

www.jcs.mil/Portals/36/Documents/Library/Instructions/CJCSI%203500.01J.pdf?ver=_ah__rbO2yB6Uw6QbvzC8pw%3d%3d).

(ee) DoD Instruction 2000.12, “DoD Antiterrorism (AT) Program” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/200012p.pdf>).

(ff) DoD Directive 2310.01E, “DoD Detainee Program” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231001e.pdf>).

(gg) DoD Directive 2311.01, “DoD Law of War Program” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101p.pdf?ver=2020-07-02-143157-007>).

(hh) DoD Directive 3115.09, “DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/311509p.pdf>).

(ii) DoD Directive 3002.01, “Personnel Recovery in the Department of Defense” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/300201p.pdf>).

(jj) DoD Instruction 3002.03, “DoD Personnel Recovery—Reintegration of Recovered Personnel” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300203p.pdf>).

(kk) DoD Directive 6200.04, “Force Health Protection (FHP)” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/620004p.pdf>).

(ll) DoD Instruction 5154.30, “Armed Forces Medical Examiner System (AFMES) Operations” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/515430p.pdf>).

(mm) Assistant Secretary of Defense for Health Affairs Memorandum, Clinical Practice Guidance for Deployment-Limiting Mental Disorders and Psychotropic Medications” October 7, 2013 (available at <https://health.mil/Reference-Center/Policies?query=deployment&isDateRange=0&broadVector=000&newsVector=00000000&refVector=00000000100000&refSrc=1>).

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

Sec.

159.1 Purpose.

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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.

SOURCE: 76 FR 49655, Aug. 11, 2011, unless otherwise noted.

§ 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 (CJCS) and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (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, as amended. 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 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 non-governmental 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 Secretary of Defense and the Secretary of State 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) Prescribes policies applicable to all:

(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.

(2) U.S.G.-funded PSCs and PSC personnel performing private security functions in an area of combat operations or, with the agreement of the Secretary of State, other significant military operations as designated by the Secretary of Defense.

[76 FR 49655, Aug. 11, 2011, as amended at 87 FR 55283, Sept. 9, 2022]

§ 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.

Arming authority. A Combatant Commander (CCDR) with responsibility for the applicable geographic area concerned, or a person or persons designated by that Commander 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. Per 10 U.S.C. 101(a)(13)(a), a military operation that is designated by the Secretary of De-

fense as a contingency operation, or that becomes a contingency operation as a matter of law in accordance with 10 U.S.C. 101(a)(13)(b).

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

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 U.S. 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 Secretary of Defense and the Secretary of State 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 Contractor (PSC). A company contracted by the U.S.G. to perform private security functions under a covered contract.

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

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(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, armed contractors are limited in the use of force to a defensive response to hostile acts or demonstrated hostile intent.

PSC personnel. Any individual performing 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.

[76 FR 49655, Aug. 11, 2011, as amended at 87 FR 55283, Sept. 9, 2022]

§ 159.4 Policy.

(a) Consistent with the requirements of paragraph (a)(2) of section 862 of Public Law 110–181, as amended, 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. Coordination shall encompass the contemplated use of PSC personnel during the planning stages of contingency operations so as to allow guidance to be developed under paragraphs (b) and (c) of this section and promulgated under § 159.5 in a timely manner that is appropriate for the needs of the contingency operation.

(b) Combatant Commanders (CCDRs) with geographic Areas of Responsibility (AORs) 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)¹ and the Defense Federal Acquisition Regulation Supplement (DFARS).²

(c) In a designated area of combat operations or other significant military operations, the relevant Chief of Mission (COM) will be responsible for developing and issuing implementing instructions for non-DoD PSCs and their personnel consistent with the standards set forth by the CCDR for the applicable geographic AOR in accordance with paragraph (b) of this section. The COM has the option to instruct non-DoD PSCs and their personnel to follow the guidance and procedures developed by the CCDR for the applicable geographic AOR and/or a sub unified commander or joint force commander (JFC) where specifically authorized by the Combatant Commander to do so and notice of that authorization is provided to non-DoD agencies.

