



COMPTROLLER

UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

NOV 20 1998



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Revised Waiver Policy and Procedures for Reinvention Laboratories

Earlier this year, President Clinton directed the Departments and Agencies to adopt, where it is determined to be appropriate, best practices relative to the granting of waivers to reinvention laboratories. In response to the President's memorandum, Secretary Cohen has issued revised policy regarding requests from reinvention laboratories to waive Department of Defense (DoD) issuances. The intent of the revised policy is to lower the approval authority within the Office of the Secretary of Defense, while increasing the level of authority to disapprove waiver requests from reinvention laboratories.

In his memorandum, dated November 14, 1998, Secretary Cohen directed this office to issue procedures to implement the revised waiver policy. These procedures are attached for your information and use. The waiver procedures, along with Secretary Cohen's policy document, are available on the DoD National Partnership for Reinventing (NPR) Government Home Page (<http://www.dtic.mil/npr/index.html>).

The Directorate for Management Improvement within the Office of the Under Secretary of Defense (Comptroller) remains the Department's focal point for NPR activities. For assistance involving the waiver request procedures or other NPR related activities, contact the Management Improvement Directorate at (703) 697-8580 (or DSN 227-8580).

Alice C. Maroni
Principal Deputy Under Secretary
of Defense (Comptroller)

Attachment

**Department of Defense
Under Secretary of Defense (Comptroller)**

**OSD Waiver Policy and Procedures for Reinvention Laboratories
(Effective November 20, 1998)**

I. Introduction

a. As part of the National Partnership for Reinventing Government (NPR), DoD Components are encouraged to create reinvention laboratories to experiment with innovative concepts and adopt best business practices. Should reinvention laboratories encounter policy and procedures that prevent or stall their improvement efforts, they have the option to request waivers, i.e., delegations of authority to deviate from existing internal policies and procedures.

b. The procedures described below are to be followed when reinvention laboratories wish to request waivers to DoD issuances.¹ These procedures give greater visibility to waiver requests and encourage decisions in a more timely fashion.

c. Subject to various provisions addressed in Sections II. through XI. below, it is Office of the Secretary of Defense (OSD) policy that:

1. The authority to approve requests from reinvention laboratories to waive DoD issuances has been delegated by the Secretary of Defense to the Deputy Assistant Secretary of Defense (DASD), or equivalent level. Since DoD directives are policy level regulations issued by the Secretary or Deputy Secretary of Defense, the authority to waive these directives should remain at the DASD, or equivalent, level. Approval to waive other DoD issuances, such as instructions and publications, may be further delegated as appropriate.

2. All waiver approvals require the concurrence of the Office of the General Counsel.

3. When determined appropriate, waiver requests from reinvention laboratories shall be acted upon within 30 days of receipt within OSD. However, no waiver shall go into effect until written approval has been granted.

4. Waiver requests may be disapproved only by a Principal Staff Assistant, or equivalent senior level OSD official, who reports directly to the Secretary or Deputy Secretary of Defense.

5. When waiver requests are disapproved, reinvention laboratories may appeal the disapproval to the Secretary or Deputy Secretary of Defense, except where disapprovals are based on legal or legislative restrictions.

d. Waiver policy and procedures are posted on the DoD NPR Home Page at <http://www.dtic.mil/npr/index.html>.

¹ DoD issuances are defined as directives, instructions, and other publications such as regulations, handbooks, and manuals.

II. References

a. Memorandum, dated November 14, 1998, "Revised Waiver Policy for Reinvention Laboratories," signed by William Cohen, the Secretary of Defense (attachment 1).

b. Memorandum, dated December 9, 1993, "Reinvention Laboratories," signed by Eleanor R. Spector, Director of Defense Procurement. This memorandum grants reinvention laboratories the authority to deviate from the Federal Acquisition Regulation (FAR) or the Defense Federal Acquisition Regulation Supplement (DFARS) under certain conditions. (See attachment 2 for conditions.)

c. DoD Directive 5025.1, "DoD Directives System Annual Index." This index contains numerical and alphabetical listings of DoD issuances. It identifies the OSD office with primary responsibility for the issuances, along with names and telephone numbers of action officers. It may be found at the following web site: <http://web7.whs.osd.mil/corres.htm>.

