

DEPARTMENT OF DEFENSE

STATEMENT OF REGULATORY PRIORITIES

BACKGROUND

The Department of Defense (DoD) is the largest Federal department, employing over 1.6 million military personnel and 750,000 civilians with operations all over the world. DoD's enduring mission is to provide combat-credible military forces needed to deter war and protect the security of our nation. In support of this mission, DoD adheres to a strategy where a more lethal force, strong alliances and partnerships, American technological innovation, and a culture of performance will generate a decisive and sustained United States military advantage. Because of this expansive and diversified mission and reach, DoD regulations can address a broad range of matters and have an impact on varied members of the public, as well as other federal agencies.

The regulatory and deregulatory actions identified in this Regulatory Plan embody the core of DoD's regulatory priorities for Fiscal Year (FY) 2021 and help support or impact the Secretary's three lines of efforts to: 1) build a more lethal force; 2) strengthen alliances and attract new partners; and 3) reform the Department for greater performance and affordability. These actions originate within 6 of DoD's main regulatory components -- the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), which is responsible for contracting and procurement policy, the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), which supports troop readiness and health affairs, the Office of the Under Secretary of Defense for Intelligence and Security (OUSD(I&S)), which is responsible for intelligence, counterintelligence, security, sensitive activities, and other intelligence-related matters, the DoD Chief Information Officer (CIO), which is responsible for all matters relating the DoD information enterprise, the Department of the Army, which provides prompt and sustained land dominance in our nation's wars, and the United States Army Corps of Engineers (USACE), which provides engineering services to support the national interest. The missions of these offices are discussed more fully below.

Other Departmental regulatory priorities focus on responding to the current worldwide pandemic. A novel coronavirus (SARS-CoV-2), which causes COVID-19, was first detected in December 2019 and has

spread rapidly throughout the world. On January 31, 2020, the Secretary of Health and Human Services determined that a public health emergency had existed since January 27, 2020. On March 13, 2020, the President declared a national emergency due to the COVID-19 outbreak, retroactive to March 1, 2020 (Proclamation 9994, 85 FR 15337). Pursuant to the President's national emergency declaration and as a result of the worldwide COVID-19 pandemic, the Department is temporarily modifying regulations to ensure that TRICARE beneficiaries have access to the most up-to-date care required for the diagnosis and treatment of COVID-19, and that TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute. The Department is researching the impacts of making some of those modifications permanent and may pursue such future action. In response to medical manpower requirements, the Department is also modifying its regulation regarding Screening the Ready Reserve. That rule is highlighted below.

DoD's REGULATORY PHILOSOPHY AND PRINCIPLES

The Department's regulatory program strives to be responsive, efficient, and transparent. DoD adheres to the general principles set forth in Executive Order (EO) 12866, "Regulatory Planning and Review," dated October 4, 1993, by promulgating only those regulations that are required by law, necessary to interpret the law, or are made necessary by compelling public need. By following this regulatory philosophy, the Department's regulatory program also complements and advances the Secretary's third line of effort -- to reform the Department for greater performance and affordability

The Department is also fully committed to implementing and sustaining regulatory reform in accordance with Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," dated January 30, 2017, and Executive Order 13777, "Enforcing the Regulatory Reform Agenda," dated February 24, 2017. These reform efforts support DoD's goals to eliminate outdated, unnecessary, or ineffective regulations; account for the currency and legitimacy of each of the Department's regulations; and ultimately reduce regulatory burden and costs placed on the American people.

In support of DoD's reform efforts, DoD appointed a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies. DoD also established a Regulatory Reform

Task Force (Task Force) to review and evaluate existing regulations and make recommendations to the Agency head regarding their repeal, replacement, or modification, consistent with applicable law.

DoD is implementing its reform efforts in three general phases:

- Phase I: Utilizing the Task Force. The Task Force assessed all 716 existing, codified DoD regulations to include 350 solicitation provisions and contract clauses contained in the Defense Federal Acquisition Regulation Supplement (DFARS).
- Phase II: Implementing the approved recommendations. Implementation requires drafting, internal coordination, review by the Office of Management and Budget to include interagency coordination, and providing for notice and comment, as required by law.
- Phase III: Updating policies. Incorporating into its policies a requirement for components to sustain review of both new regulatory actions and existing regulations.

In FY 2021, based primarily on the ongoing work of the Task Force, DoD expects to publish more deregulatory actions than regulatory actions. Exact figures are not yet available as the regulations reported in this edition of the Unified Agenda are still under evaluation for classification under Executive Order 13771. Additionally, the Task Force will continue working to execute directives under Executive Orders 13783 and 13807 to streamline its regulatory process and permitting reviews.

