

Indian Tribe in which that biological parent was enrolled.

(e) If trust personalty does not descend under paragraph (d) of this section, then:

(1) To the Indian Tribe in which the decedent's biological grandparents were enrolled; if all enrolled biological grandparents were enrolled in the same Tribe;

(2) To the Indian Tribes in which the decedent's biological grandparents were enrolled, in equal shares, if two or more of the decedent's biological grandparents were enrolled in different Tribes; or

(3) If only one biological grandparent was enrolled in an Indian Tribe, to the Indian Tribe in which that biological grandparent was enrolled.

(f) If trust personalty does not descend under paragraph (e) of this section, then to an Indian Tribe selected by the judge, in consideration of the following factors:

(1) The origin of the funds in the decedent's IIM account;

(2) The Tribal designator contained in the owner identification number or IIM account number assigned to the decedent by BIA; and

(3) The geographic origin of the decedent's Indian ancestors.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Scott Cameron,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 158

[Docket ID: DOD-2020-OS-0015]

RIN 0790-AK81

Operational Contract Support (OCS) Outside the United States

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

ACTION: Proposed rule.

SUMMARY: The DoD is issuing this rule to update the policies and procedures for operational contract support (OCS) outside the United States. These changes include broadening the range of applicable operational scenarios, eliminating content internal to the Department, and making updates to comply with law and policy. Changes

include designating contractor personnel as part of the DoD total force, incorporating requirements for accountability and reporting, and clarifying responsibilities. Through these updates, the Department will also address open recommendations from the Government Accountability Office (GAO). OCS is a segment of the GAO High Risk Area of DoD Contract Management and while the latest update in March 2019 acknowledged progress, GAO cited the need to revise and reissue guidance to address several open recommendations.

DATES: Comments must be received by March 8, 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.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Rule

The Joint Force relies on contracted support in nearly every mission and operational setting. Operational Contract Support (OCS) is how the Department plans for and integrates contracted capabilities and associated contractor personnel providing support to operations within a designated geographic area. Since 2007, the Department has been heavily focused on better oversight, management, and accounting of contractors supporting U.S. military operations. Concurrently, there has been increasing demand from commanders for more visibility of contractor personnel. Successfully planning for, procuring, and integrating contracted support requires that

commanders have a full understanding of what contracted support is needed and when; how requirements can be optimized and executed; and how the Department includes contracted support as part of the total force. The existing part describes, in detail, the specific DoD policy, responsibilities, and procedures that enable and substantiate OCS and enable both the DoD and its commercial partners to plan for contractor support when operating with U.S. Armed Forces in applicable operations. Contractors are currently required to load their employees' information in the Synchronized Pre-deployment Operational Tracker—Enterprise System (SPOT-ES) when an employee deploys under a contract to support U.S. military operations overseas, and this revision neither increases nor decreases the burden of this requirement. The changes resulting from the revised rule increase transparency of new policies and better inform the DoD's commercial partners.

B. Background

Operational contract support was born in the aftermath of significant reporting on DoD acquisition and contracting operations in Iraq and Afghanistan, including the 2008 "Commission on Army Acquisition and Program Management in Expeditionary Operations" and the 2011 "Commission on Wartime Contracting in Iraq and Afghanistan." The Commission on Wartime Contracting in Iraq and Afghanistan published findings that identified deficiencies related to contract management and oversight that required DoD's attention. As a result, the DoD has invested heavily in efforts to address these findings and enhance oversight, better define contract requirements, and improve the visibility and accounting of contractors supporting U.S. operations overseas. There has been persistent scrutiny of the DoD's progress to close these deficiencies, namely by the GAO. The GAO has reviewed the Departments' progress on OCS on multiple occasions, and classified OCS as a segment within the DoD Contract Management High Risk Area. In the last report (GAO-19-157SP) published in March 2019 (available at <https://www.gao.gov/products/GAO-19-157SP>), GAO recognized the progress made on OCS and affirmed that it could remove its high-risk status. Removal could come quickly once the DoD successfully completes the few remaining GAO recommendations. By implementing the GAO recommendations, updating internal policies especially DoD Instruction 3020.41 "Operational

Contract Support” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302041p.pdf>), and revising this CFR part, the DoD will address the vital need for greater efficiency and accountability. Improved policy and guidance will foster an environment focused on operational planning of contracted support to operations and improved readiness, and will result in cost savings by reducing the potential for waste, fraud, and abuse.

C. Summary of Major Provisions

This proposed rule: (1) Broadens the types of operations when contracted support may be employed, beyond contingency operations; (2) describes and clarifies contractors’ responsibilities related to theater admission requirements for their personnel deploying in support of operations outside the United States; (3) clarifies contractors’ responsibilities to provide personnel who meet specific medical and dental fitness standards; (4) details the services the U.S. Government is authorized to provide to contractors; and (5) removes all internally facing information to promote efficiency and streamline communication with the public.

To address GAO recommendations to improve the ability to track contracts and contractor personnel in contingency and other operations and to help ensure that DoD possesses the capability to collect and report statutorily required information and to clarify responsibilities and procedures, § 158.5(g) was updated to address SPOT minimum reporting requirements, system requirements, and references to the SPOT business rules were included which include area specific requirements.

D. Legal Authority

The legal authority for this rule is found in Section 861, *Memorandum of Understanding on Matters Relating to Contracting*, of the *National Defense Authorization Act for Fiscal Year 2008* (Pub. L. 110–181), and Section 854, *Additional Contractor Requirements and Responsibilities Relating to Alleged Crimes By or Against Contractor Personnel in Iraq and Afghanistan*, of the *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009* (Pub. L. 110–417).

II. Regulatory History

An interim final rule for this part was published on December 29, 2011 (76 FR 81807). The DoD adopted the interim final rule as a final rule without change on December 3, 2013 (78 FR 72573). The 2011 rule action procedurally closed gaps that existed in planning, oversight, and management of DoD contractors supporting contingency operations. The rule was necessary to address legislative mandates, remove confusion with other policies, and better reflect the practices and procedures in place at that time. The rule was crucial at the time due to the sustained employment of a large number of contractors in the U.S. Central Command area of responsibility; the importance of contractor oversight in support of counter-insurgency operations in Afghanistan; and the requirement to manage contractors effectively during the withdrawal of U.S. forces from Iraq in 2011.

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. This rule has been designated a “not significant regulatory action” and has been determined not to be economically significant under section 3(f) of Executive Order 12866.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This rule is not significant under Executive Order 12866; therefore, it is not subject to the requirements of Executive Order 13771.

b. Summary

This rule broadens the range of operations in which contracted support

may be employed; updates requirements for the development of contractor oversight plans; increases visibility and accountability; reinforces requirements for adequate military personnel necessary to execute contract oversight; and describes U.S. Government standards for medical care available to deployed contractor personnel, when authorized. It also updates policy resulting from changes in law and policy. Lastly, the rule has been streamlined to show only information relevant to the public and removes internally facing responsibilities and procedures.

c. Affected Population

The existing rule provides information relevant to contractors and their personnel that may provide contracted support to the DoD during applicable operations outside the United States. The following populations are expected to continue to be stakeholders in the content of the revised rule:

- Contractor personnel—Provides information and describes the requirements the DoD imposes on employees of commercial industry partners who may be employed in support of DoD operations conducted outside the United States.

- Companies or organizations—Provides information for commercial industry partners to understand how contractor personnel are managed and accounted for and includes deployment requirements necessary to provide support to DoD in applicable operations.

d. Costs

A negligible burden reduction to the public may be achieved by the clarifications and increased transparency provided by this revision. Contractors may save time by having increased access to DoD policy requirements and in avoiding unnecessary duplication or providing personnel not suitable or prepared to support applicable operations outside the United States. The changes implemented by this rule are not expected to alter significantly the baseline burden that was calculated as part of the most recent SPOT–ES system collection, Control Number 0704–0460, approved by the OMB in 2019 in accordance with the Public Law 96–511, “Paperwork Reduction Act.”

Collection instrument (SPOT database)	2016 approved estimates	2019 approved estimates
Estimation of Respondent Burden Hours		
Number of Respondents	1670	964.
Number of Responses per Respondent	56	77.
Number of Total Annual Responses	93,520	74,561.
Response Time (Amount of time needed to complete the collection instrument)5	.5.
Respondent Burden Hours (Total Annual Responses multiplied by Response Time) Please compute these into hours).	46,760	37,291.
Labor Cost of Respondent Burden		
Number of Responses	93,520	74,561 (decrease of 18,959).
Response Time per Response5	.5.
Respondent Hourly Wage	\$36.00	\$32.11.
Labor Burden per Response (Response Time multiplied by Respondent Hourly Wage)	\$18.00	\$16.06.
Total Labor Burden (Number of Respondents multiplied by Response Time multiplied by Re- spondent Hourly Wage).	\$1,683,360	\$1,197,077 (decrease of \$486,283).

The burden and cost decreased due to contractor deployments to ongoing contingencies having been reduced since 2016. Thus, the number of responses required was reduced from 93,520 to 74,561. This drove the associated calculations down and resulted in a decrease in cost of \$486,283. In addition, the difference in the respondent hourly range is attributed to the respondent labor category from a management labor category in 2016 to human resources specialist in 2019. Wage information is based on data from the Department of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm).

Based on data from the Federal Procurement Data System—Next Generation for contract actions for fiscal year 2019 with a place of performance outside the United States, approximately 15,742 of 2.4 million (or 1 percent), are to small businesses. This amounts to \$2,438,406,319 of \$36,747,264,771 (or less than 8 percent) of contracts obligated to small businesses worldwide.

e. Benefits

OCS is a force multiplier, giving commanders more options, and supports force optimization. When properly planned for and integrated into operations, OCS can be leveraged to support the Secretary of Defense's objective of restoring military readiness and to close any gaps in fulfilling requirements associated with maintenance, material, intelligence information, or translation services, which can be filled by either short- or long-term commercial capabilities. This rule most significantly improves and refines DoD policy for planning and integrating contracted support in applicable operations. The Department

has been working for more than a decade to establish OCS as a core defense capability; one that minimizes risk, increases readiness and flexibility, and improves effectiveness. This rule codifies policy that implements a programmatic approach and improves oversight of contracted support, reducing the likelihood that historical instances of waste, fraud, and abuse will be repeated. This rule furthermore ensures contractors supporting applicable operations are fully prepared to meet the requirements necessary to support operations outside the United States.

f. Alternatives

The DoD has considered the following alternatives:

- No action—maintain the status quo. If no action is taken, the significant improvements made to accounting and managing, planning for, and overseeing contracted support will not be codified, raising the risk that past mismanagement will persist, resulting in significant waste, fraud, and abuse. In addition, the rule must be updated and published before an update to the associated DoD issuance, DoD Instruction 3020.41, “Operational Contract Support (OCS),” may be issued. Publishing the updated policy is required to remove the OCS element of DoD Contract Management as a GAO High-Risk Area.