III. Exceptions

a. These procedures apply only to reinvention laboratories requesting waivers to DoD issuances. Other organizations requesting waivers to DoD issuances must follow applicable procedures established by their Component and the OSD functional office responsible for the issuance.

b. These procedures shall not be used to waive any provision required by statute; any practice, policy, procedure, or regulation required by law; any government-wide regulation; or any regulation issued by another Executive Branch agency that is binding on the Department of Defense. Requests for legislative changes should be worked through the Defense Legal Services Agency for inclusion in the DoD Omnibus Legislative Program that accompanies the DoD Authorization Bill.

c. Waiver requests relating to civilian employee working conditions must be consistent with any bargaining obligations and with labor-management partnership principles, including those set forth in the charter of the Defense Partnership Council.

d. Reinvention laboratory waiver requests relating to Component issuances should be directed to the Component NPR office or NPR point of contact (POC).

IV. The Waiver Request

a. Waiver requests should be prepared by the applicable reinvention laboratory desiring the waiver. As a minimum, the request must contain the following information:

1. Name of reinvention laboratory or center.
2. Waiver title (Subject or name used to refer to a specific waiver request).

3. Statement of the requirements of the policy/regulation to be waived (including identification of the DoD issuance by number and name, the paragraph, and line number of the applicable section) and an explanation of the reason the waiver is being requested. Attach a copy of the page(s) from the issuance containing the portion affected.
4. Description of the expected benefits.
5. Identification of the metrics to measure success if the waiver is granted.
6. Duration of the waiver (not to exceed 2 years).
7. A statement, signed by the reinvention laboratory's legal officer, stating that the granting of this waiver would not be inconsistent with any statute. Include the name, date, telephone and fax (commercial and DSN) numbers, e-mail address, and signature of the legal officer.
8. Reinvention laboratory point of contact, including name, phone and fax (commercial and DSN) numbers, and e-mail address.

V. Processing of Waiver Requests

a. The reinvention laboratory shall forward the request to its Component NPR office or NPR POC.² (Those requests received directly from laboratories will be returned to the Component NPR office or NPR POC, except under those conditions noted in the footnote below.) The Component NPR office will check for completeness and then forward the waiver request to the Management Improvement (MI) Directorate within the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)).

b. OUSD(C)/MI will review the request, assign a tracking number, enter the request into a DoD Waiver Database, identify the "lead" OSD office responsible for the issuance, and forward the request to the applicable Principal Staff Assistant, or equivalent senior level OSD official, who reports directly to the Secretary or Deputy Secretary of Defense, for review and a determination. With the tasking, OUSD(C)/MI will assign a suspense date by which a determination should be made. It is OSD's policy, that where feasible, to respond to waiver requests within 30 days of receipt in OSD.³

c. In forwarding the request to the applicable Principal Staff Assistant, the OUSD(C) memorandum will stress the importance of approving the waiver and to complete the review as quickly as possible. If it is not possible to grant the entire waiver, the OSD functional office will be encouraged to grant as much of the waiver as feasible.

d. The lead OSD functional office will review the waiver request and determine whether the waiver should be approved or disapproved, in conjunction with other OSD functional offices that may have an interest in the waiver request. The "lead" OSD functional office is responsible

² If the reinvention laboratory initiating the request does not have an NPR implementation office or POC, then the waiver request should be sent directly to the Office of the Under Secretary of Defense (Comptroller), Directorate for Management Improvement (MI).