In addition to reform efforts, DoD is also mindful of the importance of international regulatory cooperation, consistent with domestic law and trade policy, as described in Executive Order 13609, "Promoting International Regulatory Cooperation" (May 1, 2012). For example, DoD, along with the Departments of State and Commerce, engages with other countries in the Wassenaar Arrangement, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime through which the international community develops common lists of items to be subject to export controls. DoD has been a key participant in the Export Control Reform (ECR) effort that resulted in a complete overhaul of the U.S. Munitions List and fundamental changes to the Commerce Control List. New controls have facilitated transfers of goods and technologies to allies and partners while helping prevent transfers to countries of national security and proliferation concern. In this context, following ECR, DOD is a key contributor to the ongoing implementation efforts in support of the Foreign Investment Risk Review and Modernization Act

(FIRRMA) and Export Control Reform Act (ECRA), signed into law under the FY2019 National Defense Authorization Act (NDAA) in August 2018. Under FIRRMA, DOD has significantly expanded the breadth of its reviews of foreign acquisitions of U.S. assets. Under ECRA, DoD will continue to assess new and emerging technologies to ensure items that provide critical military and intelligence capabilities are properly controlled on international export control regime lists.

DoD PRIORITY REGULATORY ACTIONS

As stated above, OUSD (A&S), OUSD (P&R), OUSD(I&S), the DoD CIO, and the Department of the Army (including USACE) will be planning actions that are considered the most important significant DoD regulatory actions for FY 2021. Further information on these actions is provided below.

OUSD (A&S)/Defense Pricing and Contracting (DPC)

DPC is responsible for all contracting and procurement policy matters in the Department and uses the Defense Acquisition Regulations System (DARS) to develop and maintain acquisition rules and to facilitate the acquisition workforce as they acquire goods and services. For this component, DoD is highlighting the following rules:

Covered Telecommunications Equipment or Services (DFARS Case 2018-D022). RIN: 0750-AJ84

This rule implements section 1656 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 1656 provides that DoD may not procure or obtain or extend or renew a contract to provide or obtain any equipment, system, or service to carry out the DoD nuclear deterrence mission or the DoD homeland defense mission that uses covered telecommunications equipment or services as a substantial or essential component of any system or as a critical technology as a part of any system. Covered telecommunications equipment or services means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities; telecommunication services provided by such entities or using such equipment; or telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the governments of China or Russia. A similar Government-wide ban required by section 889 of the FY 2019 NDAA has been implemented in the Federal Acquisition Regulation (FAR). This rule builds upon the existing framework in

the FAR to implement the DoD-specific prohibitions.

Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041). RIN: 0750-AK81

The theft of intellectual property and sensitive information from all U.S. industrial sectors due to malicious cyber activity threatens economic security and national security. Malicious cyber actors have and continue to target the Defense Industrial Base (DIB) sector and the supply chain of the Department of Defense (DoD). These attacks not only focus on the large prime contractors, but also target subcontractors that make up the lower tiers of the DoD supply chain. The aggregate loss of intellectual property and certain unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as well as significantly increase risk to national security.

While existing FAR and DFARS clauses establish the expected cyber security requirements required to be in place on contractor information system that handle Federal contract information and controlled unclassified information, neither clause provides for the validation or verification of whether a contractor or subcontractor has adequate controls in place on its covered systems. To enhance the protection of unclassified information within the supply chain, DoD has developed the following standards and framework to assess contractor implementation, both of which are being implemented by this rule:

- *The NIST SP 800-171 DoD Assessment Methodology.* This is a standard methodology to assess contractor implementation of the cybersecurity requirements in NIST SP 800-171, as required by DFARS clause 252.204-7012. It provides a means for the Department to immediately assess contractor implementation of cyber security requirements as the Department transitions to full implementation of the CMMC
- *Cybersecurity Maturity Model Certification (CMMC) Framework.* This is a DoD cybersecurity framework that measures cybersecurity maturity with five certification levels, each of which aligns to a set of processes and practices that are commensurate with the type and sensitivity of information to be protected and the associated range of threats.

This rule provides the Department with: (1) the ability to immediately assess at a corporate-level a contractor's implementation of NIST SP 800-171 security requirements, as currently required by DFARS

clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; and (2) assurances that a DIB contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

Rulemakings of particular Interest to Small Business.

Small Business Innovation Research Program Data Rights (DFARS Case 2019-D043). RIN 0750-AK84

This rule implements changes made by the Small Business Administration (SBA) related to data rights in the Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The SBIR and STTR programs fund a diverse portfolio of startups and small businesses across technology areas and markets to stimulate technological innovation, meet Federal research and development (R&D) needs, and increase commercialization to transition R&D into impact. The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS. These changes include harmonizing definitions, lengthening the SBIR/STTR protection period from 5 years to 20 years, and providing for the granting of Government-purpose rights license in place of an unlimited rights license upon expiration of the SBIR/STTR protection period.