- Publish proposed rule. Codify changes in policy and statute that result in improved management of contract requirements, contractor management and visibility and accountability of contractors. These improvements will support removing OCS as a sub-area under the GAO High Risk Area of DoD Contract Management.

In summary, if the status quo is maintained, resolution of the GAO recommendations cannot be implemented.

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

The DoD certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. Based on data from the Federal Procurement Data System—Next Generation for contract actions for fiscal year 2019 with a place of performance outside the United States, approximately 15,742 of 2.4 million (or 1 percent), are to small businesses. This amounts to \$2,438,406,319 of \$36,747,264,771 (or less than 8 percent) of contracts obligated to small businesses worldwide. Therefore, the requirements of the Regulatory Flexibility Act do not apply.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.* 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. The DoD will submit a report containing the final 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 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 rule will not mandate any requirements for State, local, or tribal governments.

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

It has been determined that 32 CFR part 158 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. This SPOT–ES system collection has been reviewed and approved by the OMB and assigned OMB Control Number 0704–0460 (cleared through September 30, 2022). The SPOT–ES collection package encapsulated the requirement for all DoD, Department of State (DOS), and United States Agency for International Development (USAID) contractor personnel to register in the SPOT–ES database. Within the current collection, 87 percent of contractor personnel records were related to DoD contracts and less than 13 percent were from other government agencies. This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

System of Records Notices (SORNs) and Privacy Impact Assessments (PIAs) (<https://www.dmdc.osd.mil/appj/dwp/documents.jsp>) have been accomplished under SORN Identifier DMDC 18 DoD (<https://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570569/dmdc-18-dod/>), “Synchronized Predeployment Operational Tracker Enterprise Suite.”

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. The changes in this rule will not have a substantial effect on State and local governments and do not implicate federalism.

List of Subjects in 32 CFR Part 158

Accountability/visibility, Accounting, Armed forces, Combating trafficking in persons, Deployment and redeployment, Government contracts, Medical clearances, Passports and visas, Planning, Security measures, Support to contractors, Transportation.

■ Accordingly, 32 CFR part 158 is proposed to be revised to read as follows:

PART 158—OPERATIONAL CONTRACT SUPPORT (OCS) OUTSIDE THE UNITED STATES

Sec.

- 158.1 Purpose.
- 158.2 Applicability.
- 158.3 Definitions.
- 158.4 Policy.
- 158.5 Procedures.
- 158.6 Guidance for contractor medical and dental fitness.

Authority: Public Law 110–181; Public Law 110–417.

§ 158.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for operational contract support (OCS), including contract support integration, contracting support, management, and deployment of defense contractor personnel in applicable operations outside the United States.

§ 158.2 Applicability.

This part applies to contracts and contractor personnel supporting DoD Components operating outside the United States in contingency operations, humanitarian assistance, or peace operations and other activities, including operations and exercises as determined by a Combatant Commander or as directed by the Secretary of Defense.

§ 158.3 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this part.

Acquisition. The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.

Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Applicable operations. Contingency operations, humanitarian assistance, or peace operations conducted outside the United States and other activities, including operations and exercises outside the United States as determined

by a combatant commander (CCDR) or as directed by the Secretary of Defense.

Austere environment. Areas where applicable operations may be conducted that are in remote, isolated locations, where access to modern comforts and resources may be limited or non-existent.

Civil augmentation program. External support contracts designed to augment Military Department logistics capabilities with contracted support in both preplanned and short-notice operations.

Contingency contract. A legally binding agreement for supplies, services, and/or construction let by a U.S. Government contracting officer in the operational area, or that has a prescribed area of performance within an operational area.

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).

Contract administration. The processes and procedures of contracting, from contract award through closeout, that includes oversight efforts by contracting professionals and designated non-contracting personnel to ensure that supplies, services, and/or construction are delivered and/or performed in accordance with the terms and conditions of the contract.

Contract support integration. The coordination and synchronization of contracted support executed in a designated operational area in support of military operations.

Contracting. Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contracting officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas.

Contracting Officer's Representative (COR). An individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Contracting support. The coordination of contracts and execution of contracting authority by a warranted contracting officer that legally binds commercial entities to perform contractual requirements in support of DoD operational requirements.

Contractor management. The oversight and integration of contractor personnel and associated equipment providing support to military operations.

Contractor personnel. Any individual, employed by a firm, corporation, partnership, or association, employed under contract with the DoD to furnish services, supplies, or construction. Contractor personnel may include U.S. citizens and host nation and third country national (TCN) individuals.

Contractor personnel accountability. The process of identifying, capturing, and recording the personally identifiable information and assigned permanent duty location of an individual contractor employee through the use of a designated database.

Contractor personnel visibility. Information on the daily location, movement, status, and identity of contractor personnel.

Contractors Authorized to Accompany the Force (CAAF). Contractor personnel and all tiers of subcontractor personnel authorized to accompany U.S. Armed Forces in applicable operations outside of the United States who have been afforded this status through the issuance of a Letter of Authorization (LOA). CAAF generally include all U.S. citizen and TCN employees not normally residing within the operational area whose area of performance is in the direct vicinity of the U.S. Armed Forces and who are routinely co-located with the U.S. Armed Forces. In some cases, CCDR subordinate commanders may designate mission-essential host nation (HN) or local national (LN) contractor personnel (e.g., interpreters) as CAAF. CAAF includes contractor personnel previously identified as contractors deploying with the force. CAAF status does not apply to contractor personnel within U.S. territory working in support of contingency operations outside the United States.

Defense contractor. Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly

with the DoD to furnish services, supplies, or construction.

DoD Components. Includes 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 (CCMDs), the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

Essential contractor service. A service provided by a firm or an individual under contract to the DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

Expeditionary Contract Administration (ECA). Contract administration conducted during joint or other expeditionary operations. Formerly known as the Contingency Contract Administrative Services or CCAS.

Expeditionary operations. Activities organized to achieve a specific objective in a foreign country.

External support contracts. Contracts awarded by contracting organizations whose contracting authority does not derive directly from the theater support contracting head(s) of contracting activity or from systems support contracting authorities.

Host nation (HN). A nation that permits, either in writing or other official invitation, government representatives or agencies and/or agencies of another nation to operate, under specified conditions, within its borders.

Hostile environment. Operational environment in which local government forces, whether opposed to or receptive to operations that a unit intends to conduct, do not have control of the territory and population in the intended operational area.

Isolated personnel. U.S. military, DoD civilians, and contractor personnel (and others designated by the President or Secretary of Defense) who are unaccounted for as an individual or a group while supporting an applicable operation and are, or may be, in a

situation where they must survive, evade, resist, or escape.

Law of war. The treaties and customary international law binding on the United States that regulate: The resort to armed force; the conduct of hostilities and the protection of war victims in international and non-international armed conflict; belligerent occupation; and the relationships between belligerent, neutral, and non-belligerent States. Sometimes also called the "law of armed conflict" or "international humanitarian law," the law of war is specifically intended to address the circumstances of armed conflict.

Letter of authorization (LOA). A document issued by a contracting officer or his or her designee that authorizes contractor personnel to accompany the force to travel to, from, and within an operational area, and outlines U.S. Government authorized support authorizations within the operational area, as agreed to under the terms and conditions of the contract. For more information, see 48 CFR subpart 225.3.

Local national (LN). An individual who is a permanent resident of the nation in which the United States is conducting operations.

Long-term care. A variety of services that help a person with comfort, personal, or wellness needs. These services assist in the activities of daily living, including such things as bathing and dressing. Sometimes known as custodial care.

Mission-essential functions. Those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect the DoD's ability to provide vital services or exercise authority, direction, and control.

Non-CAAF. Personnel who are not designated as CAAF, such as LN employees and non-LN employees who are permanent residents in the operational area or TCNs not routinely residing with the U.S. Armed Forces (and TCN expatriates who are permanent residents in the operational area), who perform support functions away from the close proximity of, and do not reside with, the U.S. Armed Forces. U.S. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of the U.S. Armed Forces.

Operational area. An overarching term encompassing more descriptive terms (such as area of responsibility and joint operations area) for geographic areas where military operations are conducted.

Operational contract support (OCS). The ability to orchestrate and synchronize the provision of integrated contract support and management of contractor personnel providing support to command-directed operations within a designated operational area.

Operationally critical support. A critical source of supply for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the U.S. Armed Forces in applicable operations.

Prime contractor. Any supplier, distributor, vendor, or firm that has entered into a contract with the United States government.

Replacement centers. Centers at selected installations that ensure necessary accountability, training, and processing actions are taken to prepare personnel for onward movement and deployment to a designated operational area.

Requiring activity. A military or other designated supported organization that identifies the need for and receives contracted support to meet mission requirements during military operations.

Subcontractor. Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Synchronized Pre-deployment Operational Tracker-Enterprise System (SPOT-ES). A common joint database used to maintain contractor personnel visibility and accountability in applicable operations. References to SPOT-ES in this part will refer to that system or any database system that supersedes it for use in OCS.

Systems support contract. Contracts awarded by Military Service acquisition program management offices that provide fielding support, technical support, maintenance support, and, in some cases, repair parts support, for selected military weapon and support systems.

Theater business clearance. A CCDR policy or process to ensure visibility of and control over systems support and external support contracts executing or delivering support in designated areas of operations.

Theater support contract. A type of contract awarded by contracting officers deployed to an operational area serving under the direct contracting authority of

the Military Service component, special operations force command, or designated joint contracting authority for the designated operation.

Total force. The organizations, units, and individuals that comprise the DoD resources for implementing the National Security Strategy. It includes DoD Active and Reserve Component military personnel, military retired members, DoD civilian personnel (including foreign national direct- and indirect-hires, as well as nonappropriated fund employees), contractors, and host-nation support personnel. (For source information, see paragraph (a) of appendix A to this part.)

Uncertain environment. Operational environment in which host government forces, whether opposed to or receptive to operations that a unit intends to conduct, do not have totally effective control of the territory and population in the intended operational area.

§ 158.4 Policy.

It is DoD policy that:

(a) Defense contractor personnel are part of the total force. (See paragraph (a) of appendix A of this part).

(b) DoD Components implement OCS functions, including contract support integration, contracting support, and contractor management, during applicable operations.

(c) DoD Components will use contracted support only in appropriate situations, consistent with 48 CFR subpart 7.5, 48 CFR subpart 207.5, and Office of Federal Procurement Policy (OFPP) Policy Letter 11-01 (available at <https://www.federalregister.gov/documents/2011/09/12/2011-23165/publication-of-the-office-of-federal-procurement-policy-ofpp-policy-letter-11-01-performance-of>), and paragraph (b) of appendix A to this part.

