 101(a)(13).

\* \* \* \* \*

*Covered contract.* (1) A DoD contract for performance of services and/or delivery of supplies in an area of contingency operations, humanitarian or peace operations, or other military operations or exercises outside the United States or non-DoD Federal agency contract for performance of services and/or delivery of supplies in an area of combat operations or other significant military operations, as designated by the Secretary of Defense; a subcontract at any tier under such contracts; or a task order or delivery order issued under such contracts or subcontracts.

(2) Excludes temporary arrangements entered into by non-DoD contractors for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company.

*Other significant military operations.*

(1) 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.

(2) With respect to an area of other significant military operations, the requirements of this part shall apply only upon agreement of the Secretary of Defense and the Secretary of State. Such an agreement of the Secretaries may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this part shall always apply.

*Private security functions.* Activities engaged in by a contractor under a covered contract as follows:

(1) Guarding personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of their contract. For the DoD, DoD Instruction 3020.41, “Operational Contract Support (OCS)” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302041p.pdf>) prescribes policies related to personnel allowed to carry weapons for self-defense.

(3) Contractors, including those 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.

*Private Security Contractor (PSC).* A company contracted by the U.S.G. to perform private security functions under a covered contract.

\* \* \* \* \*

*Total Force.* The organizations, units, and individuals that comprise DoD’s resources for implementing the National Security Strategy. It includes the DoD Active and Reserve Component military personnel, DoD civilian personnel (including foreign national direct-hires as well as non-appropriated fund employees), contracted support, and host nation support personnel.

**§ 159.4 [Amended]**

- 5. Amend § 159.4 by:
  - a. In paragraph (a):
    - i. Adding “as amended,” after “Public Law 110–181.”
    - ii. Removing “section 159.5 of this part” and adding in its place “§ 159.5.”
  - b. In paragraph (b):

- i. Adding “(GCCs)” after “Geographic Combatant Commanders.”
- ii. Redesignating footnotes 4 and 5 as footnotes 1 and 2.

- c. In paragraph (c):

- i. Adding “(COM)” after “the relevant Chief of Mission” in the first sentence.
- ii. Removing “geographic Combatant Commander” and adding in its place “GCC” in the first sentence.
- iii. Removing “Chief of Mission” and adding in its place “COM” in the second sentence.
- iv. Removing “geographic Combatant Commander” and adding in its place “GCC” in the second sentence.

- 6. Revise § 159.5 to read as follows:

**§ 159.5 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will provide Department-wide policies on the total force manpower mix and labor sourcing, consistent with statute, the FAR, the DFARS, and other applicable Federal policy documents, especially with respect to contracted services and restrictions on functions that contractors may and may not perform. The USD(P&R) will ensure that policies specifically address circumstances where use of PSCs would be inherently governmental or where GCCs would need to assess where performance of the function by PSCs or total reliance on PSCs would constitute an unacceptable risk.

(b) The Deputy Assistant Secretary of Defense for Logistics (DASD(Logistics)), under the authority, direction, and control of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) and through the Assistant Secretary of Defense for Sustainment, monitors the registering, processing, and accounting of PSC personnel in areas of contingency operations, humanitarian or peace operations, or other military operations or exercises.

(c) The Principal Director, Defense Pricing and Contracting (DPC), under the authority, direction, and control of the USD(A&S), ensures that the DFARS and (when appropriate, in consultation with the other members of the FAR Council) the FAR, provides appropriate guidance and publish contracting requirements pursuant to this part and Section 862 of Public Law 110–181.

(d) The CJCS 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 Its Operational Execution” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/>

*302049p.pdf*; DoD Instruction 3020.41, DoD Directive 5210.56, “Arming and the Use of Force” (available at [https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/521056\\_dodd\\_2016.pdf](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/521056_dodd_2016.pdf)); and this part.

