DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 2

Pilot Program Policy

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Acquisition Reform).

ACTION: Final rule.

SUMMARY: This rule establishes the criteria for nominating an acquisition program as a participant in the Defense Acquisition Pilot Program, the procedures for designation under the pilot program, and the policies related to requests for statutory and regulatory relief to be granted under the pilot program. This part implements the provisions of Section 809 of the National Defense Authorization Act for Fiscal Year 1991, as amended by the National Defense Authorization Act of FY 1994.

EFFECTIVE DATE: April 10, 1997.

ADDRESSES: Office of the Deputy Under Secretary of Defense (Acquisition Reform), Room 2A330, 3620 Defense Pentagon, Washington, DC 20301–3620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Sylvester, telephone (703) 697–6399.

SUPPLEMENTARY INFORMATION: On December 2, 1993, the Department of Defense published a proposed rule (58 FR 63542). Public comments were received on the proposed rule and reviewed and addressed. The comments fell into two basic categories, the majority which dealt with administrative corrections and have been incorporated, and the second group, which are no longer germane as a result of the designation of programs as authorized by the Federal Acquisition Streamlining Act of 1994 or from inapplicability due to more recent changes in statute. No substantive changes have been made to the rule.

Publication in the **Federal Register** is required by Section 809 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430 note), as amended by the National Defense Authorization Act of FY 1994. This rule does not constitute ''significant regulatory action as defined by E.O. 12866. The rule does not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs; the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants user fees, loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. This rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no Regulatory Flexibility Analysis was prepared. This rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 32 CFR Part 2

Government procurement.

Accordingly, title 32, chapter I, is amended by adding part 2, to read as follows:

PART 2—PILOT PROGRAM POLICY

Sec.

Authority: 10 U.S.C. 2340 note.

§ 2.1 Purpose.

Section 809 of Public Law 101–510, ''National Defense Authorization Act for Fiscal Year 1991,'' as amended by section 811 of Public Law 102–484, ''National Defense Authorization Act for Fiscal Year 1993'' and Public Law 103–160, ''National Defense Authorization Act for Fiscal Year 1994,'' authorizes the Secretary of Defense to conduct the Defense Acquisition Pilot Program. In accordance with section 809 of Public Law 101–510, the Secretary may designate defense acquisition programs for participation in the Defense Acquisition Pilot Program.

(a) The purpose of the pilot programs is to determine the potential for increasing the efficiency and effectiveness of the acquisition process. Pilot programs shall be conducted in accordance with the standard commercial, industrial practices. As used in this policy, the term ''standard commercial, industrial practice'' refers to any acquisition management practice, process, or procedure that is used by commercial companies to produce and sell goods and services in the commercial marketplace. This definition purposely implies a broad range of potential activities to adopt commercial practices, including regulatory and statutory streamlining, to eliminate unique Government requirements and practices such as government-unique contracting policies and practices, government-unique specifications and standards, and reliance on cost determination rather than price analysis.

(b) Standard commercial, industrial practices include, but are not limited to:

(1) Innovative contracting policies and practices;

(2) Performance and commercial specifications and standards;

(3) Innovative budget policies;

(4) Establishing fair and reasonable prices without cost data;

(5) Maintenance of long-term relationships with quality suppliers;

(6) Acquisition of commercial and non-developmental items (including components); and

(7) Other best commercial practices.

§ 2.2 Statutory relief for participating programs.

(a) Within the limitations prescribed, the applicability of any provision of law or any regulation prescribed to implement a statutory requirement may be waived for all programs participating in the Defense Acquisition Pilot Program, or separately for each participating program, if that waiver or limit is specifically authorized to be waived or limited in a law authorizing appropriations for a program designated by statute as a participant in the Defense Acquisition Pilot Program.

(b) Only those laws that prescribe procedures for the procurement of supplies or services; a preference or requirement for acquisition from any source or class of sources; any requirement related to contractor performance; any cost allowability, cost accounting, or auditing requirements; or any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program may be waived.

(c) The requirements in section 809 of Public Law 101–510, as amended by section 811 of Public Law 102–484, the requirements in any law enacted on or after the enactment of Public Law 101–510 (except to the extent that a waiver or limitation is specifically authorized for such a defense acquisition program by statute), and any provision of law that ensures the financial integrity of the conduct of a Federal Government program or that relates to the authority of the Inspector General of the Department of Defense may not be considered for waiver.

§ 2.3 Regulatory relief for participating programs.

