

# **Department of Defense**

## **Report on Resources to Implement the Civilian Casualty Policy of the Department of Defense**

Submitted pursuant to Section 923 of the National Defense Authorization Act for  
Fiscal Year 2020

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## Report on Resources to Implement the Civilian Casualty Policy of the Department of Defense

### **I. INTRODUCTION**

Pursuant to Section 923 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020, this is a report on the resources currently estimated to be necessary over the period of the future-years defense plan for fiscal year 2020 to fulfill the requirements of Section 936 of the John S. McCain NDAA for FY 2019 (Public Law 115-232) and to implement fully policies related to such section.

### **II. DESIGNATION OF A SENIOR CIVILIAN OFFICIAL**

Subsection (a) of Section 936 called for the Under Secretary of Defense for Policy to designate a senior civilian official to develop, coordinate, and oversee compliance with DoD civilian casualty policy.

As reported last year in DoD's "Report on Civilian Casualty Policy," the Under Secretary of Defense for Policy, Mr. John Rood, designated the Deputy Under Secretary of Defense for Policy (DUSD(P)), Mr. David Trachtenberg, on October 23, 2018, to perform the responsibilities set out in subsection (b) of Section 936. After Mr. Trachtenberg's departure from DoD to return to the private sector, Dr. James H. Anderson assumed such responsibilities, while performing the duties of the DUSD(P).

Given that the senior official designated under subsection (a) of Section 936 is expected to continue to be a DoD official who will perform the responsibilities set out in subsection (b) of Section 936 while also performing other duties within the Department, DoD does not expect to need additional resources to fulfill the requirements of subsection (a).

### **III. RESPONSIBILITIES OF THE SENIOR OFFICIAL DESIGNATED TO BE RESPONSIBLE FOR CIVILIAN CASUALTY POLICY**

Subsection (b) of Section 936 of the John S. McCain NDAA for FY 2019 (Public Law 115-232) sets forth certain responsibilities for the senior civilian official designated to develop, coordinate, and oversee compliance with DoD civilian casualty policy. Subsection (b) requires the designated official to ensure that civilian casualty policy provides for eight matters, which are listed therein.

Last year's "Report on Civilian Casualty Policy" described the significant work that DoD has undertaken in recent years to evaluate and improve on efforts to minimize civilian casualties, including by describing many of its existing policies and procedures that are relevant to the eight matters listed in subsection (b) of Section 936. The report also described efforts to draft a DoD-level policy issuance that would build upon existing policies and procedures and address the eight matters listed in subsection (b) of Section 936.

The Department continues work on the DoD-level policy issuance. As discussed in last year's "Report on Civilian Casualty Policy, the DoD-level policy issuance will supplement and reinforce existing policy reflected in: (1) Chairman of the Joint Chiefs of Staff's instructions and manuals; (2) joint doctrine; (3) Military Services' publications, including multi-service publications; and (4) the

Combatant Commanders' guidance, policies, and procedures. Thus, in addition to the resources identified in this report related to expected implementation of a future DoD-level policy issuance, the Department anticipates that further resources may be necessary because we anticipate that DoD components will continue to refine and improve existing policies and procedures, consistent with the new DoD-level policy issuance, but in ways that may not be strictly required by it.

The information in this report related to implementing provisions of that DoD-level issuance should be considered an estimate that is subject to change because the DoD-level issuance continues refined, and because it is currently not clear the extent to which current resources may be sufficient. Resourcing decisions would also be subject to DoD's planning, programming, budget, and execution processes. Nonetheless, at this time, we anticipate that additional personnel and financial resources may be required to accomplish the following tasks:

1. Implement the DoD-level policy issuance, which will address the eight matters listed in subsection (b) of Section 936, as well as additional associated matters, as follows:
  - a. Preparing U.S. military forces to mitigate civilian harm during U.S. military operations.
  - b. Accounting for civilian casualties from U.S. military operations, including by identifying and assessing reports of civilian casualties.
  - c. Acknowledging responsibility when civilian casualties result from U.S. military operations and, as appropriate and consistent with mission objectives and applicable law, offering condolences.
  - d. Integrating civilian harm mitigation objectives into partnered operations and into U.S. security cooperation and security assistance programs.
  - e. Maintaining channels for external engagement on civilian harm mitigation and civilian casualty response in order to improve outside entities' understanding about U.S. military operations.
2. Implement the recommendations of the 2018 Chairman of the Joint Chiefs of Staff (CJCS)-directed Civilian Casualty Review and its associated Implementation Plan. These recommendations are aligned with the eight matters listed in subsection (b) of Section 936 and the effort to develop the DoD-level policy issuance. These recommendations include the following matters:
  - a. Clarifying guidance and doctrine to address the risk of civilian casualties when U.S. forces operate by, with, and through partner forces.
  - b. Investing in tools to assist Ground Force Commanders with situational awareness.
  - c. Systematically seeking out additional sources of information on potential civilian casualties, including through social media, non-governmental organizations, and local sources. Placing greater attention on civilian casualties as part of the battle damage assessment process.

- d. Considering standardizing the civilian casualty review process across Combatant Commands (CCMDs).
- e. Expanding CCMD-level civilian casualty cells to include individuals tasked with reconciling external and U.S. military reports on civilian casualties.
- f. Developing a process for initial assessment reports that broadens the geographic area and timeframe of inquiry.
- g. Institutionalizing civilian casualty investigation processes.
- h. Developing for CCMDs specific guidance, processes, and clarification of authorities for civilian casualty response, which are informed by host nation customs, laws, and norms.
- i. As required, developing more specific processes and guidance to CCMDs regarding specific aspects of civilian casualty response, such as *ex gratia* payments.

The Office of the Under Secretary of Defense for Policy (OUSD(P)), in coordination with the Joint Staff, the Combatant Commands, and other DoD components, is developing and implementing policies related to civilian casualties. Our initial estimates of resource requirements are focused on supporting the Department's efforts to identify the additional personnel, operation and maintenance (O&M) funds, and information technology resources that may be needed over the period of the future-years defense plan.

**a. PERSONNEL**

It is anticipated that DoD may need additional personnel at key organizations with civilian casualty-related responsibilities in the near-term (0-3 years). These personnel would both help accomplish key functions where personnel gaps have initially been identified and support the Department's efforts more broadly to understand resource requirements throughout DoD related to civilian casualty-related functions. The placement of additional personnel in organizations with civilian casualty mitigation and response responsibilities would enhance commanders' efforts to ensure compliance with existing policies and procedures as well as the DoD-level issuance and would help improve the Department's ability to determine long-term staffing requirements. These additional people would strengthen key organizations' implementation of civilian casualty policies as the Department conducts operations, engages in great power competition, and plans for potential future conflicts.

Additional personnel may be required in the following organizations to support implementation of DoD civilian casualty policy, as indicated below:

1. OUSD(P), to conduct policy development, reporting to Congress, and oversight of DoD components' implementation of civilian casualty policy.
2. Joint Staff, to oversee policy implementation, to develop joint doctrine and lessons learned programs, and to communicate operational guidance.

3. Geographic Combatant Commands, to provide guidance and oversight relating to civilian casualty issues, and conduct civilian casualty response functions across theaters of operations — including receipt of reports of civilian casualties; conduct of civilian casualty assessments and investigations, analysis of civilian casualty incidents and trends; and offers of condolences, including *ex gratia* payments.
  - a. U.S. Central Command (USCENTCOM) and U.S. Africa Command (USAFRICOM) may require additional personnel within their respective Joint Fires Elements or Civilian Casualty Cells.
    - i. Additional personnel may also be required at operational-level headquarters, currently Operation INHERENT RESOLVE (OIR) and Operation FREEDOM SENTINEL/RESOLUTE SUPPORT Mission (OFS/RSM).
  - b. U.S. Special Operations Command (USSOCOM) may require additional personnel at the USSOCOM headquarters level and at Theater Special Operations Commands.
  - c. U.S. Indo-Pacific Command (USINDOPACOM) and U.S. European Command (USEUCOM) both may require additional personnel.