(d) Generally, contractors are responsible for providing their employees with all life, mission, medical, logistics, and administrative support necessary to perform the contract. However, in many operations, especially in those in which conditions are austere, hostile, and/or non-permissive, the contracting officer may decide it is in the interest of the U.S. Government to allow for selected life, mission, medical, logistics, and administrative support to be provided to contractor personnel to ensure continuation of essential contractor services. Contractors authorized to accompany the force (CAAF) may receive U.S. Government-furnished support commensurate with the operational situation in accordance with the terms of the contract.

(e) A common joint database (*i.e.*, the Synchronized Predeployment and Operational Tracker-Enterprise Suite (SPOT-ES) or its successor) will be used to maintain contractor personnel visibility and accountability in applicable operations. References to SPOT-ES in this part will refer to that system or any database system that supersedes it for contractor personnel visibility and accountability.

(f) Solicitations and contracts will:

(1) Require defense contractors to provide personnel who are ready to perform contract duties in applicable operations and environments by verifying the medical, dental, and psychological fitness of their employees and, if applicable, by ensuring currency of any professional qualifications and associated certification requirements needed for employees to perform contractual duties.

(2) Incorporate contractual terms and clauses into the contract that are consistent with applicable host nation (HN) laws and agreements or designated operational area performance considerations.

(g) Contracts for highly sensitive, classified, cryptologic, or intelligence projects and programs must implement this rule to the maximum extent possible, consistent with applicable laws, Executive orders, presidential directives, and relevant DoD issuances. To the extent that contracting activities are unable to comply with this rule, they should submit a request for a waiver to the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)). Waiver requests should include specific information providing the rationale regarding the inability to comply with this rule.

§ 158.5 Procedures.

(a) *Planning considerations and requirements; requirements for publication.* CCDRs will make management policies and specific OCS requirements for contractual support available to affected contractor personnel. The Geographic Combatant Commander (GCC) OCS web page will set forth the following:

(1) Theater business clearance (TBC) requirements for contracts currently being performed and delivering contracted support in the CCDR's AOR.

(2) Restrictions imposed by applicable local laws, international law, status of forces agreements (SOFAs), and other agreements with the HN.

(3) CAAF-related deployment requirements, including, but not limited to:

(i) Pre-deployment and required individual protective equipment (IPE) training.

(ii) Physical health standards.

(iii) Immunization and medical requirements.

(iv) Deployment procedures and theater reception.

(4) Reporting requirements for accountability and visibility of contractor personnel and associated contracts.

(5) Operational security (OPSEC) plans and restrictions.

(6) Force protection policies.

(7) Personnel recovery procedures.

(8) Availability of medical and other authorized U.S. Government support (AGS).

(9) Redeployment procedures, including disposition of U.S. Government-furnished equipment.

(b) *Contractual relationships.* The contract provides the only legal basis for the contractual relationship between the DoD and the contractor. The contracting officer is the only individual with the legal authority to enter into such a binding relationship with the contractor.

(1) Commanders have the ability to restrict installation access, and contractor personnel must comply with applicable CCDR and local commander force protection policies. However, military commanders or unit personnel do not have contracting authority over contractors or contractor personnel and may not direct contractors or contractor personnel to perform contractual tasks. Moreover, the contract does not provide a basis for commanders to exercise operational control or tactical control over contractors or their personnel or to assign or attach contractors or their personnel to a command or organization.

(2) The contract must specify:

(i) The terms and conditions under which the contractor is to perform, including minimum acceptable professional and technical standards.

(ii) The method by which the contracting officer will notify the contractor of the deployment procedures to process contractor personnel who are deploying to the operational area.

(iii) The specific contractual support terms and agreement between the contractor and DoD.

(iv) The appropriate flow-down of provisions and clauses to subcontractors and state that the service performed by contractor personnel is not considered to be active duty or active service. For more information, see paragraph (c) in appendix A to this part, and 38 U.S.C. 106, "Active Duty Service

Determinations for Civilian or Contractual Groups."

(3) The contract must contain applicable clauses to ensure efficient deployment, accountability, visibility, protection, and redeployment of contractor personnel and detail authorized levels of health service, sustainment, and other support that is authorized to be provided to contractor personnel supporting applicable operations outside the United States.

(c) *Restrictions on contractors performing inherently governmental functions.* (1) Paragraph (c) of appendix A of this part, 48 CFR subpart 7.5, 48 CFR subpart 207.5; Public Law 105-270 and Office of Management and Budget Circular No. A-76 (available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf) bar inherently governmental functions and duties from private sector performance.

(2) Contractor personnel may provide support during applicable operations, including, but not limited to:

(i) Transporting munitions and other supplies.

(ii) Providing communications support.

(iii) Performing maintenance functions for military equipment.

(iv) Providing force protection and private security services.

(v) Providing foreign language interpretation and translation services.

(vi) Providing logistics services, such as billeting and messing.

(vii) Intelligence surveillance and reconnaissance support.

(viii) Commercial air assets.

(3) The requiring official will review each service performed by contractor personnel in applicable operations on a case-by-case basis to ensure compliance with paragraph (b) of appendix A of this part and applicable laws and international agreements.

(4) Restrictions on use of contractor personnel for private security services. A contractor may be authorized to provide private security services only if such authorization is consistent with applicable U.S., local, and international law, including applicable agreements with the HN or other applicable international agreements, and 32 CFR part 159. For more information, see paragraph (b) of appendix A of this part and 48 CFR subpart 252.2, which provide specific procedures and guidance.

(d) *Combating trafficking in persons.* Trafficking in persons is a violation of U.S. law and internationally recognized human rights, and is incompatible with DoD core values.

(1) 48 CFR subpart 222.17 and 48 CFR 52.222-50 also known and referred to as Combating Trafficking in Persons, describe how contractors, contracting officers and their representatives, and commanders must deter activities such as prostitution, forced labor, and other related activities contributing to trafficking in persons. For more information, see paragraph (d) of appendix A to this part.

(2) Contracts in support of applicable operations will include terms and provisions that require that the contractor remove personnel from the performance of the contract and return any of its personnel who have been determined to have engaged in any of the activities mentioned in paragraph (h)(4)(v)(H) of this section from the operational area to the home of record, point of origin, or an authorized location at the end of contract performance or sooner as directed by the contracting officer. Once notified of such an incident, the contracting officer will notify the commander responsible in the AOR and provide any information required to support an investigation. For more information, see 48 CFR subpart 222.17.

(e) *CAAF designation, legal status, credentialing, and security clearance requirements—*(1) *CAAF designation.* (i) CAAF designation is provided to contractor personnel, including all tiers of subcontractor personnel, through a letter of authorization (LOA). CAAF generally include all U.S. citizen and third country national (TCN) employees not normally residing within the operational area whose area of performance is in the direct vicinity of the U.S. Armed Forces and who routinely are co-located with the U.S. Armed Forces, especially in non-permissive environments. Personnel co-located with the U.S. Armed Forces will be afforded CAAF status through an LOA.

(ii) In some cases, CCDRs or subordinate commanders may designate mission-essential HN or LN contractor personnel as CAAF unless otherwise precluded by HN law, a SOFA, or other agreement. In general, LNs are only afforded CAAF status when they assume great personal risk to perform an essential function.

(iii) Personnel who do not receive a CAAF designation are referred to as non-CAAF. Individuals' CAAF status may change depending on where their employers or the provisions of their contract details them to work. CAAF designation may affect, but does not necessarily affect, a person's legal status under the law of war and the treatment to which that person is entitled under

the 1949 Geneva Conventions if that person falls into the power of the enemy during international armed conflict. Although CAAF are regarded as “persons authorized to accompany the armed forces,” personnel who are not CAAF may also receive this status under the law of war. For more information, see § 4.15 of paragraph (e) of appendix A of this part. In addition, although CAAF designation and access to AGS often coincide, CAAF status does not determine AGS provided.

(2) *Legal status.* In implementing this part, the DoD Component heads must abide by applicable laws, regulations, international agreements, and DoD policy as they relate to contractor personnel performing contractual support in support of applicable operations.

(i) *HN and third country laws.* All contractor personnel must comply with applicable HN and third country laws. The applicability of HN and third country laws may be affected by international agreements (e.g., agreements between the United States and the HN) and customary international law (e.g., limits imposed by customary international law on the reach of third country laws).

(A) U.S., HN, or other countries may hire contractor personnel whose status may change (e.g., from non-CAAF to CAAF) depending on where in the operational AOR their employers or the provisions of their contracts detail them to work.

(B) CCDRs, as well as subordinate commanders, Military Service Component commanders, the Directors of the Defense Agencies, and Directors of DoD Field Activities should recognize limiting factors regarding the employment of LN and TCN personnel. Limiting factors include, but are not limited to:

- (1) Imported labor worker permits.
- (2) Workforce and hour restrictions.
- (3) Medical, life, and disability insurance coverage.
- (4) Taxes, customs, and duties.
- (5) Cost of living allowances.
- (6) Hardship differentials.
- (7) Access to classified information.
- (8) Hazardous duty pay.

(ii) *U.S. laws.* U.S. citizens and CAAF, with some exceptions, are subject to U.S. laws and U.S. Government regulations.

(A) All U.S. citizen and TCN CAAF are subject to potential prosecutorial action under the criminal jurisdiction of the United States, including, but not limited to, 18 U.S.C. 3261, also known and referred to in this part as the Military Extraterritorial Jurisdiction Act of 2000 (MEJA). MEJA extends U.S.

federal criminal jurisdiction to certain contractor personnel for offenses committed outside U.S. territory.

(B) The March 10, 2008, Secretary of Defense Memorandum states that contractor personnel are subject to prosecution pursuant to 10 U.S.C. Chapter 47, also known and referred to in this part as the Uniform Code of Military Justice (UCMJ), when serving overseas in support of a declared war or contingency, and provides guidance to commanders on the exercise of this UCMJ jurisdiction.

(C) Other U.S. law may allow prosecution of offenses by contractor personnel (e.g., 18 U.S.C. 7).

(3) *1949 Geneva Conventions.* The 1949 Geneva Conventions, including the Geneva Convention Relative to the Treatment of Prisoners of War, may be applicable to certain contractor personnel who fall into the power of the enemy during international armed conflict.

(i) All contractor personnel may be at risk of injury or death incidental to enemy actions while supporting military operations.

(ii) Contractor personnel with CAAF status will receive an appropriate identification card required by the Geneva Convention Relative to the Treatment of Prisoners of War, consistent with paragraph (f) of appendix A to this part.

(iii) CAAF may be used in support of applicable operations, consistent with the terms of U.S. Government authorization. If they fall into the power of the enemy during international armed conflict, contractor personnel with CAAF status are entitled to prisoner of war status.