(e) The GCCs in whose AOR contingency operations, humanitarian or peace operations, or other military operations or exercises are 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, DoD Instruction 3020.41, DoD Instruction 1100.22, “Policy and Procedures for Determining Workforce Mix” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110022p.pdf>); DFARS, 48 CFR subpart 225.302, 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, a sub unified commander or JFC shall be responsible for developing and issuing implementing procedures as warranted by the situation, operation, and environment, in consultation with the relevant COM in designated areas of combat operations or other significant military operations.

(2) Through the Contracting Officer, the PSC should acknowledge that its personnel understand their obligation to comply with the terms and conditions of applicable 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 shall be included with the written authorization, if not previously provided. Rules for the Use of Force shall conform to the guidance in DoD Directive 5210.56 and the CJCS Instruction 3121.01B, “Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces.” Offerors’ and contractors’ access to the Rules for the Use of Force may be controlled in accordance with the terms of FAR 52.204-2, “Security Requirements”; DFARS 252.204-7000, “Disclosure of Information”; or both.<sup>1</sup>

<sup>1</sup> CJCS Instruction 3121.01B provides guidance on the standing rules of engagement (SROE) and establishes standing rules for the use of force for DoD operations worldwide. This document is classified secret. CJCS Instruction 3121.01B is

(4) Ensure that the procedures, orders, directives, and instructions prescribed in § 159.6 are available through a single location (to include an internet website, 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 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 and DFARS clauses and include additional mission-specific requirements as appropriate.

(3) Ensure the head of the contracting activity responsible for each covered contract takes appropriate steps to assign sufficient oversight personnel to the contract to verify that the contractor responsible for performing private security functions complies with the requirements of this part. This includes ensuring that the contracting officer coordinates with the requiring activity to nominate and appoint a qualified contracting officer’s representative (COR) or other multiple or alternate CORs, in accordance with DoD Instruction 5000.72, “DoD Standard for Contracting Officer’s Representative (COR) Certification” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.pdf>).

■ 7. Amend § 159.6 by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(1)(i), removing “, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces.”,” and adding a period in its place.

■ c. In paragraph (a)(1)(iii) introductory text:

■ i. Removing “geographic Combatant Commander” everywhere it appears and adding in its place “GCC” in the first sentence.

■ ii. Removing “of this part”.

■ d. In paragraph (a)(1)(iii)(C):

■ i. Removing ““Guidance for Determining Workforce Mix”” and adding in its place ““Policy and Procedures for Determining Workforce Mix””.

■ ii. Redesignating footnote 12 as footnote 1.

■ e. In paragraph (a)(1)(iii)(F)(1), redesignating footnote 13 as footnote 2.

■ f. In paragraph (a)(1)(iv), adding “PSC personnel, weapons,” before “armored vehicles”.

■ g. In paragraph (a)(1)(v)(F), removing “TASER guns” and adding in its place “disruption devices”.

■ h. In paragraph (a)(1)(viii), removing “commander of a combatant command may request” and adding in its place “commander of a CCMD may, through the contracting officer, request”.

■ i. In paragraph (a)(1)(x), removing “paragraph (a)(2)(ii)” and adding in its place “paragraph (a)(2)(iii)”.

■ j. In paragraph (a)(2)(i), removing “, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces.”,” and adding a period in its place.

■ k. Redesignating paragraphs (a)(2)(ii) through (iv) as paragraphs (a)(2)(iii) through (iv) and adding new paragraph (a)(2)(ii).

■ l. Further redesignating newly redesignated paragraph (a)(2)(iv) as paragraph (a)(2)(vi) and adding new paragraph (a)(2)(v).

■ m. In newly redesigned paragraph (a)(2)(vi), removing “Chief of Mission” and adding in its place “COM”.

■ n. Removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

■ o. In newly redesigned paragraph (b):

■ i. Revising the paragraph heading.

■ ii. Removing “Chief of Mission” and “combatant command” and adding in their places “COM” and “CCMD,” respectively.

■ p. In newly redesigned paragraph (c):

■ i. Revising the paragraph heading.

■ ii. Removing “Chief of Mission” and “geographic Combatant Commander/sub unified commander” and adding in their places “COM” and “GCC/sub unified commander,” respectively.

