

**DEPARTMENT OF DEFENSE (DOD)****Statement of Regulatory Priorities****Background**

The Department of Defense (DoD) is the largest Federal Department consisting of three Military Departments (Army, Navy, and Air Force), ten Unified Combatant Commands, fourteen Defense Agencies, and ten DoD Field Activities. It has 1,417,747 military personnel and 731,592 civilians assigned as of June 30, 2009, and over 200 large and medium installations in the continental United States, U. S. territories, and foreign countries. The overall size, composition, and dispersion of DoD, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order 12866 "Regulatory Planning and Review" of September 30, 1993.

Because of its diversified nature, DoD is affected by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, Transportation, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in Executive Order 12866, there must be coordination of proposed regulations among the regulatory agencies and the affected DoD Components. Coordinating the proposed regulations in advance throughout an organization as large as DoD is straightforward, yet a formidable undertaking.

DoD is not a regulatory agency, but occasionally it issues regulations that have an effect on the public. These regulations, while small in number compared to the regulating agencies, can be significant as defined in Executive Order 12866. In addition, some of DoD's regulations may affect the regulatory agencies. DoD, as an integral part of its program, not only receives coordinating actions from the regulating agencies, but coordinates with the agencies that are affected by its regulations as well.

**Overall Priorities**

The Department needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done in DoD while reacting to the contradictory pressures

of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866.

**Administration Priorities:****1. Rulemakings that Support the Administration's Regulation Agenda to Streamline Regulations and Reporting Requirements**

The Department plans to:

- Revise the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete restrictions on contracting with foreign entities for the performance of research and development in connection with any weapon system or other military equipment for DoD.
- Review of the DFARS requirements for reporting the loss, theft, damage, or destruction of Government property.
- Review of the DFARS requirements for reporting Government Furnished Equipment and Government Furnished Material in the DoD Item Unique Identification (IUID) registry.
- Review of the DFARS requirements for Unique Item Identifier marking of Government-furnished Equipment.
- Simplify and clarify the DFARS coverage of patents, data, and copyrights, dramatically reducing the amount of regulatory text and the number of required clauses.
- Simplify and clarify the DFARS coverage of multiyear acquisitions.
- Finalize the DFARS rule that makes the required changes to conform the DFARS to the Federal Acquisition Regulation (FAR) implementation of the OFPP waivers of certain statutory requirements when acquiring of COTS items.
- Improve the contract closeout process.

**2. Regulations of Particular Interest to Small Business**

Of interest to Small Businesses are regulations to:

- Revise the FAR and DFARS to implement the use of Electronic Subcontracting Reporting System for both summary and individual subcontracting reporting.
- Consider revisions to the FAR to address the findings of the Rothe case that Federal contracting programs for minority-owned and other small

businesses that implement 10 U.S.C. 2323 are "facially unconstitutional."

- Revise the FAR to implement changes in the HUBZone Program, in accordance with Small Business Administration regulations.
- Revise the FAR to clarify the criteria for sole source awards to service-disabled veteran-owned small businesses concerns.

**3. Regulations with International Effects or Interest**

Of international effect or interest are regulations to:

- Finalize the FAR rule implementing the American Recovery and Reinvestment Act of 2009 buy American requirements for construction material.
- Finalize the DFARS rule that prohibits procurement of steel for construction projects or activities for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.
- Implement in the DFARS the determinations regarding participation of South Caucasus/Central and South Asian states in acquisitions in support of operations in Afghanistan.
- Finalize the DFARS rule that provides authority to limit competition in the acquisition of products or services, other than small arms, acquired in support of operations in Iraq or Afghanistan.
- Clarify in the DFARS the criteria for deciding whether a company is located in Iraq or Afghanistan.
- Consider whether to revise the DFARS regulations relating to acquisition of spare or replacement parts from the original foreign manufacturer.
- Revise the DFARS to implement the pending Defense Procurement Trade Cooperation Treaties with the United Kingdom and Australia, upon ratification.
- Finalize the DFARS rule that implements the determination that authorizes acquisition of articles containing para-aramid fibers and yarns manufactured in a qualifying country, in accordance with section 807 of the National Defense Authorization Act for FY 1999.
- Revise the FAR and DFARS list of least designated countries under the Trade Agreements Act to add Taiwan,

Peru, Costa Rica, and Oman (FAR only).