(4) *Credentialing.* Contracts must require CAAF to receive an identification card with the Geneva Convention's category of persons authorized to accompany the armed forces. For more information, see paragraphs (f) through (h) of appendix A to this part. At the time of identification card issuance, CAAF must present their SPOT-ES-generated LOA as proof of eligibility.

(i) Sponsorship must incorporate the processes for confirming eligibility for an identification card. The sponsor is the person affiliated with the DoD or another Federal agency that takes responsibility for verifying and authorizing an applicant's need for a Geneva Convention identification card. A DoD official or employee must sponsor applicants for a common access card (CAC).

(ii) Individuals who have multiple DoD personnel category codes (e.g., an individual who is both a reservist and

a contractor) will receive a separate identification card in each personnel category for which they are eligible. Individuals under a single personnel category code may not hold multiple current identification cards of the same form.

(5) *Security clearance requirements.* To the extent necessary, the contract must require the contractor to provide personnel who have the appropriate security clearance or who are able to satisfy the appropriate background investigation requirements to obtain access required to perform contractual requirements in support of the applicable operation.

(f) *Considerations for support to contractors—(1) U.S. Government support.* Generally, contracts supporting applicable operations must require contractors to provide to their personnel all life, mission, medical, and administrative support necessary to perform the contractual requirements and meet CCDR guidance posted on the GCC OCS web page. In some operations, especially those in which conditions are austere, uncertain, or non-permissive, the CCDR may decide it is in the U.S. Government's interest for the DoD to allow contractor personnel access to selected AGS. The contract must state the level of access to AGS in its terms and conditions.

(i) In operations where conditions are austere, uncertain, or non-permissive, the contracting officer will consult with the requiring activity to determine if it is in the U.S. Government's interests to allow for selected life, mission, medical, and administrative support to certain contractor personnel.

(ii) The solicitation and contract must specify the level of AGS that the U.S. Government will provide to contractor personnel and what support provided to the contractor personnel is reimbursable to the U.S. Government.

(iii) Access to DoD benefits facilitated by the identification card may be granted to contractors under certain circumstances. For more information, see paragraph (i) of appendix A to this part.

(2) *IPE.* When necessary or directed by the CCDR, the contracting officer will include language in the contract authorizing the issuance of military IPE (e.g., chemical, biological, radiological, nuclear (CBRN) protective ensemble, body armor, ballistic helmet) to contractor personnel as part of AGS.

(i) Typically, IPE will be issued by the central issue facility at the deployment center before deployment to the designated operational area and must be accounted for and returned to the U.S. Government or otherwise accounted for,

in accordance with appropriate DoD Component regulations, directives, and instructions.

(ii) Contractor personnel deployment training will include training on the proper care, fitting, and maintenance of protective equipment, whether issued by the U.S. Government or provided by the contractor in accordance with the contractual requirements. This training will include practical exercises within mission-oriented protective posture levels.

(iii) When the terms and conditions of a contract require a contractor to provide IPE, such IPE must meet minimum standards as defined by the contract.

(3) *Clothing.* Contractors, or their personnel, must provide their own personal clothing, including casual and work clothing required to perform the contract requirements.

(i) Generally, CCDRs will not authorize the issuance of military clothing to contractor personnel or will not allow the wearing of military or military look-alike uniforms. Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the CCDR. However, a CCDR or subordinate joint force commander (JFC) deployed forward may authorize contractor personnel to wear standard uniform items for operational reasons. Contracts must include terms and clauses that require that this authorization be provided in writing by the CCDR and that the uniforms are maintained in the possession of authorized contractor personnel at all times.

(ii) When commanders issue any type of standard uniform item to contractor personnel, care must be taken to ensure that contractor personnel are distinguishable from military personnel through the use of distinctive patches, arm bands, nametags, or headgear, consistent with force protection measures, and that contractor personnel carry the CCDR's written authorization with them at all times.

(4) *Weapons.* Contractor personnel are not authorized to possess or carry firearms or ammunition during applicable operations, except as provided in paragraph (h)(2)(ii) of this section and 32 CFR part 159. The contract will provide the terms and conditions governing the possession of firearms by contractor personnel. Information on all weapons authorized for contractors and their personnel will be entered into the SPOT-ES database.

(5) *Mortuary affairs.* The DoD Mortuary Affairs Program, as described in paragraph (j) of appendix A to this part, covers all CAAF who die while

performing contractual requirements in support of the U.S. Armed Forces. Mortuary affairs support and transportation will be provided on a reimbursable basis for the recovery, identification, and disposition of remains and personal effects of CAAF.

(i) Every effort must be made to identify remains and account for unrecovered remains of contractor personnel and their dependents who die in military operations, training accidents, and other incidents. The remains of contractor personnel who die as the result of an incident in support of military operations are afforded the same dignity and respect afforded to military remains. For more information, see paragraph (k) of appendix A to this part.

(ii) The DoD may provide mortuary affairs support and transportation on a reimbursable basis for the recovery, identification, and disposition of remains and personal effects of non-CAAF at the request of the Department of State (DOS) and in accordance with this rule, applicable agreements with the HN, and applicable contract provisions. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will coordinate this support with the DOS, including for cost reimbursement to the DoD Component for the provision of this support.

(iii) The responsibility for coordinating the transfer of non-CAAF remains to the HN or affected nation resides with the GCC in coordination with the DOS, through the respective embassies, or through the International Committee of the Red Cross, the International Federation of the Red Cross or Red Crescent Societies, as appropriate, and in accordance with applicable contract clauses.

(6) *Medical support and evacuation.* Generally, the DoD will provide only resuscitative care, stabilization, and hospitalization at military medical treatment facilities (MTFs) and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. The DoD Foreign Clearance Guide (FCG) and the GCC OCS web pages contain theater-specific contract language to provide contract terms to clarify available healthcare for contractor personnel. During operations in austere, uncertain, or hostile environments, CAAF may encounter situations in which they cannot access adequate medical support in the local area.

(i) All costs associated with the treatment and transportation of contractor personnel to the selected civilian facility are reimbursable to the U.S. Government and are the

responsibility of contractor personnel, their employers, or their health insurance providers. For more information, see paragraph (l) of appendix A to this part. Nothing in this paragraph is intended to affect the allowability of costs incurred under a contract.

(ii) Medical support and evacuation procedures:

(A) All CAAF will normally be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF who are injured while in the vicinity of the U.S. Armed Forces while supporting applicable operations also normally will receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include:

(1) Examination and initial treatment of victims of sexual assault.

(2) Refills of prescriptions for life-dependent drugs.

(3) Repair of broken bones, lacerations, and infections.

(4) Traumatic injuries to the teeth.

(B) MTFs normally will not authorize or provide primary medical or dental care to CAAF. When required and authorized by the CCDR or subordinate JFC, this support must be specifically authorized under the terms and conditions of the contract and detailed in the corresponding LOA. Primary care is not authorized for non-CAAF. Primary care includes:

(1) Routine inpatient and outpatient services.

(2) Non-emergency evacuation.

(3) Pharmaceutical support (with the exception of emergency refills of prescriptions for life-dependent drugs).

(4) Non-emergency dental services.

(5) Other medical support, as determined by the CCDR or JFC based on recommendations from the cognizant medical authority and the existing capabilities of the forward-deployed MTFs.

(C) The DoD will not provide long-term care to contractor personnel.

(D) The CCDR or subordinate commander has the authority to quarantine or restrict movement of contractor personnel. For more information, see paragraph (m) of appendix A to this part.

(E) When CAAF are evacuated for medical reasons from the designated operational area to MTFs funded by the Defense Health Program, normal reimbursement policies will apply for services rendered by the facility. If CAAF require medical evacuation

outside the United States, the sending MTF staff will assist the CAAF in making arrangements for transfer to a civilian facility of the CAAF's choice. When U.S. forces provide emergency medical care to LN contractor personnel, these patients will use HN transportation means, when possible, for evacuation or transportation to their local medical systems. For more information, see paragraph (n) of appendix A to this part.

(7) *Other AGS.* 48 CFR subpart 225.3 lists types of support that may be authorized for contractor personnel who are deployed with or otherwise provide support to applicable operations, which may include transportation to and within the operational area, mess operations, quarters, phone service, religious support, and laundry.

(i) Contractor personnel of U.S. owned-contractors who are supporting DoD activities may be authorized the use of the military postal service. For more information, see paragraph (o) of appendix A to this part. The extent of postal support will be set forth in the contract. The provisions for postal support in such contracts must be reviewed and approved by the applicable CCDR, or the designated representative, and the Military Department concerned before execution of the contract.

(ii) Morale, welfare, and recreation and exchange services are authorized for contractor personnel who are U.S. citizens supporting DoD activities outside the United States. For more information, see paragraphs (p) and (q) of appendix A to this part.

(g) *Accountability and visibility of contracts and contractor personnel.* (1) During applicable operations, contractors will use SPOT-ES as follows:

(i) All CAAF will register in SPOT-ES by name.

(ii) Non-CAAF will be registered in SPOT-ES by name if they are performing on a DoD contract for at least 30 consecutive days unless a lesser number of days is requested by the CCDR or if they require access to a U.S. or coalition-controlled installation. Contracting officers will ensure non-CAAF who require access to U.S. or coalition-controlled installations are registered in SPOT-ES before requesting or receiving installation access.

(iii) All private security contractor personnel and all other contractor personnel authorized to carry weapons, regardless of the length of the performance or contract value, will register in SPOT-ES by name.

(iv) During operations other than contingency operations, humanitarian

assistance, or peace operations, contractors will use SPOT-ES in situations required by the CCDR and as follows:

(2) To account for:

(i) All U.S. citizen and TCN contractor personnel.

(ii) All private security contractor personnel and all other contractor personnel authorized to carry weapons, where the designated area and place of performance are outside the United States, regardless of the length of performance or contract value.

(3) The contracting officer will account for an estimated total number of LNs employed under the contract, by country or on a monthly basis.

(4) Contract linguists will register in SPOT-ES in the same manner as other contractor personnel and will also be tracked using the Contract Linguist Enterprise-wide Database. For more information, see paragraph (r) of appendix A to this part.

(5) LNs should be registered in SPOT-ES by name to improve data quality and reduce confusion during a transition to accountability requirements during a contingency operation, which will require by-name accountability.

(6) The DoD has designated SPOT-ES as the joint web-based database to assist the CCDRs in maintaining awareness of the nature, extent, and potential risks and capabilities associated with contracted support for contingency operations, humanitarian assistance, and peacekeeping operations, or military exercises designated by the CCDR. To facilitate integration of contractors and other personnel, as directed by the USD(A&S) or the CCDR, and to ensure the accurate forecasting and provision of accountability, visibility, force protection, medical support, personnel recovery, and other related support, the following procedures will help establish, maintain, and validate the accuracy of information in the database.

(i) SPOT-ES will:

(A) Serve as the central repository for deployment status and reporting on the contractor personnel as well as other U.S. Government agency contractor personnel, as applicable. For additional information, see paragraph (s) of appendix A to this part.