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

[76 FR 49655, Aug. 11, 2011, as amended at 87 FR 55284, Sept. 9, 2022]

§ 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 U.S. law, 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

¹Published in Title 48 of the Code of Federal Regulations.

²Published in Title 48 of the Code of Federal Regulations.

governmental or where CCDRs with geographic AORs 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) and through the Assistant Secretary of Defense for Acquisition, ensures that the DFARS and (when appropriate, in consultation with the other members of the FAR Council) the FAR, provides appropriate guidance and publishes 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, "Program Management for the Planning and Execution of Operational Contract Support" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/302049d.pdf?ver=fgxC1kzBqeIV4KpOv9pDTw%3d%3d>); 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/521056p.PDF?ver=PIvIb3eht0obgolnD0UCEw%3d%3d>); and this part.

(e) CCDRs with responsibility for the AOR in which 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 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 Combatant Command (CCMD) with a designated geographic AOR, 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, 48 CFR 52.204-2, "Security Requirements"; DFARS, 48 CFR 252.204-7000, "Disclosure of Information"; or both.¹

(4) Ensure that the procedures, orders, directives, and instructions prescribed in §159.6 are available through a single location (including an internet website, consistent with security considerations and requirements).

¹CJCS 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 available via Secure internet Protocol Router Network at <https://jsportal.osd.smil.mil>.

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(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 CCMD of the applicable geographic AOR.

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

(3) In coordination with the appropriate requiring activity (or activities), 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>).

[87 FR 55284, Sept. 9, 2022]

§ 159.6 Procedures.

(a) *Standing Combatant Command (CCMD) guidance and procedures.* Each CCDR with a geographic AOR 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/231101p.pdf?ver=2020-07-02-143157-007>); DoD 5200.08–R, "Phys-

ical Security Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520008rm.pdf>); CJCS Instruction 3121.01B., and DoD Directive 5210.56. 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.

(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 CCDR of the geographic AOR (or a designee) to ensure there is a legal basis for approval. The request will then be approved or denied by the CCDR of the geographic AOR 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). Requests for permission to arm all 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, "Policy and Procedures for Determining Workforce Mix,"¹ 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.

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

(1) Inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces may subject such personnel to United States or host nation prosecution and civil liability.²

(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 about 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 PSC personnel, weapons, 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. (Active non-lethal systems include laser optical distracters, acoustic hailing devices, electro-muscular disruption devices, blunt-trauma devices like rubber balls and sponge grenades, and a variety of riot-control agents and delivery systems).

(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.

¹Available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>.

²This requirement is specific to arming procedures. Such written acknowledgement should not be construed to limit potential civil and criminal liability to conduct arising from "the use of weapons." For example, PSC personnel could be held criminally liable for any conduct that would constitute a Federal offense (see MEJA, 18 U.S.C. 3261(a)).

(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 CCDR may, through the contracting officer, 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 they relate to this part.

(x) Implementation of the training requirements contained below in paragraph (a)(2)(iii) 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.

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

(iii) 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.

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

(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.

(vi) Requirements and procedures for direction, control and the maintenance of communications with regard to the movement and coordination of PSCs and PSC personnel, including speci-

fying interoperability requirements. These include coordinating with the COM, 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) *Subordinate guidance and procedures.* A sub unified commander or JFC, in consultation with the COM, will issue guidance and procedures implementing the standing CCDR publications specified in paragraph (a) of this section, consistent with the situation and operating environment.

(c) *Consultation and coordination.* The COM and the CCDR with geographic AOR/sub unified commander or JFC 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 PSCs and their personnel.

[76 FR 49655, Aug. 11, 2011, as amended at 87 FR 55285, Sept. 9, 2022]

PART 161—IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS

Subpart A—Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals

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