³ If it is not possible for the OSD functional office to make its determination within the timeframe requested, the functional office should provide an interim response to the requesting reinvention laboratory with a copy of the correspondence to OUSD(C)/MI.

for resolving differing positions or nonconcurrences from other OSD functional offices. In those cases where differences or nonconcurrences with other OSD functional offices cannot be resolved, the issues shall be elevated to the appropriate Principal Staff Assistant for decision.

- e. The lead OSD functional office will coordinate its response with the OGC.

VI. Approving Waiver Requests

a. Waiver requests may be approved at the Deputy Assistant Secretary of Defense (DASD) or equivalent level position. When the waiver is approved (or partially approved), the lead OSD functional office will document the decision (and any constraints) in a memorandum to the reinvention laboratory requesting the waiver. The lead OSD functional office will send the response directly to the requesting laboratory with a copy to the originating Component's NPR office or POC. Additionally, the OSD functional office shall provide a copy of the decision memorandum to the OUSD(C)/MI, along with the supporting documentation.

b. Unless otherwise specified, the waiver will become effective as soon as a DASD, or equivalent official, signs the memorandum.⁴

VII. Disapproving Waiver Requests

a. If a waiver request is disapproved, the lead OSD functional office shall document the decision in a memorandum to the reinvention laboratory that requested the waiver and cite specific reasons why the request was not granted. The memorandum must be signed by the cognizant Principal Staff Assistant, or equivalent senior level OSD official, who reports directly to the Secretary or Deputy Secretary of Defense, and should be sent directly to the requesting laboratory with a copy to the originating Component's NPR office or POC. Additionally, the lead OSD functional office shall provide a copy of the decision memorandum to the OUSD(C)/MI, along with the supporting documentation.

b. The action will then be considered closed unless the reinvention laboratory elects to appeal the decision.

VIII. The Appeal Process

a. In those cases where a waiver request has been disapproved by the cognizant Principal Staff Assistant, or equivalent senior level OSD official, who reports directly to the Secretary or Deputy Secretary of Defense **and** there is no legal or legislative basis for the disapproval, the reinvention laboratory may appeal the decision.

⁴ If another OSD office nonconcurs with the decision to approve the waiver, the Principal Staff Assistant for the lead functional office shall sign the memorandum to the reinvention laboratory.

b. To appeal, a reinvention laboratory must prepare a rebuttal, outlining specific points and providing additional justification where appropriate. The reinvention laboratory must forward its appeal request to its Component NPR office or POC for review prior to being forwarded to the OUSD(C)/MI.

c. OUSD(C)/MI shall assign the appeal request to the applicable Principal Staff Assistant responsible for the DoD issuance involved, and provide a suspense date. The OSD functional office shall prepare a memorandum to the Secretary of Defense requesting final determination of the waiver request. The memorandum shall contain the following information:

1. Description of the waiver request.
2. Specific reasons for the initial disapproval.
3. Summary of the points raised by the requesting activity.
4. Responses to points raised by the requesting activity.

d. The cognizant Principal Staff Assistant, or equivalent senior level OSD official, who reports directly to the Secretary or Deputy Secretary of Defense, shall forward the memorandum to the Secretary of Defense through the USD(C).

e. The OUSD(C) shall notify the requesting laboratory and the originating Component's NPR office or POC of the final decision.

f. Where feasible, it is the goal of OSD to complete the resolution process within 60 days of receipt in OSD of the appeal request from the reinvention laboratory.

IX. Expiring Waivers

a. As indicated in Section IV. above, waivers shall be approved for a period of time, not to exceed 2 years. As the end of the waiver period approaches, the reinvention laboratory must determine whether it wishes to request that the waiver be continued.

b. If it is desired that the waiver be continued, the reinvention laboratory must request an extension or a permanent exception to the applicable DoD issuance. The reinvention laboratory shall submit a request for extension or permanent exception at least **30 days** prior to the expiration date of the waiver. Such requests shall contain the following information:

1. Name of reinvention laboratory or center.
2. Waiver title and OSD database number (if known).
3. Statement whether the request is for an extension (indicate time period) or permanent exception.
4. Copy of the memorandum that approved the initial waiver for which an extension or permanent exception is being requested.
5. Description of the waiver and the specific issuance involved. Attach a copy of the page(s) from the DoD issuance containing the portion affected.
6. Restatement of the metrics used to measure success and description of the results,

including resource and cost savings or avoidance. (If, based on the experience with the waiver, the reinvention laboratory would like to revise the performance metrics by which future results are measured, then the proposed new performance criteria must be provided and only a waiver extension can be requested.)