(B) Track information for all DoD contracts that are awarded in support of applicable operations outside of the United States, in accordance with the SPOT Business Rules and as directed by the USD(A&S), 48 CFR subpart 225.3, or the CCDR. SPOT-ES will collect and report on:

(1) The total number of contractor personnel working under contracts

entered into as of the end of each calendar quarter.

(2) The total number of contractor personnel performing security functions under contracts entered into with the DoD.

(3) The total number of contractor personnel killed or wounded who were performing under any contracts entered into with the DoD.

(C) Provide personnel accountability via unique identifier (*e.g.*, Electronic Data Interchange Personnel Identifier or Foreign Identification Number) of contractor personnel and other personnel, as directed by the USD(A&S), 48 CFR subpart 225.3, or the CCDR.

(D) Contain, or link to, minimum contract information necessary to:

(1) Establish and maintain accountability of the personnel in paragraph (g) of this section.

(2) Maintain information on specific equipment related to the performance of private security contracts.

(3) Maintain oversight information on the contracted support in applicable operations.

(E) Comply with:

(1) The personnel identity protection program requirements found in paragraphs (t) and (u) of appendix A to this part.

(2) The DoD Information Enterprise architecture. For more information, see paragraph (v) of appendix A to this part.

(3) The interoperability and secure sharing of information requirements found in paragraphs (w) through (y) of appendix A to this part.

(ii) Before registering in SPOT-ES, contracting officers, company administrators, and U.S. Government administrators or authorities must meet minimum training requirements in the SPOT Business Rules.

(iii) The contractor must enter all required data into SPOT-ES before its employees may deploy to or enter a theater of operations, and maintain such data, as directed by the USD(A&S), 48 CFR subpart 225.3, or the CCDR.

(iv) The contracting officer will enter the DoD contract services or capabilities for all contracts that are awarded in support of applicable operations, including theater support, external support, and systems support contracts, into SPOT-ES consistent with 48 CFR 252.225-7040.

(v) In accordance with applicable acquisition policy and regulations and under the terms and conditions of each affected contract, all contractors awarded contracts that support applicable operations must input employee data and maintain accountability, by name, of designated

contractor personnel in SPOT-ES as required by 48 CFR 252.225-7040.

(A) Contractors must maintain current status of the daily location of their employees and, when requested, submit to the COR up-to-date, real-time information reflecting all personnel deployed or to be deployed in support of applicable operations.

(B) Prime contractors must enter up-to-date information regarding their subcontractors at all tiers into SPOT-ES.

(vi) In all cases, users providing classified information in response to the requirements of this part must report and maintain that information on systems approved for the level of classification of the information provided.

(7) The contracting officer or his or her designee will ensure a SPOT-ES-generated LOA has been issued to all CAAF who are approved to deploy, as required by 48 CFR 252.225-7040, and selected non-CAAF (e.g., LN and non-LN employees who are permanent residents in the operational area, or TCNs not routinely residing with the U.S. Armed Forces who perform support functions away from the close proximity of, and do not reside with, the U.S. Armed Forces, and private security contractors), pursuant to 48 CFR subpart 225.3, or as otherwise designated by the CCDR.

(i) The contract will require that all contractor personnel issued an LOA carry the LOA with them at all times.

(ii) Reserved.

(h) *Theater admission requirements.* Special area, country, and theater personnel clearance documents must be current, in accordance with the DoD FCG, and coordinated with affected agencies to ensure that entry requirements do not adversely affect accomplishment of mission requirements.

(1) CAAF employed in support of DoD missions are considered DoD-sponsored personnel for DoD FCG purposes.

(2) Contracting officers must ensure contracts include a requirement for contractor personnel to meet theater personnel clearance requirements and obtain personnel clearances through the Aircraft and Personnel Automated Clearance System before entering a designated theater of operations. For more information, see paragraph (z) of appendix A to this part.

(3) Contracts must require contractor personnel to obtain proper identification credentials, such as passports, visas, and other documents required to enter and exit a designated operational area, and have a required Geneva Conventions identification card,

or other appropriate DoD credential from the deploying center.

(i) *Deployment procedures.* Contracts must contain terms and conditions that detail the need for contractors to follow these credentialing requirements, as required by 48 CFR subpart 225.3, 48 CFR 252.225-7040, and as outlined in the DoD FCG. At a minimum, contracting officers must ensure that contracts address operational area-specific contract requirements and the means by which the DoD will inform contractor personnel of the requirements and procedures applicable to their deployment.

(1) *Deployment center designation.* A formally designated group, joint, or Military Department deployment center will be used to conduct deployment and redeployment processing for CAAF, unless contractor-performed theater admission preparation is authorized or waived by the CCDR or designee pursuant to DoDI 3020.41, "Operational Contract Support (OCS)." If the contract contains clauses that specify another U.S. Government-authorized process that incorporates all the functions of a deployment center, such process may also be used by a contractor to conduct deployment and redeployment processing for CAAF.

(2) *Medical preparation.* (i) In accordance with 32 CFR 158.7, contracts must require that contractors provide medically and physically qualified contractor personnel to perform duties in applicable operations, as outlined in the contract.

(A) Any CAAF deemed unsuitable to deploy during the deployment process due to medical or dental reasons will not be authorized to deploy.

(B) The Secretary of Defense may direct immunizations as mandatory for CAAF performing essential contractor services.

(C) For contracts that employ CAAF who are U.S. citizens, the contract must require that contractors make available the medical and dental records of deploying employees who authorize release for this purpose based on this section, applicable cognizant medical authority guidance, and relevant Military Department policy. These records should include current panoramic x-rays. For more information see paragraph (aa) of appendix A to this part.

(ii) U.S. Government personnel may not involuntarily immunize contractor personnel or require contractor personnel to disclose their medical records involuntarily. Therefore, the contracting officer will provide contractors time to notify and/or hire employees who voluntarily consent to

U.S. Government medical requirements, including to receiving U.S. Government-required immunizations and disclosing their private medical information to the U.S. Government.

(iii) All CAAF will receive medical threat pre-deployment briefings at the deployment center to communicate health risks and countermeasures in the designated operational area. For more information, see paragraph (bb) of appendix A to this part.

(A) In accordance with GCC or JFC plans and orders, contracts must include terms and conditions that fully specify health readiness and force health protection capability, either as a responsibility of the contractor or the DoD Components, to ensure appropriate medical staffing in the operational area.

(B) Health surveillance activities must include plans for CAAF. For more information, see paragraphs (bb) and (cc) of appendix A to this part. Section 158.7 of this rule further addresses deoxyribonucleic acid (DNA) collection and other medical requirements.

(3) *Training.* Joint training policy and guidance for the Military Services, including contractors, is provided. For more information, see paragraph (dd) of appendix A to this part. CCDRs will place standing training requirements on the GCC OCS web pages for reference by contractors. Other training requirements that are specific to an applicable operation will be placed on the GCC OCS web pages shortly after identifying the requirement so that contracting officers can incorporate the training requirement into the appropriate contracts as soon as possible. Training requirements:

(i) Must be included, or incorporated by reference in contracts employing contractor personnel supporting applicable operations.

(ii) Include specific requirements established by the CCDR and training required in accordance with this rule, 32 CFR part 159, and paragraphs (ee) through (hh) of appendix A to this part.

(4) *Deployment center procedures.* Affected contracts must require that all CAAF deploying from outside the operational area process through a designated deployment center or a U.S. Government-authorized, contractor-performed deployment processing facility before deploying to an applicable operation and redeploy in the same manner. Upon receiving the contracted company's certification that employees meet deployability requirements, the contracting officer or representative will digitally sign the LOA, which CAAF will then present to officials at the deployment center. The

deployment process includes, but is not limited to:

- (i) Verifying registration in SPOT-ES.
- (ii) Issuing applicable U.S. Government-furnished equipment.

(iii) Verifying the completion of medical and dental screening before arrival.

(iv) Administering required theater-specific immunizations and medications not available through healthcare providers in the general public.

(v) Verifying and, when necessary, providing required training, country and cultural awareness briefings, and other training and briefings, as required by the CCDR. Examples of required training include, but are not limited to:

- (A) Law of war, including the 1949 Geneva Conventions.
- (B) Law and policy applicable to detainee operations and intelligence interrogation operations, as appropriate.
- (C) General orders.
- (D) Standards of conduct.
- (E) Force protection.
- (F) Personnel recovery.
- (G) First aid.
- (H) Combatting trafficking in persons.
- (I) OPSEC.
- (J) Anti-terrorism.
- (K) Counterintelligence reporting.
- (L) The use of CBRN protective ensemble.

(M) Deployment health threats briefing.

(5) *Certification.* Contracts supporting applicable operations must include terms and conditions requiring contractors to certify to the authorized U.S. Government representative, before deployment, that each individual has completed all required deployment processing actions.

(6) *Legal.* Contractor personnel are not entitled to military legal assistance in-theater or at the deployment center. Individual contractor personnel must have their personal legal affairs in order (e.g., preparing and completing powers of attorney, wills, trusts, and estate plans) before reporting to deployment centers.

(7) *Waivers.* For required contracted support of 17 days or less in an operational area, the CCDR or designee may waive a portion of the formal procedural requirements pursuant to DoDI 3020.41, "Operational Contract Support (OCS)," which may include the CCDR or designee waiving the requirement in writing for processing through a deployment center. However, the CCDR or designee may not waive the requirements to possess proper identification cards and to establish and maintain accountability for all contractor personnel, or any medical requirement without the prior approval

of the cognizant medical authority or their designee. If a contract authorizes contractor personnel to be armed, the requirements of paragraphs (c)(4) and (k)(2) of this section may not be waived.

(j) *Reception—(1) Designated reception site.* In applicable operations, all CAAF must enter into the operational area through a designated reception site.

(i) Based upon a visual inspection of the LOA, the site will verify that contractor personnel are entered in SPOT-ES and meet theater-specific entry requirements.

(ii) Contractor personnel already in the designated operational area when a contingency is declared must report to the designated reception site as soon as it is operational based on the terms and conditions of the contract.

(iii) When entering a designated reception site for theater entry processing, if any CAAF does not have the proper documentation to perform in an area, he or she will be refused entry into the theater, and the contracting officer will notify the contractor to take the necessary action to resolve the issue. Should the contractor fail to take action, the CAAF individual will be sent back to his or her departure point, or directed to report to the Military Service Component command or Defense Agency responsible for that specific contract for theater entrance processing.

(2) *Contractor integration.* It is critical that CAAF brought into an operational area are properly integrated into the military operation through a formal reception process. At a minimum, they will:

(i) Meet theater entry requirements and be authorized to enter the theater.

(ii) Be accounted for in SPOT-ES.

(iii) Possess any required IPE, including CBRN protective ensemble.