(a) A program participating in the Defense Acquisition Pilot Program will not be subject to any regulation, policy, directive, or administrative rule or guideline relating to the acquisition activities of the Department of Defense other than the Federal Acquisition Regulation (FAR) [1], the Defense FAR Supplement (DFARS) [2], or those regulatory requirements added by the Under Secretary of Defense for Acquisition and Technology, the Head of the Component, or the DoD Component Acquisition Executive.

(b) Provisions of the FAR and/or DFARS that do not implement statutory requirements may be waived by the Under Secretary of Defense for Acquisition and Technology using appropriate administrative procedures. Provisions of the FAR and DFARS that implement statutory requirements may be waived or limited in accordance with the procedures for statutory relief previously mentioned.

(c) Regulatory relief includes relief from use of government-unique specifications and standards. Since a major objective of the Defense Acquisition Pilot Program is to promote standard, commercial industrial practices, functional performance and commercial specifications and standards will be used to the maximum extent practical. Federal or military specifications and standards may be used only when no practical alternative exists that meet the user's needs. Defense acquisition officials (other than the Program Manager or Commodity Manager) may only require the use of military specifications and standards with advance approval from the Under Secretary of Defense for Acquisition and Technology, the Head of the DoD Component, or the DoD Component Acquisition Executive.

§ 2.4 Designation of participating programs.

(a) Pilot programs may be nominated by a DoD Component Head or Component Acquisition Executive for participation in the Defense Acquisition Pilot Program. The Under Secretary of Defense for Acquisition and Technology shall determine which specific programs will participate in the pilot program and will transmit to the Congressional defense committees a written notification of each defense acquisition program proposed for participation in the pilot program. Programs proposed for participation must be specifically designated as participants in the Defense Acquisition Pilot Program in a law authorizing appropriations for such programs and provisions of law to be waived must be specifically authorized for waiver.

(b) Once included in the Defense Acquisition Pilot Program, decision and approval authority for the participating program shall be delegated to the lowest level allowed in the acquisition regulations consistent with the total cost of the program (e.g., under DoD Directive 5000.1, [3] an acquisition program that is a major defense acquisition program would be delegated to the appropriate Component Acquisition Executive as an acquisition category IC program)

(c) At the time of nomination approval, the Under Secretary of Defense for Acquisition and Technology will establish measures to judge the success of a specific program, and will also establish a means of reporting progress towards the measures.

§ 2.5 Criteria for designation of participating programs.

(a) Candidate programs must have an approved requirement, full program funding assured prior to designation, and low risk. Nomination of a candidate program to participate in the Defense Acquisition Pilot Program should occur as early in the program's life-cycle as possible. Developmental programs will only be considered on an exception basis.

(b) Programs in which commercial or non-developmental items can satisfy the military requirement are preferred as candidate programs. A nominated program will address which standard commercial, industrial practices will be used in the pilot program and how those practices will be applied.

(c) Nomination of candidate programs must be accompanied by a list of waivers being requested to Statutes, FAR, DFARS, DoD Directives [4] and Instructions,[5] and where applicable, DoD Component regulations. Waivers being requested must be accompanied by rationale and justification for the waiver. The justification must include:

(1) The provision of law proposed to be waived or limited.

(2) The effects of the provision of law on the acquisition, including specific examples.

(3) The actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

(4) A discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

(d) No nominated program shall be accepted until the Under Secretary of Defense has determined that the candidate program is properly planned.

Dated: April 4, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–9202 Filed 4–9–97; 8:45 am]

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[1] Copies of this Department of Defense publication may be obtained from the Government Printing Office, Superintendent of Documents, Washington, DC 20402.

[2] See footnote 1 to § 2.3(a).

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[4] See footnote 3 to § 2.4(b).

[5] See footnote 3 to § 2.4(b).

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Danger Zones and Restricted Areas

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is amending many of the danger zone and restricted area regulations to clarify that persons, as well as vessels or other listed watercraft, are subject to the restrictions placed on the use of and entry into the areas established by the danger zone and restricted area regulations. This clarification does not affect the size, location or further restrict the public's use of the areas. The danger zones and restricted areas continue to be essential to the safety and security of Government facilities, vessels and personnel and protect the public from the hazards associated with the operations at the Government facilities. We are also making several minor editorial changes to remove obsolete materials and reflect a change in the name of a Naval Command referenced in a restricted area regulation.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending danger zone and restricted area regulations in 33 CFR part 334, by inserting the word ''person'', or similar