Reauthorization and Improvement of Mentor-Protégé Program (DFARS Case 2020-D009). RIN 0750-AK96)

This rule implements section 872 of the NDAA for FY 2020. Section 872 reauthorizes and modifies the DoD Mentor-Protégé Program. The purpose of the Program is to provide incentives for DoD contractors to assist eligible small businesses (protégés) in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts. Under this program, protégés expand their footprint in the defense industrial base by partnering with larger companies (mentors). As a result of this rule, the date by which new mentor-protégé agreements may be submitted and approved is extended to September 30, 2024. In addition, mentors incurring costs prior to September 30, 2026, may be eligible for certain credits and reimbursements. Per the statute, this rule also establishes additional performance goals and outcome-based metrics to measure progress in meeting those goals.

OUSD (Personnel & Readiness)

The Office of the Under Secretary for Personnel and Readiness mission is to develop and implement policies, procedures, and standards for manpower requirements determination and training for the total force; review and evaluate plans and programs to ensure adherence to approved policies and standards; participate in planning, programming, and budgeting activities related to USD(P&R) functions; promote coordination, cooperation, and mutual understanding within the Department, and between the Department and other Federal Agencies, State, and local Governments and the civilian community; and, serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on manpower and personnel matters outside the Department.

For this component, DoD is highlighting the following rule:

Screening the Ready Reserve (RIN: 0790-AL00)

DoD policy established requirements for federal government employers and this rule parallels those requirements for application to non-federal employers, i.e., all employers not of the federal government (state, local, non-profit, private, self-employed, etc.), hereafter referred to as “employer.” This rule simplifies employer responsibilities for the screening of Ready Reserve members. The Ready Reserve, consisting of the Selected Reserve and Individual Ready Reserve, is liable for active duty as prescribed by law. The rule encourages employers to screen Ready Reservist employees to ensure those with critical civilian skills are identified. In response to COVID-19, early identification of critical positions could enhance leadership decisions to meet capacity and capability of medical providers needed to support the civilian sector and the military medical response to COVID-19. The passage of this rule will enhance the early identification of critical civilian employees through appropriate screening, and in coordination with the Services, allow the service member to be moved to the Standby Reserve so they are not counted as an available member of the Ready Reserve and considered in military mobilization planning factors. These efforts, in turn, create efficiencies in the manpower requirements for this pandemic as it evolves and for any future event requirement use of the Ready Reserve.

OUSD (Intelligence and Security)

The Under Secretary of Defense for Intelligence and Security (USD(I&S)) is the principal staff assistant and advisor to the Secretary of Defense and Deputy Secretary of Defense on intelligence, counterintelligence, security, sensitive activities, and other intelligence-related matters. The USD(I&S) exercises the Secretary of Defense's authority, direction, and control over the Defense Agencies and DoD Field Activities that are defense intelligence, counterintelligence, or security components. The USD(I&S) also exercises planning, policy, and strategic oversight over all DoD intelligence, counterintelligence, and security policy, plans, and programs.

For this component, DoD is highlighting the following rule:

National Industrial Security Program Operating Manual (NISPOM) (RIN: 0790-AK85)

This rule ensures uniform implementation of reporting requirements for cleared personnel, including contractors, to allow the U.S. Government (USG) to continuously monitor and vet a trusted workforce, protect classified information and preserve our nation's economic and technological interests in the face of persistent threats from adversaries seeking to denigrate the U.S.'s technological advantage. This rule provides baseline requirements for protection of classified information by contractors when levied by contract through a Federal Acquisition Regulation clause or its equivalent, and requirements for the implementation of the Director of National Intelligence's Security Executive Agent Directive 3, which stipulates that cleared personnel, including contractor personnel, report foreign travel and foreign contacts so that reported information may be analyzed, shared, and acted upon as necessary by the USG to ensure national security eligibility determinations can be continuously and consistently reassessed.

This rule is a priority since it has a direct bearing on the national security of the United States to prevent the theft of classified information and USG critical classified programs or technologies by adversaries or undetected insider threats.

Office of the Department of Defense Chief Information Officer

The Department of Defense Chief Information Officer (DoD CIO) is the principal staff assistant and senior advisor to the Secretary of Defense and Deputy Secretary of Defense for information technology (IT) (including national security systems and defense business systems), information resources management

(IRM), and efficiencies. This means that DoD CIO is responsible for all matters relating the DoD information enterprise, such as cybersecurity, communications, information systems, and more.