(iv) Be authorized any contractually required AGS and force protection.

(k) *In-theater management—(1) Conduct and discipline.* Contract terms and conditions must require that CAAF comply with CCDR theater orders, applicable directives, laws, and regulations. Non-CAAF who require base access to perform contractual requirements must follow base force protection and security-related procedures, as applicable.

(i) The contracting officer may appoint a designee (usually a COR) as a liaison between the contracting officer and the contractor and requiring activity. This designee monitors and reports contractor performance and requiring activity concerns to the contracting officer. In emergency situations (e.g., enemy or terrorist actions or natural disaster), the

cognizant military commander may recommend or issue warnings or messages urging contractor personnel to take emergency actions to remove themselves from harm's way or to take other appropriate self-protective measures. During armed conflict, contractor personnel are not exempt from the authority that commanders may exercise to control the movement of persons and vehicles within the immediate vicinity of operations. For more information, see §§ 5.2.2.1, 13.8, and 14.6 of paragraph (e) of appendix A to this part.

(ii) The contractor is responsible for disciplining contractor personnel, as necessary and appropriate. However, in accordance with paragraph (h)(1) of 48 CFR 252.225-7040, the contracting officer may direct the contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment, who threaten force protection measures, or who fail to comply with or violate applicable requirements of the contract. Such action may:

(A) Include contractor personnel whose actual field performance (certification or professional standard) is below the contractual requirement.

(B) Be taken at U.S. Government discretion without prejudice to the contractor's rights under any other provision of the contract. A commander also has the authority to take certain actions affecting contractor personnel, such as the ability to revoke or suspend security access or impose restrictions from access to military installations or specific worksites.

(iii) CAAF, or individuals employed by or accompanying the Military Services outside the United States, are subject to potential prosecutorial action under the criminal jurisdiction of the United States, pursuant to Sections 7, 2441, 2442, or 3261 of Title 18, U.S.C., or other provisions of U.S. law, including the UCMJ.

(A) Commanders possess significant authority to act whenever criminal acts are committed by anyone subject to the MEJA and UCMJ that relates to or affects the commander's responsibilities. This includes situations in which the alleged offender's precise identity or actual affiliation is undetermined. The March 10, 2008, Secretary of Defense Memorandum provides guidance to commanders on the exercise of this UCMJ jurisdiction over DoD contractor personnel serving with or accompanying the U.S. Armed Forces overseas during declared war and in contingency operations.

(B) Contracting officers will ensure that contractors are aware of their

employees' status and liabilities as CAAF and the required training associated with this status.

(C) CCDRs retain authority to respond to an incident, restore safety and order, investigate, apprehend suspected offenders, and otherwise address the immediate needs of the situation.

(iv) The Department of Justice may prosecute misconduct under applicable Federal laws, including MEJA and 18 U.S.C. 2441. Contractor personnel also are normally subject to the domestic criminal law of the local country. When confronted with disciplinary problems involving contractor personnel, commanders should seek the assistance of their legal staff, the contracting officer responsible for the contract, and the contractor's management team.

(v) In the event of an investigation of reported offenses allegedly committed by or against contractor personnel, appropriate investigative authorities will keep the contracting officer informed, to the extent possible without compromising the investigation, if the alleged offense has a potential contract performance implication.

(2) *Force protection and weapons issuance.* CCDRs must include contractor personnel in their force protection planning and communicate the results to contracting activities and contractors via the GCC OCS web page. In general, contractors are responsible for the security of their own personnel. Contractor personnel working within a U.S. military facility or in close proximity to the U.S. Armed Forces may receive incidentally the benefits of measures taken to protect the U.S. Armed Forces. For more information, see paragraph (ee) of appendix A to this part. However, where additional security is needed to achieve force protection, and it is not operationally or cost effective for contractors to do so individually, the commander may determine it is in the interests of the U.S. Government to provide security for contractor personnel. When security is provided through military means, contractor personnel should receive a level of force protection equal to that of DoD civilian employees.

(i) When the CCDR deems military force protection and legitimate civil authority are unavailable or insufficient, he or she may authorize, in writing, contractor personnel to be armed for self-defense purposes only. In authorizing contractor personnel to be armed, the contractor, the armed contractor personnel, and the U.S. military must adhere to:

(A) Applicable U.S., HN, and international law;

(B) Relevant SOFAs and other agreements;

(C) Other arrangements with local authorities; and

(D) The rules for the use of force, and guidance and orders regarding the possession, use, safety, accountability of weapons and ammunition that are issued by the CCDR.

(ii) Depending on the operational situation and the specific circumstances of contractor personnel, the contractor may apply for its personnel to be armed for self-defense purposes on a case-by-case basis. The appropriate Staff Judge Advocate (or their designee) to the CCDR will review all applications to ensure there is a legal basis for approval. In reviewing applications, CCDRs will apply the criteria mandated for arming contractor personnel for private security services consistent with 32 CFR part 159.

(A) In such cases, the contractor will validate to the contracting officer, or designee, that the contractor personnel have received weapons familiarization, qualification, and briefings regarding the rules for the use of force, in accordance with CCDR policies.

(B) Acceptance of weapons by contractor personnel is voluntary. In accordance with paragraph (j) of 48 CFR 252.225-7040, the contract must require contractors to ensure that applicable U.S. law does not prohibit personnel from possessing firearms.

(C) Contracts must require all contractor personnel to comply with applicable CCDR and local commander force protection policies. When armed for personal protection, the contract may only authorize contractor personnel to use force for self-defense and must require contractors to ensure that U.S. law does not prohibit its personnel from possessing firearms, in accordance with paragraph (j) of 48 CFR 252.225-7040. Unless not subject to local laws or HN jurisdiction by virtue of an international agreement or customary international law, the contract must include terms and conditions setting forth that the inappropriate use of force could subject contractor personnel to U.S. and/or local or HN prosecution and civil liability.

(3) *Personnel recovery, missing persons, and casualty reporting.* (i) The DoD personnel recovery program applies to all CAAF regardless of their citizenship. For more information, see paragraph (ii) of appendix A to this part. If a CAAF individual becomes isolated or unaccounted for, the contractor must promptly file a search and rescue incident report to the theater's personnel recovery architecture (e.g., the component personnel recovery

coordination cell or the CCMD joint personnel recovery center).

(ii) Upon recovery following an isolating event, a CAAF returnee must enter the first of the three phases of reintegration. For more information, see paragraph (jj) of appendix A to this part. The contractor must offer the additional phases of reintegration to the returnee to ensure his or her physical and psychological well-being while adjusting to the post-captivity environment.

(iii) The contractor must report all CAAF and non-CAAF casualties. For more information, see paragraph (s) of appendix A to this part.

(1) *Redeployment procedures.* The considerations in this section apply during the redeployment of CAAF. At the end of the performance period of a contract, or in cases of early redeployment, CAAF must complete the redeployment process to adjust AGS requirements and turn in U.S. Government-provided equipment.

(1) *Preparation for redeployment.* CAAF must complete intelligence out-briefs and customs and immigration briefings and inspections in accordance with CCDR policy and applicable HN law. CAAF are subject to customs and immigration processing procedures at all designated stops and their final destination during their redeployment. CAAF returning to the United States are subject to U.S. reentry customs requirements in effect at the time of reentry.

(2) *Transportation out of theater.* The terms and conditions of the contract will state whether the U.S. Government will provide transportation out of theater.

(i) Upon completion of the deployment or other authorized release, the U.S. Government must provide contractor personnel transportation from the theater of operations to the location from which they deployed, in accordance with each individual's LOA and unless otherwise directed. If commercial transportation is not available, it should be stated in the LOA in accordance with paragraph (l) of appendix A to this part. CAAF are also required to depart from the operational area through the designated reception site.

(ii) Before redeployment, the contractor personnel, through his or her contractor, will coordinate exit times and transportation with the continental U.S. replacement center or designated reception site.

(3) *Redeployment center procedures.* In most instances, the deployment center or site that prepared the CAAF for deployment will serve as the return

processing center. As part of CAAF redeployment processing, the designated reception site personnel will screen contractor records, recover U.S. Government-issued identification cards and equipment, and conduct debriefings, as appropriate. The returning CAAF will spend the minimum amount of time possible at the return processing center in order to complete the necessary administrative procedures.

(i) Contractor personnel must return all U.S. Government-issued identification and access badges (e.g., badges, key cards, and other access devices, including CACs).

(ii) Contractor personnel must return any issued clothing and equipment and report any lost, damaged, or destroyed clothing and equipment in accordance with procedures of the issuing facility. Contractor personnel also will receive a post-deployment medical briefing on signs and symptoms of potential diseases (e.g., tuberculosis (TB)). As some countries hosting an intermediate staging base may not permit certain items to enter their territory, certain clothing and equipment, whether issued by the contractor, purchased by the employee, or provided by the DoD, may not be permitted to be removed from the AOR. In this case, CCDR or JFC guidance and contract terms and conditions will provide alternate methods of accounting for U.S. Government-issued equipment and clothing.

(4) *Update to SPOT-ES.* Contracting officers or their designated representatives must verify that contractors have updated SPOT-ES to reflect their employee's change in status within three days of a contractor employee's redeployment, close out the deployment, and collect or revoke the LOA.

(5) *Transportation to home destination.* Transportation of CAAF from the deployment center or site to their home destinations is the employer's responsibility.

§ 158.6 Guidance for contractor medical and dental fitness.

(a) *General.* (1) DoD contracts requiring the deployment of CAAF must include medical and dental fitness requirements as specified in this section. Under the terms and conditions of their contracts, contractors will employ personnel who meet such medical and dental requirements. Replacement of non-medically qualified contractor personnel already deployed to theater will be at the contractor's cost.

(2) The GCC concerned will establish force health protection policies and

programs for the protection of all forces assigned or attached to their command in accordance with force health protection (FHP) standards and applicable medical and dental standards of fitness in order to promote and sustain a healthy and fit force. For more information, see paragraph (kk) of appendix A to this part. When the requiring activity requests exceptions to these standards through the contracting officer, the CCDR concerned will establish a process for reviewing such exceptions and ensuring that a mechanism is in place to track and archive all approved and denied waivers, including the medical condition supporting the basis for the waiver.

(3) The GCC concerned will ensure that processes and procedures are in place to remove contractor personnel in theater who are not medically qualified, once so identified by a healthcare provider. The GCC concerned will ensure development of appropriate procedures and criteria for requiring removal of contractor personnel identified as "no longer medically qualified," and post such language on the GCC OCS web page. Contracting officers will incorporate the language into clauses for all contracts for performance in the AOR.

(4) Unless otherwise stated in the contract terms and conditions, all medical evaluations and treatment are the contractor's responsibility.

