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David A. Stawick,

Secretary of the Commission.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 83

[Docket ID DOD–2010–OS–0108]

RIN 0790–AI63

Alternative Dispute Resolution (ADR) and Conflict Management

AGENCY: Defense Legal Services Agency, DoD.

ACTION: Proposed rule.

SUMMARY: This part establishes policy and assigns responsibilities. It establishes a framework for encouraging the expanded use of alternative means of dispute resolution and conflict management practices as an integral part of normal business practices within the Department of Defense.

DATES: Comments must be received by June 24, 2011.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (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: Christine M. Kopocis, 703–696–1809.

SUPPLEMENTARY INFORMATION:

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been certified that 32 CFR part 83 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 section 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, or 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 these Executive Orders.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 83 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

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

It has been certified that 32 CFR part 83 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it [would or would not], if promulgated, have a significant economic impact on a substantial number of small entities.

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

It has been certified that 32 CFR part 83 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 83 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 83

Personnel, Dispute resolution.

Accordingly, 32 CFR Part 83 is proposed to be added to read as follows:

PART 83—ALTERNATIVE DISPUTE RESOLUTION (ADR) AND CONFLICT MANAGEMENT

Sec.
83.1 Purpose.
83.2 Applicability.
83.3 Definitions.
83.4 Policy.
83.5 Responsibilities.

Authority: 5 U.S.C. 571–584; Executive Order 12988.

§ 83.1 Purpose.

This part:

(a) Establishes policy pursuant to title 5, United States Code (U.S.C.) 571–584 and Executive Order 12988.

(b) Assigns responsibilities, and

(c) Establishes a framework for encouraging the expanded use of alternative means of dispute resolution and conflict management practices as an integral part of normal business practices within the Department of Defense.

§ 83.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

§ 83.3 Definitions.

These terms and their definitions are for the purpose of this part.

Alternative dispute resolution (ADR). Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, and use of ombuds, or any combination thereof.

ADR coordinating committee. The group consisting of the dispute resolution specialists designated under title 5 U.S.C. 571–584 or their representatives from the DoD Components and other officials appointed by the Deputy General Counsel (Legal Counsel) (DGC(LC)). The purpose of the ADR Coordinating Committee is to promote among the DoD Components the exchange of information on ADR and conflict management design and implementation.

Conflict management. A systemic process used to proactively identify and manage, at the earliest stage possible, conflict that can lead to one or more disputes, for the purpose of reducing the

incidence of disputes and increasing the likelihood that disputes that do arise may be resolved efficiently, effectively, and expeditiously. Techniques used in the process include, but are not limited to, structured unassisted negotiation (e.g., use of interest-based negotiation techniques), joint or collaborative problem-solving, coaching, and the design of an integrated conflict management system.

§ 83.4 Policy.

It is DoD policy that:

(a) The Department of Defense shall foster and advance collaboration and coordination among the DoD Components on the use of ADR and conflict management practices.

(b) Each DoD Component shall establish and implement ADR program(s) to resolve disputes at the earliest possible stage of the dispute and at the lowest possible organizational level. Any dispute, regardless of subject matter, is a potential candidate for ADR.

(c) DoD personnel are encouraged to identify and address underlying conflict in order to prevent and avoid disputes.

(d) All personally identifiable information (PII) collected during the course of the ADR process shall be maintained and protected in accordance with title 32, Code of Federal Regulations (CFR) part 310.

§ 83.5 Responsibilities.

(a) The General Counsel, Department of Defense (GC, DoD) shall develop policy and provide guidance on the administration of ADR.

(b) The DGC(LC), under the authority, direction, and control of the GC, DoD, shall:

(1) Monitor the implementation of policies and procedures pertaining to the use of ADR and conflict management practices within the Department of Defense.

(2) Establish a data collection and reporting system to evaluate the use of ADR and conflict management practices, as determined necessary, within the Department of Defense.

(3) Provide reports, as determined necessary, to the Secretary of Defense on the use of ADR within the Department of Defense.

(4) Chair the ADR Coordinating Committee.

(5) Ensure that the ADR Coordinating Committee:

(i) Shares information among the DoD Components on ADR and conflict management policies and practices.

(ii) Collaborates, as needed, in the design and implementation of ADR and conflict management practices.

(iii) Collaborates with other programs in the Department of Defense (e.g., Equal Employment Opportunity (EEO)) as needed to integrate ADR and conflict management into the normal business practices of the Department of Defense.

(iv) Establishes DoD-wide working groups and takes other steps to coordinate and facilitate ADR and conflict management practices within the Department of Defense.

(6) Ensure that the Associate Director, Center for Alternative Dispute Resolution, Defense Office of Hearings and Appeals:

(i) Provides support to the DGC(LC) in fulfilling the duties under this part.

(ii) Provides facilitation, administrative, and substantive support for the activities of the ADR Coordinating Committee.

(iii) Represents the Department of Defense as a member of the Interagency ADR Working Group Steering Committee.

(iv) Upon request of a DoD Component, provides consulting, education, and referral services for the design, implementation, training, and evaluation of ADR and conflict management practices.

(v) Upon request of a DoD Component, designates and makes available third-party neutrals qualified to conduct ADR and conflict management processes specified by the DGC(LC).

(c) The Director, Washington Headquarters Services (WHS), under the authority, direction, and control of the Director of Administration and Management, shall offer ADR services to WHS serviced customers in accordance with Administrative Instruction 106 (*see http://www.dtic.mil/whs/directives/corres/pdf/a106p.pdf*).

(d) The Heads of DoD Components shall:

(1) Appoint a dispute resolution specialist as the term is used in title 5 U.S.C. 571–584 and inform the Associate Director, Center for Alternative Dispute Resolution, of the appointment.

(2) Establish, implement, and operate programs to expand the use of ADR and conflict management practices that are appropriate to their Component and in accordance with public law and DoD policy.

(3) Review and revise, where appropriate, existing ADR and conflict management practices to promote increased awareness and use of ADR and conflict management consistent with DoD policy.

(4) Consistent with accomplishing their assigned missions, actively promote the use of ADR and conflict management practices.

(5) Identify and eliminate barriers to the use of ADR and conflict management practices.

(6) Provide copies of Component ADR policies and implementing procedures to the Associate Director, Center for Alternative Dispute Resolution.

(7) Provide representatives and information to the ADR Coordinating Committee and working groups, as requested.

(8) Provide training to employees involved in implementing and maintaining the Component's ADR policy and program.

(9) Collaborate with other DoD Components and other offices (e.g., Equal Employment Office) as appropriate when designing and implementing ADR and conflict management policies and procedures.

(10) Establish a data collection system to monitor ADR and conflict management practices as determined necessary and in compliance with the information requirement in § 83.6 of this part.

(11) Link the Component's ADR Web site, if one is established, to the ADR Web sites of other DoD Components as well as to the Interagency ADR Working Group Steering Committee Web site at *http://www.adr.gov.*

(12) Use existing Government resources, to the extent possible, to avoid unnecessary expenditure of time and money when designing and implementing dispute resolution and conflict management programs.

(13) Provide sufficient resources, including dedicated personnel resources, as necessary, to fulfill the responsibilities listed in this part.

(14) Ensure the collection, use, and release of PII complies with title 5 U.S.C. 552a as implemented by title 32 CFR part 310.

Dated: March 2, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 223

[Docket ID: DOD–2010–OS–0108]

RIN 0790–AI64

DoD Unclassified Controlled Nuclear Information (UCNI)

AGENCY: Department of Defense

ACTION: Proposed rule.