The revisions and additions read as follows:

#### § 159.6 Procedures.

(a) *Standing Combatant Command (CCMD) guidance and procedures.* Each GCC shall develop and publish guidance and procedures for PSCs and PSC personnel operating during contingency operations, humanitarian or peace operations, or other military operations or exercises within their AOR, consistent with applicable law; this part; applicable Military Department publications; and other applicable DoD issuances including DoD Directive 3020.49, DoD Instruction 1100.22, “Policy and Procedures for Determining Workforce Mix,” FAR, DFARS, DoD Instruction 3020.41, DoD Directive 2311.01E, “DoD Law of War Program” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101e.pdf>); DoD 5200.8-R, “Physical

Security Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520008rm.pdf>); CJCS Instruction 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces," and DoD Directive 5210.56. The guidance and procedures shall:

\* \* \* \*

(2) \*

(ii) Assessing compliance with DoD approved business and operational standards for private security functions.

\* \* \* \*

(v) Requirements for the PSC to cooperate with any investigation conducted by the DoD, including by providing access to its employees and relevant information in its possession regarding the matter(s) under investigation.

\* \* \* \*

(b) *Subordinate guidance and procedures.* \* \* \*

(c) *Consultation and coordination.*

\* \* \*

Dated: May 10, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021-10100 Filed 5-24-21; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 310

[Docket ID: DoD-2021-OS-0004]

RIN 0790-AL20

#### Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary of Defense (OSD), Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (Department or DoD) is giving concurrent notice of a new Department-wide system of records pursuant to the Privacy Act of 1974 for the DoD 0006, "Military Justice and Civilian Criminal Case Records" system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from certain provisions of the Privacy Act because of national security and law enforcement requirements.

**DATES:** Send comments on or before July 26, 2021.

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

\* *Federal eRulemaking Portal:* <https://www.regulations.gov>.

Follow the instructions for submitting comments.

\* *Mail:* The DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

*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 <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700; [OSD.DPCLTD@mail.mil](mailto:OSD.DPCLTD@mail.mil); (703) 571-0070.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, the Department of Defense (DoD) is establishing a new system of records titled, "Military Justice and Civilian Criminal Case Records," DoD 0006. This system of records describes DoD's collection, use, and maintenance of records for the handling of Uniform Code of Military Justice (UCMJ) and disciplinary cases within the authority of the DoD. This system of records also includes records created when DoD legal practitioners, in support of the U.S. Department of Justice, prosecute in U.S. District Courts crimes that occurred on military installations or property. Individuals covered by this system of records include armed forces members and others identified in Article 2 of the UCMJ, as well as civilians who are alleged to have engaged in criminal acts on DoD installations and properties.

The purpose of this system of records is to support the collection, maintenance, use, and sharing of records compiled by the DoD for the adjudication and litigation of cases conducted under the Uniform Code of Military Justice, as well as criminal proceedings brought in U.S. District Courts for offenses occurring on DoD

installations or property. This system contains information, records, and filings publicly accessible on the Department's court docket. It also supports the compilation of internal statistics and reports related to these activities.

The collection and maintenance of this information by the DoD is necessary to meet its statutory obligations and to ensure good order and discipline.

#### II. Privacy Act Exemption

The Privacy Act allows federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including those that provide individuals with a right to request access to and amendment of their own records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. This proposed rule explains why an exemption is being claimed for this system of records and invites public comment, which DoD will consider before the issuance of a final rule implementing the exemption.

The DoD proposes to modify 32 CFR part 310 to add a new Privacy Act exemption rule for the DoD 0006, "Military Justice and Civilian Criminal Case Records" system of records. The DoD proposes this exemption because some of its records may contain classified national security information and notice, access, amendment and disclosure (to include accounting for those records) to an individual may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to executive order. The DoD is proposing to claim an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements pursuant to 5 U.S.C. 552a(k)(1), to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

The DoD also proposes to exempt this system of records because these records support the conduct of criminal law enforcement activities, and certain requirements of the Privacy Act may interfere with the effective execution of these activities, and undermine good order and discipline. The Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), authorizes agencies with a principal law enforcement function pertaining to the