(b) *Medical and dental evaluations.* (1) All CAAF deploying in support of an applicable operation must be medically, dentally, and psychologically fit for deployment pursuant to paragraph (kk) of appendix A to this part and CCDR guidance. Fitness specifically includes the ability to accomplish the tasks and duties unique to a particular operation and the ability to tolerate the environmental and operational conditions of the deployed location. Under the terms and conditions of their contracts, contractors will employ medically, dentally, and psychologically fit contractor personnel to perform contractual duties.

(2) All CAAF must undergo a medical and dental assessment within 12 months before arrival at the designated deployment center or U.S. Government-authorized contractor-performed deployment processing facility. This assessment, conducted by the contractor's medical health provider, should emphasize diagnosing system disease conditions (e.g., cardiovascular, pulmonary, orthopedic, neurologic, endocrinologic, dermatologic, psychological, visual, auditory, dental) that may preclude the CAAF from

performing the functional requirements of the contract, especially in the austere work environments encountered in some applicable operations.

(3) CAAF will receive a health threat and countermeasures briefing from the applicable Military Service before deployment to the operational area. For more information, see paragraph (bb) of appendix A to this part.

(4) In general, CAAF who have any of the medical conditions listed in paragraph (j) of this section should not be deployed.

(5) Individuals who are deemed "not medically fit" at the deployment center or at any period during the deployment process based upon an individual assessment by a licensed medical provider, or who require extensive preventive dental care (see paragraph (j)(2)(xxv) of this section), are not authorized to deploy.

(6) Non-CAAF shall be medically screened by a U.S. Government designee when required by the requiring activity and the contract, for the class of labor under consideration (e.g., LNs working in a dining facility).

(7) Contracts will require contractors to replace individuals who develop conditions that cause them to become medically unqualified to perform contractual requirements at any time during contract performance.

(8) Contracts must require that CAAF complete a post-deployment health assessment in the Defense Medical Surveillance System at the end of their deployment or within 30 days of redeployment. For more information, see paragraph (bb) of appendix A to this part.

(c) *Glasses and contact lenses.* (1) If contractor personnel require vision correction, they must have two pairs of glasses, and if applicable, eyeglass inserts for a chemical protective mask. The contractor personnel may also provide a written prescription to the supporting military medical component in order to prepare eyeglass inserts for use in a compatible chemical protective mask. If the type of protective mask to be issued is known and time permits, the military medical component should attempt to complete the preparation of eyeglass inserts before deployment.

(2) Wearing contact lenses in a field environment is not recommended and is at the contractor personnel's own risk due to the potential for irreversible eye damage caused by debris, chemical or other hazards present, and the lack of ophthalmologic care in a field environment.

(d) *Medications.* Other than those force health protection prescription products provided by the U.S.

Government to CAAF and selected non-CAAF, contracts must require that contractor personnel deploy with a minimum 90-day supply of any required medications obtained at their own expense. For more information, see paragraph (bb) of appendix A to this part.

(1) Contractor personnel must know that deployed medical units are equipped and staffed to provide emergency care to healthy adults and are unable to provide or replace many medications required for routine treatment of chronic medical conditions, such as high blood pressure, heart conditions, and arthritis.

(2) The contract must require contractor personnel to review both the amount of the medication and its suitability in the foreign area with their personal physician and make any necessary adjustments before deploying. The contract must also hold the contractor personnel responsible for the re-supply of required medications.

(e) *Comfort items.* The contract must require that contractor personnel take spare hearing-aid batteries, sunglasses, insect repellent, sunscreen, and any other supplies related to their individual physical requirements. DoD sources will not provide these items.

(f) *Immunizations.* A list of immunizations, both those required for entry into the designated area of operations and those recommended by medical authorities, will be produced by the cognizant medical authority for each deployment; posted to the GCC OCS web page and DoD FCG; and incorporated in contracts for performance in the designated AOR.

(1) The GCC, upon the recommendation of the cognizant medical authority, will provide contractor personnel who are deploying to the applicable theater of operation guidance and a list of immunizations required to protect against communicable diseases assessed to be a potential hazard to their health. The cognizant medical authority will prepare and maintain this list.

(2) The contract must require that CAAF be immunized appropriately before completing the pre-deployment process.

(3) During pre-deployment processing, the DoD will provide contractor personnel, at no cost to the contractor, any theater-specific immunizations and medications not available to the general public. Contractor personnel must obtain all other immunizations before arrival at the deployment center, documented on the International Certificate of Vaccinations or Prophylaxis as

approved by the World Health Organization or the Department of Health and Human Services Centers for Disease Control and Prevention Form 731. However, the contract must stipulate that CAAF and selected non-CAAF obtain all other necessary immunizations before their arrival at the deployment center. The TB skin test is required for all contractor personnel within three months before they are deployed.

(4) The DoD will provide theater-specific medical supplies and force health protection prescription products to CAAF and selected non-CAAF. Additionally, these personnel will receive deployment medication information sheets for all vaccines or deployment-related medications that are to be dispensed or administered.

(5) Contractors will ensure that individuals with a positive TB skin test be evaluated for targeted diagnosis and treatment of latent TB infection in accordance with the procedures outlined in the World Health Organization Guidelines on the Management of Latent Tuberculosis Infection.

(6) The contract must stipulate that CAAF and selected non-CAAF bring a current copy of the International Certificate of Vaccination or Prophylaxis to the pre-deployment processing center and to the operational area.

(g) *Human Immunodeficiency Virus (HIV) Testing.* HIV testing is not mandatory for contractor personnel unless specified by the GCC CCDR or by host nation requirements. HIV testing, if required, must occur within one year before deployment.

(h) *Armed Forces Repository of Specimen Samples for the Identification of Remains (AFRSSIR).* For identification of remains purposes, contractors whose CAAF members are U.S. citizens will obtain a dental panograph and will forward a specimen sample suitable for DNA analysis to, and ensure it is on file with, the AFRSSIR before or during deployment processing and recorded in SPOT-ES. The DoD Components must ensure that all contracts require CAAF who are U.S. citizens to provide DNA specimen samples for AFRSSIR as a condition of deployment. For more information, see paragraph (ll) of appendix A to this part.

(1) All CAAF who are U.S. citizens processing through a deployment center will have a DNA specimen sample collected and forwarded to the AFRSSIR for storage. Contracts must require contractors to verify in SPOT-ES or its successor that AFRSSIR has received the DNA specimen sample or that the

contractor has collected the DNA specimen sample.

(2) If CAAF who are U.S. citizens do not process through a deployment center, or the contractor is authorized to process its own personnel, the contract must require that the contractor collect and forward DNA specimen samples for all contractor personnel who are deployed as CAAF to the AFRSSIR. Regardless of what specimen collection and storage arrangements are made, all contractors deploying CAAF who are U.S. citizens must provide the CAAF's name and Social Security number, location of the DNA specimen sample, facility contact information, and retrieval plan to AFRSSIR. If the AFRSSIR is not used and a CAAF who is a U.S. citizen becomes a casualty, the contractor must be able to retrieve identification media for use by the Armed Forces Medical Examiner (AFME) or other competent authority to conduct a medical-legal investigation of the incident and identification of the victim or victims. These records must be retrievable within 24 hours for forwarding to the AFME when there is a reported incident that would necessitate their use for identifying human remains. The contractor shall have access to the location of its employees' fingerprint, medical, and dental records, including panographs.

(3) AFRSSIR is responsible for implementing special rules and procedures to ensure the protection of privacy interests in regards to the specimen samples and any DNA analysis of those samples. Specimen samples shall only be used for the purposes outlined in paragraph (ll) of appendix A to this part.

(i) *Pre-existing medical conditions.* All evaluations of pre-existing medical conditions should occur before contractor personnel deploy. Personnel who have pre-existing medical conditions may deploy if:

(1) The condition is not of such a nature it is likely to have a medically grave outcome or a negative impact on mission execution if it unexpectedly worsens.

(2) The condition is stable and reasonably anticipated by the pre-deployment medical evaluator not to worsen during the deployment under contractor-provided medical care in-theater in light of the physical, physiological, psychological, environmental, and nutritional effects of the duties and location.

(3) Any required ongoing health care or medications must be available or accessible to contractor personnel, independent of the military health system, and not be subject to special

handling, storage, or other requirements (e.g., refrigeration requirements and/or cold chain, electrical power requirements) that cannot be met in the specific theater of operations.

(4) The condition does not and is not anticipated to require duty limitations that would preclude performance of contractual requirements or to require accommodation by the DoD component or requiring activity. When necessary, the cognizant medical authority (or delegated representative) is the appropriate authority to evaluate the suitability of an individual's limitations in theater.

(5) There is no need for routine out-of-theater evacuation for continuing diagnostics or other evaluations.

(j) *Conditions usually precluding medical clearance.* This section is not intended to be comprehensive. A list of all possible diagnoses, including relevant severity levels that should preclude approval by the cognizant medical authority or designee would be too expansive to list in this part. These are minimum requirements. Contractor personnel may have additional medical clearance requirements based on their occupation and local laws. It is the responsibility of the contractor to ensure that its employees' medical clearances comply with any applicable local occupation-specific medical requirements.

(1) In general, individuals with the conditions in paragraph (b) of § 158.7, based on an individual assessment pursuant to paragraph (bb) of appendix A to this part, will not normally be approved for deployment to provide contractual support in applicable operations. The medical evaluator must carefully consider whether climate; altitude; the nature of available food and housing available; the nature of medical, behavioral health, and dental services; or other environmental or operational factors may prove hazardous to the deploying person's health because of a known physical or mental condition.

(2) Medical clearance for deployment of persons with any of the conditions in this section shall be granted by the contracting officer only after consultation with the appropriate cognizant medical authority or a designated representative. The cognizant medical authority makes recommendations and serves as the GCC's advisor on conditions precluding the medical clearance of deploying personnel; however, the geographic CCDR is the final approval or disapproval authority except as provided in paragraph (k)(3) of this section. The cognizant medical authority or designated representative

may determine if adequate treatment facilities and specialist support are available at the duty station for:

(i) Physical or psychological conditions resulting in the inability to wear IPE effectively, if wearing IPE may be reasonably anticipated or required in the deployed location.

(ii) Conditions that prohibit immunizations or use of force health protection prescription products required for the specific deployment. Depending on the applicable threat assessment, required force health protection prescription products, vaccines, and countermeasures may include atropine, epinephrine, and/or 2-pam chloride auto-injectors, certain antimicrobials, antimalarials, and/or pyridostigmine bromide.

(iii) Any chronic medical conditions that require frequent clinical visits, fail to respond to adequate conservative treatment, or necessitate significant limitation of physical activity.

(iv) Any medical conditions that require durable medical equipment or appliances or periodic evaluation or treatment by medical specialists not readily available in theater (e.g., Continuous Positive Airway Pressure (CPAP) machine for sleep apnea).