For this component, DoD is highlighting the following rule:

Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities. RIN: 0790-AK86

This rule will revise the DoD-Defense Industrial Base (DIB) Cybersecurity (CS) activities -- expanding current voluntary cyber threat information sharing activities from cleared defense contractors to all defense contractors who have the Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.204-7012, "Safeguarding Covered Defense Information and Cyber Incident Reporting," as part of their contracts. This revised regulation aligns with the Administration's effort to promote public-private cyber collaboration.

Department of the Army

The Army, is one of the three military departments (Army, Navy and Air Force) reporting to the Department of Defense. The Army Mission remains constant: To deploy, fight and win our nation's wars by providing ready, prompt and sustained land dominance by Army forces across the full spectrum of conflict as part of the joint force.

For this component, DoD is highlighting the following rule:

Revised Eligibility Criteria at Arlington National Cemetery. RIN: 0702-AB08

This regulatory action amends eligibility criteria for in-ground interment and above-ground inurnment at Arlington National Cemetery (ANC) and the U.S. Soldiers' and Airmen's Home National Cemetery in order to meet the intent of the FY19 National Defense Authorization Act to preserve ANC as an active burial ground "well into the future." This regulatory action is expected to affect the eligibility (only at ANC) of a large portion of the approximately 22 million living Veterans and military service members. Non-significant portions of this regulation also define important terms and add or amend other governing policies for operations in Army cemeteries.

United States Army Corps of Engineers (Corps)

The United States Army Corps of Engineers (Corps) is a major Army command made up of some 37,000 civilian and military personnel, making it one of the world's largest public engineering, design, and construction management agencies. Its Civil Works program has three main missions: flood and storm damage reduction, commercial navigation, and aquatic ecosystem restoration in the United States. The Corps also has a Military program. Under this program, the Corps is involved in the design and construction management of military facilities for the Army, Air Force, Army Reserve and Air Force Reserve and other Defense and Federal agencies.

For this component, DoD is highlighting the following rules, all of which pertain to the Civil Works program:

Compensatory Mitigation for Losses of Aquatic Resources--Review and Approval of Mitigation Banks and In-Lieu Fee Programs. RIN: 0710-AA83

In 2008, the Corps and the U.S. Environmental Protection Agency (EPA) issued a final rule governing compensatory mitigation for losses of aquatic resources (73 FR 19593). The regulation prescribes a review and approval process for the establishment and management of mitigation banks and in-lieu fee programs. The regulation also includes time frames for certain steps in the mitigation bank and in-lieu fee program review and approval process. The review and approval process for mitigation banks and in-lieu fee programs includes an opportunity for public and agency review and comment, as well as a second review by an interagency review team. The interagency review team consists of Federal, Tribal, State, and local agencies that review documentation and provide the Corps with advice on the establishment and management of mitigation banks and in-lieu fee programs. The Corps is reviewing the review and approval process and the interagency review team process to identify ways to enhance the efficiency of the mitigation bank and in-lieu fee program approval time frames by generating savings to the public through shorter review times for proposed mitigation banks, in-lieu fee programs, instrument modifications, and credit release requests while also promoting conservation and wetland mitigation projects. The Corps will also consider whether there are opportunities for efficiency and clarity improvement from relying on other types of credit metrics for stream compensatory mitigation projects rather than linear metrics. The Corps is considering clarifying credit accounting for multipurpose

mitigation banks and in-lieu fee programs to increase additional opportunities for investment in conservation. The Corps is also reviewing any clarification needed regarding the standards for audits of in-lieu fee programs.

Reissuance and Modification of Nationwide Permits. RIN: 0710-AA84

The Corps issues nationwide permits to authorize specific categories of activities in jurisdictional waters and wetlands that have no more than minimal individual and cumulative adverse environmental effects. Since the submission and review of such nationwide permits can take significantly less time than individual permits, any changes to the program that increase the conditions under which the nationwide permits can be used could result in significant cost savings for the public. The issuance and reissuance of nationwide permits must be done every five years to continue the Nationwide Permit Program. The nationwide permits were last issued on December 21, 2016, and expire on March 18, 2022. On October 25, 2017, the Corps issued a report to meet the requirements of Executive Order 13783, Promoting Energy Independence and Economic Growth. In that report, the Corps recommended changes to nine nationwide permits that authorize activities related to domestic energy production and use, including oil, natural gas, coal, and nuclear energy sources, as well as renewable energy sources such as flowing water, wind, and solar energy. This rulemaking action would seek to open the permits early in order to review and, if appropriate, modify those nine nationwide permits in accordance with the opportunities identified in the report in order to reduce burden on the public.. In response to E.O. 13921, Promoting American Seafood Competitiveness and Economic Growth, the Corps is soliciting comment on whether to issue new nationwide permits for seaweed and finfish mariculture activities. The Corps also intends to take a holistic look at the existing 52 permits and may propose changes to other permits or, if necessary, propose to create additional nationwide permits.