- Revise the FAR list of articles that are domestically non-available.
- Finalize the FAR rule that prohibits Federal contractors from restricted business operations in Sudan and imports from Burma.
- Finalize the FAR rule that prohibits Government contracts with any foreign incorporated entity that is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002 or any subsidiary of such entity.

#### 4. Suggestions From the Public for Reform—Status of DoD Items

##### *Rulemaking Actions in Response to Public Nominations*

The Army Corps of Engineers has not undertaken any rulemaking actions in response to the public nominations submitted to the Office of Management and Budget in 2001, 2002, or 2004. Those nominations were discussed in:

- *Making Sense of Regulation: 2001 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities.*
- *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities.*
- *Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.*

##### **Specific DoD Priorities:**

For this Regulatory Plan, there are six specific DoD priorities, all of which reflect the established regulatory principles. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulations that incorporate the provisions of the President's priorities and objectives under the Executive Order.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning acquisition, security, homeowners, education, health affairs,

and the National Security Personnel System.

#### 1. Defense Procurement and Acquisition Policy

The Department of Defense continuously reviews the DFARS and continues to lead Government efforts to:

- Finalize the FAR rules that implement the regulations relating to the American Recovery and Reinvestment Act of 2009 — Reporting Requirements, Publicizing Contract Actions, Whistleblower Protection, and GAO/IG Access to Contractor Employees.
- Revise the DFARS to implement the Weapons System Acquisition Reform Act of 2009 — including acquisition strategies to ensure competition throughout life-cycle of major defense acquisition programs and address organizational conflicts of interest in major defense acquisition programs.
- Revise DFARS to ensure continuation of contractor services in support of mission essential functions during an emergency, such as an influenza pandemic.
- Revise the FAR to implement the Executive Orders relating to project labor agreements, allowability of labor relations costs, non-displacement of qualified workers, and notification of employee rights under Federal labor laws.
- Revise the FAR to address service contractor employee personal conflicts of interest and organizational conflicts of interest and limit contractor access to information.
- Revise the FAR to establish a Federal database for Federal agency contract and grant officers and suspension and debarment officials, to track information relating to awardees of Federal contracts and grants.
- Revise the FAR to require contractors to verify, through the use of the E-Verify System, that certain of their employees are eligible to work in the United States.
- Enhance competition by:
  - Limiting the length of contracts awarded non-competitively under “unusual and compelling urgency” circumstances to the minimum contract period necessary to meet requirements, not to exceed one year, unless approved by the head of the contracting activity.
  - Requiring publication of notices on FedBizOpps of all sole source task or delivery orders in excess of the

simplified acquisition thresholds that are placed against multiple award contracts or multiple award blanket purchase agreements.

— Requiring post-award debriefings be provided, as requested, to disappointed offerors on task and delivery orders in excess of \$5 million (including options).

— Requiring public disclosure of justification and approval documents for noncompetitive contracts.

- Provide enhanced competition for task and delivery order contracts and additional market research before awarding a task or delivery order in excess of the simplified acquisition threshold.

#### 2. Logistics and Materiel Readiness, Department of Defense

The Department of Defense published or plans to publish rules on contractors supporting the military in contingency operations:

- **Interim Final Rule: Private Security Contractors (PSCs) Operating in Contingency Operations.** In order to meet the mandate of Section 862 of the 2008 National Defense Authorization Act, this rule establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract during contingency operations. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel. DoD published an interim final rule on July 17, 2009 (74 FR 34690-34694) with an effective date of July 17, 2009. The comment period ended August 31, 2009.
- **Proposed Rule: Program Management of Operational Contract Support for Contingency Operations.** This rule will incorporate the latest changes and lessons learned into policy and procedures for program management for the preparation and execution of contracted support and the integration of DoD contractor personnel into military contingency operations outside the United States. DoD anticipates publishing the proposed rule in the first or second quarter of FY 2010.