(v) Any unresolved acute or chronic illness or injuries that would impair duty performance in a deployed environment during the duration of the deployment.

(vi) Active TB or known blood-borne diseases that may be transmitted to others in a deployed environment. (For HIV infections, see paragraph (j)(2)(xvii) of this section.)

(vii) An acute exacerbation of a physical or mental health condition that could affect duty performance.

(viii) Recurrent loss of consciousness for any reason.

(ix) Any medical condition that could result in sudden incapacitation including a history of stroke within the last 24 months, seizure disorders, and diabetes mellitus type I or II, treated with insulin or oral hypoglycemic agents.

(x) Hypertension not controlled with medication or that requires frequent monitoring to achieve control.

(xi) Pregnancy.

(xii) Cancers for which individuals are receiving continuing treatment or that require periodic specialty medical evaluations during the anticipated duration of the deployment.

(xiii) Precancerous lesions that have not been treated or evaluated and that require treatment or evaluation during the anticipated duration of the deployment.

(xiv) Any medical conditions that require surgery or for which surgery has been performed that requires rehabilitation or additional surgery to remove devices.

(xv) Asthma that has a Forced Expiratory Volume-1 (FEV-1) of less than or equal to 50 percent of predicted FEV-1 despite appropriate therapy, that has required hospitalization at least two times in the last 12 months, or that requires daily systemic oral or injectable steroids.

(xvi) Any musculoskeletal conditions that significantly impair performance of duties in a deployed environment.

(xvii) HIV antibody positive with the presence of progressive clinical illness or immunological deficiencies. The contracting officer should consult the cognizant medical authority in all instances of HIV seropositivity before medical clearance for deployment.

(xviii) Hearing loss. The requirement for use of a hearing aid does not necessarily preclude deployment. However, the individual must have sufficient unaided hearing to perform duties safely.

(xix) Loss of vision. Best corrected visual acuity must meet job requirements to perform duties safely.

(xx) Symptomatic coronary artery disease.

(xxi) History of myocardial infarction within one year of deployment.

(xxii) History of coronary artery bypass graft, coronary artery angioplasty, carotid endarterectomy, other arterial stenting, or aneurysm repair within one year of deployment.

(xxiii) Cardiac dysrhythmias or arrhythmias, either symptomatic or requiring medical or electrophysiologic control, such as the presence of an implanted defibrillator and/or pacemaker.

(xxiv) Heart failure.

(xxv) Individuals without a dental exam within the last 12 months or who are likely to require dental treatment or reevaluation for oral conditions that are likely to result in dental emergencies within 12 months.

(xxvi) Psychotic and/or bipolar disorders. For detailed guidance on deployment-limiting psychiatric conditions or psychotropic medications, see paragraph (mm) of appendix A to this part.

(xxvii) Psychiatric disorders under treatment with fewer than three months of demonstrated stability.

(xxviii) Clinical psychiatric disorders with residual symptoms that impair duty performance.

(xxix) Mental health conditions that pose a substantial risk for deterioration

or recurrence of impairing symptoms in the deployed environment.

(xxx) Chronic medical conditions that require ongoing treatment with antipsychotics, lithium, or anticonvulsants.

(k) *Exceptions to medical standards (waivers)*. If a contractor believes an individual CAAF with one of the conditions listed in paragraphs (j)(2)(i) through (xxx) of this section can accomplish his or her tasks and duties and tolerate the environmental and operational conditions of the deployed location, the contractor may request a waiver for that individual through the contracting officer to the CCDR for approval.

(1) It is unlikely that the CCDR will grant waivers for contractor personnel. Thus, the contractor must provide an explanation as to why it has no other qualified employees available who meet the medical standards to fulfill the deployed duties. Contractors will include a summary of a detailed medical evaluation or consultation concerning the medical condition or conditions in the requests for waivers. Since maximization of mission accomplishment and the protection of the health of personnel are the ultimate goals, justification for the waiver will include:

- (i) Statement indicating the CAAF individual's experience.
- (ii) The position the CAAF individual will occupy and the nature and scope of contractual duties assigned.
- (iii) Any known specific hazards of the position.
- (iv) Anticipated availability and need for care while deployed.
- (v) The benefit expected to accrue from the waiver.

(2) Medical clearance to deploy or continue serving in a deployed environment for persons with any of the conditions in paragraphs (j)(2)(i) through (xxx) of this section must have the concurrence of the cognizant medical authority, or designee, who will recommend approval or disapproval to the GCC. The GCC, or designee, is the final decision authority for approvals and disapprovals.

(3) For CAAF employees working with Special Operations Forces personnel who have conditions in paragraphs (j)(2)(i) through (xxx) of this section, medical clearance may be granted by the contracting officer after consultation with the appropriate Theater Special Operations Command (TSOC) surgeon. The TSOC surgeon, in coordination with the CCMD cognizant medical authority and senior in-theater medical authority, will ascertain the capability and availability of treatment

facilities and specialist support in the general duty area versus the operational criticality of the particular SOF member. The TSOC surgeon will recommend approval or disapproval to the TSOC Commander. The TSOC Commander is the final approval or disapproval authority.

Appendix A to Part 158—Related Policies

The Operational Contract Support Outside the United States Program is supported by the following policies:

- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512402p.pdf>).
- (b) 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>).
- (c) DoD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/100020p.pdf>).
- (d) DoD Instruction, "Combating Trafficking in Persons (CTIP)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/220001p.pdf>).
- (e) DoD Law of War Manual (June 2015, Updated Dec. 2016) (available at https://ogc.osd.mil/images/law_war_manual_december_16.pdf).
- (f) DoD Instruction 1000.01, "Identification (ID) Cards Required by the Geneva Conventions" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100001p.pdf>).
- (g) DoD Instruction 1000.13, "Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100013p.pdf>).
- (h) DoD Manual 1000.13, "DoD Identification (ID) Cards: ID Card Life-Cycle" Volume 1 (available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/100013_vol1.pdf).
- (i) DoD Manual 1000.13, "DoD Identification (ID) Cards: ID Card Life-Cycle", Volume 2 (available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/100013_vol2.pdf).
- (j) DoD Directive 1300.22, "Mortuary Affairs Policy" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/130022p.pdf>).
- (k) DoD Instruction 1300.18, "Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130018p.pdf>).
- (l) DoD Instruction 4515.13, "Air Transportation Eligibility" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/451513p.pdf>).
- (m) DoD Instruction 6200.03, "Public Health Emergency Management (PHEM)

within the DoD" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/620003p.pdf>).

(n) DoD Instruction 6000.11, "Patient Movement (PM)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/600011p.pdf>).

(o) DoD 4525.6-M, "Department of Defense Postal Manual" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/452506m.pdf>).

(p) DoD Instruction 1015.10, "Military Morale, Welfare, and Recreation (MWR) Programs" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/101510p.pdf>).

(q) DoD Directive 1330.21, "Armed Services Exchange Regulations" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133021p.pdf>).

(r) DoD Directive 5160.41E, "Defense Language, Regional Expertise, and Culture (LREC) Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/516041Ep.pdf>).

(s) Synchronized Predeployment and Operational Tracker (SPOT) Business Rules (available at <https://www.acq.osd.mil/LOG/PS/spot.html>).

(t) DoD 5400.11-R, "Department of Defense Privacy Program" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>).

(u) DoD Manual 6025.18, "Implementation of the Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule in DoD Health Care Programs" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/602518m.pdf>).

(v) DoD Directive 8000.01, "Management of the Department of Defense Information Enterprise (DoD IE)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/800001p.pdf>).

(w) DoD Instruction 8320.02, "Sharing Data, Information, and Information Technology (IT) Services in the Department of Defense" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/832002p.pdf>).

(x) DoD Instruction 8330.01, "Interoperability of Information Technology (IT), Including National Security Systems (NSS)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/833001p.pdf>).

(y) DoD Instruction 8500.01, "Cybersecurity" (available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/850001_2014.pdf).

(z) DoD Directive 4500.54E, "DoD Foreign Clearance Program (FCP)" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/450054E.pdf>).

(aa) DoD Directive 6485.02E, "DoD Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) Prevention Program (DHAPP) to Support Foreign Militaries" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/648502E.pdf>).

(bb) DoD Instruction 6490.03, "Deployment Health" (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649003p.pdf>).

www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649003p.pdf.

(cc) DoD Directive 6490.02E,

“Comprehensive Health Surveillance” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/649002Ep.pdf>).

(dd) CJCS Instruction 3500.01H, “Joint Training Policy for the Armed Forces of the United States” (available at https://www.jcs.mil/Portals/36/Documents/Library/Instructions/3500_01.pdf).

(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 2310.01, “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/231101e.pdf>).

(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) DoDD 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, “Policy Guidance for Deployment-Limiting Psychiatric Conditions and Medications,” November 7, 2006 (available at http://www.ha.osd.mil/policies/2006/061107_deployment-limiting_psych_conditions_meds.pdf).

Dated: October 30, 2020.

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

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POSTAL SERVICE

39 CFR Part 111

Extra Services Refund Time Limit

AGENCY: Postal Service™.

ACTION: Proposed rule; revision; additional comment period.

SUMMARY: The Postal Service is revising its pending proposal to amend *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) in subsection 604.9.2 to revise the time limit for extra service refunds.

DATES: Submit comments on or before February 8, 2021.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to PC.Federal.Register@usps.gov, with a subject line of “Extra Services Refund Time Limit”. Faxed comments are not accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT:

Sheila Marano at (202) 268–4257, Adaisja Johnson at (202) 268–6724, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On May 14, 2020, the Postal Service published a notice of proposed rulemaking (85 FR 28917–28918) to revise the time limit for extra service refunds on all classes of mail except Priority Mail Express®. The Postal Service has elected to issue a second revised proposed rule that also includes revising the timelines for Priority Mail Express® with an extra service.

Currently, DMM Exhibit 604.9.2.1, *Postage and Fees Refunds*, provides that for Priority Mail Express with an extra service a customer must apply for an extra service refund no sooner than 10 days, or no later than 30 days, and for all other classes of mail with an extra service a customer must apply for an extra service refund no sooner than 10 days, or no later than 60 days, from the date the service was purchased.

Certain extra services (e.g., Certified Mail®) have workflow timelines that extend beyond the current 10-day limit to initially file for a refund. As a result,

to meet the required workflow timelines for these extra services, and for consistency in application of the refund processes, the Postal Service is proposing to extend the current Priority Mail Express with an extra service timelines to no sooner than 30 days, or no later than 60 days. For all other classes of mail with an extra service, the 10-day time limit will be extended to a 30-day time limit before a customer can file for a refund.

We believe this proposed revision will provide customers with a more efficient process and a more consistent customer experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

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600 Basic Standards for All Mailing Services

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604 Postage Payment Methods and Refunds

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9.0 Exchanges and Refunds

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9.2 Postage and Fee Refunds

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