**b. OPERATION & MAINTENANCE (O&M)**

Additional O&M may be required to support the development and delivery of training related to civilian casualty mitigation and response, and to address other matters properly funded with O&M, as indicated below:

1. Resources to the U.S. Army for O&M requirements in support of Headquarters, USAFRICOM, and Headquarters, USEUCOM.
2. Resources to the U.S. Air Force for O&M requirements in support of Headquarters, USCENTCOM.
3. Resources to OUSD(P) for O&M requirements for OUSD(P), including with respect to the authority under Section 1213 of the NDAA for FY 2020 to make *ex gratia* payments for property damage, personal injury, or death that is incident to the use of force by the U.S. armed forces, a coalition that includes the United States, or a military organization supporting the United States or such coalition. Under Section 1213, not more than \$3,000,000 derived from funds authorized to be appropriated to the Office of the Secretary of Defense under the O&M, Defense-wide account for each calendar year, ending on December 31, 2022, may be made available for such payments.
4. Resources to the Joint Staff for O&M requirements of the Joint Staff.

**c. INFORMATION TECHNOLOGY (IT)**

The Department may require IT equipment and support, possibly contracted, to develop and test software; to procure and install hardware in multiple locations; to perform system maintenance; and to provide data storage, in order to:

1. ensure that accurate data regarding lethal effects, including kinetic strikes, conducted by U.S. military forces is recorded and maintained; and
2. develop a publicly available means appropriate to the specific regional circumstances for members of the public to submit reports of civilian casualties, including an internet-based mechanism.

#### **IV. REPORT REQUIRED**

Subsection (c) of Section 936 of the John S. McCain NDAA for FY 2019 (Public Law 115-232) called for a report to Congress that described policies and practices related to civilian casualty issues, including efforts to draft a DoD-level policy issuance that addresses the eight matters listed in subsection (b) of Section 936.

To fulfill this requirement, DoD submitted in 2019 a report titled “Report on Civilian Casualty Policy.” Preparation of the report cost DoD approximately \$40,000. Given that the report required under subsection (c) is not a recurring requirement, DoD does not need additional resources to fulfill the requirement of subsection (c).

#### **V. RESOURCES TO SUPPORT FULFILLING ADDITIONAL RELATED REQUIREMENTS**

In addition to resources that may be necessary to implement civilian casualty policy, including those related to Section 936 of the John S. McCain NDAA for FY 2019 (Public Law 115-232), additional resources would help the Department fulfill other requirements relating to civilian casualty issues, including those identified in the NDAA for FY 2020, which are summarized below:

1. Section 1206 requires reports to Congress on the steps taken to incorporate any partner units’ activities related to human rights and civilian protection into the assessment, monitoring, and evaluation programs maintained in support of security cooperation programs and activities.
2. Section 1210 authorizes an initiative related to building the institutional capacity of other countries, including capacity building for the protection of civilians and investigations into reports of civilian casualties.
3. Section 1213 requires quarterly reports to Congress with respect to *ex gratia* payments made for property damage, personal injury, or death under Section 1213 or any other authority, as well as any refusal to accept such *ex gratia* payments.
4. Section 1225 requires a report to Congress on lessons learned from coalition operations to liberate Mosul and Raqqa from control of the Islamic State of Iraq and Syria – including efforts with respect to targeting and weaponizing to avoid civilian casualties.

5. Section 1269 requires a briefing to Congress on: (1) any efforts to assist the Nigerian military to prevent, mitigate, and respond to civilian harm; (2) an assessment of the effectiveness of any such training; and (3) an overall assessment of efforts of the Nigerian government to improve civilian protections.
6. Section 1274 requires reports to Congress on civilian casualties estimated to have resulted from operations of the Saudi-led coalition and of the Houthis as part of the civil war in Yemen, as well as assessments of whether members of the Saudi-led coalition and the Houthis have followed the norms and practices that the U.S. military employs to avoid and otherwise minimize civilian casualties.
7. Section 1282 requires increased coordination with relevant Chiefs of Mission and other appropriate Department of State officials, and a briefing to Congress on policy updates related to civilian casualty issues and their implementation.
8. Section 1703 amends existing requirements under Section 1057 of the NDAA for FY 2018, which requires annual reports to Congress on civilian casualties resulting from U.S. military operations, and extends the requirement from five years to seven years.
9. Section 1721 requires DoD to enter into an agreement with a federally funded research and development center (FFRDC) to assess DoD “standards, processes, procedures, and policy relating to civilian casualties” and a report to Congress that provides views on the assessment and recommendations made by the FFRDC.
10. Section 1723 requires annual reports to Congress for the next three years on strikes taken by the United States against terrorist targets outside areas of active hostilities, including an assessment of any non-combatant deaths.