#### 3. Installations and Environment, Department of Defense

The Department of Defense has published a rule to assist eligible military and civilian Federal employee homeowners:

- **Interim Final Rule:** This rule continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. In accordance with DoD Directive 5101.1, DoD Executive Agent, “designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP. Additionally, this rule will allow the Department of Defense to temporarily expand the existing HAP in compliance with section 1001 of the American Recovery and Reinvestment Act of 2009. This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station orders, and certain wounded persons and surviving spouses. This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP. This is an economically significant rule. The interim final rule was published September 30, 2009 (74 FR 50109), with an effective date of September 30, 2009. The comment period ended October 30, 2009. DoD anticipates publishing a final rule in the third quarter of FY 2010.

#### **4. Personnel and Readiness, Department of Defense**

The Department of Defense published or plans to publish a rule implementing the Post-9/11 Veterans Educational Assistance Act of 2008, title V, P.L. 110-252 (the “Post-9/11 GI Bill”):

- **Interim Final Rule:** This rule establishes policy, assigns responsibilities, and prescribes procedures for carrying out the Post-9/11 GI Bill. It establishes policy for the use of supplemental educational assistance “kickers,” for members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits; and for the DoD Education Benefits Fund Board of Actuaries. DoD published an interim final rule on June 25, 2009 (74 FR 30212-30220) with an effective date of June 25, 2009. The comment period ended July 27, 2009.

#### **5. Health Affairs, Department of Defense**

The Department of Defense is able to meet its dual mission of wartime readiness and peacetime health care by operating an extensive network of medical treatment facilities. This network includes DoD’s own military treatment facilities supplemented by civilian health care providers, facilities, and services under contract to DoD through the TRICARE program. TRICARE is a major health care program designed to improve the management and integration of DoD’s health care delivery system. The program’s goal is to increase access to health care services, improve health care quality, and control health care costs.

The TRICARE Management Activity has published or plans to publish the following rules:

- **Final rule on CHAMPUS/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals.** This rule implements changes directed by the enactment of National Defense Authorization Act for Fiscal Year 2008 (NDAA-08), Pub. L. 110-181, to the extent necessary to ensure pharmaceuticals, paid for by the DoD that are provided by pharmacies under the TRICARE Retail Pharmacy Program (TRRx) to eligible beneficiaries, are subject to the pricing standards under section 8126 of title 38 United States Code. This is an economically significant rule. The proposed rule was published July 25, 2008 (73 FR 43394). The comment period ended September 23, 2008. The final rule published March 17, 2009 (74 FR 11279-11293) with an effective date of May 26, 2009.
- **Final rule on TRICARE: Outpatient Prospective Payment System (OPPS).** The rule implements a prospective payment system for hospital outpatient services similar to that furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. The rule also recognizes applicable statutory requirements and changes arising from Medicare’s continuing experience with its system, including certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. While TRICARE intends to remain as true as possible to Medicare’s basic OPPS methodology (i.e., adoption and updating of the Medicare data elements used in calculating the prospective payment

amounts), there will be some significant deviations required to accommodate the uniqueness of the TRICARE program. These deviations have been designed to accommodate existing TRICARE benefit structure and claims processing procedures implemented under the TRICARE Next Generation Contracts (T-NEX) while at the same time eliminating any undue financial burden to TRICARE Prime, Extra and Standard beneficiary populations. The proposed rule was published April 1, 2008 (73 FR 17271). The comment period ended June 2, 2008. The final rule published December 10, 2008 (73 FR 74945-74966) with an effective date of February 9, 2009. DoD published a notice on February 6, 2009 (74 FR 6228) delaying the effective date of the final rule to May 1, 2009 and re-opening the final rule for comment. The comment period ended March 9, 2009. DoD then published a notice May 8, 2009 (74 FR 21547) responding to the comments received. The effective date of the final rule remained May 1, 2009.

- **Final rule on TRICARE: Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage.** This rule implements section 1097c of title 10, United States Code. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible so long as the plan treats all employees the same and does not illegally take TRICARE eligibility into account. The proposed rule was published March 28, 2008 (73 FR 16612). The comment period ended May 27, 2008. DoD anticipates publishing a final rule in the first quarter of FY 2010.

- **Final rule on TRICARE: Authorization of Forensic Examinations.** This rule implements section 701 of the John Warner National Defense Authorization Act for FY 2007, Public Law 109-364. Section 701 amends Title 10 of the United States Code (U.S.C.), Chapter 55, Section 1079(a) by authorizing coverage for forensic examinations following a sexual assault or domestic violence for eligible beneficiaries. This authorizes forensic examinations provided in civilian health care facilities (e.g., civilian rape crisis facilities) following sexual assault or domestic

violence, which is consistent with the services that are authorized in Military Medical Treatment Facilities for all beneficiaries who are victims of sexual assault or domestic violence. The proposed rule was published July 7, 2008 (73 FR 38348-38350). The comment period ended September 5, 2008. The final rule published July 17, 2009 (74 FR 34649-34696) with an effective date of August 17, 2009.

**6. National Security Personnel System, Department of Defense**

On November 1, 2005 (70 FR 66115-66164), the Department of Defense and the Office of Personnel Management (OPM) issued final regulations to establish the National Security Personnel System (NSPS), a human resources management system, within DoD, as authorized by the National Defense Authorization Act (Pub. L. 108-136, November 24, 2003). These regulations govern basic pay, staffing, classification, performance management, labor relations, adverse actions, and employee appeals. These regulations are designed to ensure that the DoD's human resources management and labor relations systems align with its critical mission requirements and protect the civil service rights of its employees.

Subsequent legislation in the National Defense Authorization Act (Pub. L. 110-181, January 28, 2008) required revision of the NSPS regulation. DoD and OPM published a proposed rule on May 22, 2008 (73 FR 29882-29927). The period for public comment ended on June 23, 2008. The final rule published September 26, 2008 (73 FR 56344-56420) with an effective date of October 7, 2008. A correction to the final rule effective date published on October 7, 2008 (73 FR 58435). The effective date was corrected to November 25, 2009.

DoD and OPM published a proposed rule on December 3, 2008 (73 FR 73606-73716) to add a Staffing and Employment subpart to the final rule that was published on September 26, 2008. The period for public comment ended on January 2, 2009. The final rule published January 16, 2009 (74 FR 2757-2770) with an effective date of March 17, 2009.

On July 16, 2009, a task group under the Defense Business Board (DBB) made recommendations to significantly alter the National Security Personnel System (NSPS). The final report of the DBB will be to the Department of Defense and the Office of Personnel Management (OPM). The recommendations may be adopted or rejected. If adopted, some of the

recommendations may be implemented under the current regulation. However, it is likely that the regulation will require substantial revision

DoD and OPM anticipate publishing a proposed rule in late winter 2010 and a final rule in the fall of 2010, to be effective 60 days after final action.

**DOD—Office of the Secretary (OS)**

**FINAL RULE STAGE**

**36. • HOMEOWNERS ASSISTANCE PROGRAM (HAP)**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 3374

**CFR Citation:**

32 CFR 239

**Legal Deadline:**

None

**Abstract:**

This rule continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. In accordance with DoD Directive 5101.1, DoD Executive Agent,“ designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP.

Additionally, this rule will allow the Department of Defense to temporarily expand the existing Homeowners Assistance Program (HAP) in compliance with The American Recovery and Reinvestment Act of 2009 (ARRA). This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station (PCS) orders, and certain wounded persons and surviving spouses. This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP.

**Statement of Need:**

This rule continues to authorize the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee

homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. It updates policy, delegates authority, and assigns responsibilities for managing HAP. In accordance with DoD Directive 5101.1, “DoD Executive Agent,” designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP.

Additionally, this rule will allow the Department of Defense to temporarily expand the existing HAP in compliance with section 1001 of the American Recovery and Reinvestment Act of 2009 (ARRA). This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP.

**Summary of Legal Basis:**

42 U.S.C. 3374

**Alternatives:**

Required by 42 U.S.C. 3374. No alternatives considered.

**Anticipated Cost and Benefits:**

There is no cost to the public. Administrative costs to the Department of Defense for implementation of the authorities under this rule are eight percent of the \$555 million appropriated to fund the Expanded HAP. Workload will be accomplished with additional staffing and will be integrated into normal business.

**Risks:**

The rule will allow the Department of Defense to expand HAP to assist military families and DoD civilians who recently sold their homes at a loss. This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station orders, and certain wounded persons and surviving spouses.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	09/30/09	74 FR 50109
Interim Final Rule Effective	09/30/09	
Interim Final Rule Comment Period End	10/30/09	
Interim Final Rule Comment Period Extended	11/16/09	74 FR 58846
Interim Final Rule Comment Period End	01/15/10	
Final Action	04/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

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