7. Identification of the resource impact of continuing or discontinuing the waiver.
8. Description of the lessons learned or problems encountered when implementing the waiver.
9. Recommended permanent change(s) to the DoD applicable issuance, if appropriate.
10. Point of contact, including name, phone and fax numbers, and e-mail address.

c. Requests for waiver extensions or permanent exceptions shall be processed using the same procedures as initial waiver requests. To facilitate the approval process, OUSD(C)/MI will include a form letter that the OSD functional office may use to approve extension requests or requests for permanent exception.

d. If, by 30 days prior to the waiver expiration date, a reinvention laboratory takes no action on an expiring waiver, it will be assumed that the waiver is no longer needed or desired, and it will expire on the scheduled date of expiration. If a request for extension or permanent exception is received by OUSD(C)/MI 30 days prior to the scheduled expiration date, the reinvention laboratory shall have the authority to operate under the provisions of the initial waiver while the request for extension or permanent exception is under consideration by OSD.

e. When appropriate, OSD functional offices are encouraged to consider permanent changes to DoD issuances or to extend waivers to additional organizations.

X. Expired Waivers and Waivers Expiring by January 31, 1999

a. This section describes interim procedures for those waivers to DoD issuances that have previously expired or will expire by January 31, 1999.

1. If a reinvention laboratory desires to continue a previously approved waiver that has expired, it must submit a request for extension or permanent exception. Re invention laboratories must submit such a request no later than January 1, 1999.

2. Such requests shall be prepared in accordance with Section IX. above and shall be processed using the procedures outlined in Sections V. through VIII. above.

3. For those waivers that have expired or will expire by January 31, 1999, and for which a request for extensions or permanent exception has been received by OUSD(C)/MI by January 1, 1999, reinvention laboratories may continue to operate under the provisions of the initial waivers until the disposition of the extensions are made.

b. Waivers expiring after January 31, 1999, shall follow the procedures in Section IX.

c. If a reinvention laboratory takes no action on an expired waiver, it will be assumed that the waiver is no longer desired, and it will expire on the scheduled date of expiration.

XI. Special Considerations

a. Acquisition waivers. In accordance with reference II.b. above, contracting activities participating with reinvention laboratories have the authority to deviate from the FAR and the DFARS under certain conditions. Acquisition waiver notifications shall be prepared in accordance with Section IV. above and shall be forwarded through the originating Component's NPR office or POC to OUSD(C)/MI. OUSD(C)/MI will record the waiver in the database and forward the notification to the Office of the Director, Defense Procurement (DDP). Unless notification to the contrary is received from the DDP to the requesting reinvention laboratory (with a copy to OUSD(C)/MI), waivers meeting the conditions in the reference may be considered approved. It should be noted that reference II. b. requires a quarterly report to the DDP of all deviations exercised.

b. Cross service waiver requests. Sometimes a reinvention laboratory may wish to obtain a waiver from an issuance maintained by another DoD Component. For example, a reinvention laboratory in the Defense Logistics Agency may have occasions to request relief from Service regulations. In such situations, the reinvention laboratory involved should request waivers directly from the other applicable DoD Components. Such requests should be forwarded to the applicable Component's NPR representative as identified on the DoD NPR Home Page (<http://www.dtic.mil/npr/nprpocs.html>). Since many Component regulations are based on DoD issuances, the cognizant Component needs to ensure that it is **not** inadvertently waiving a DoD issuance. In those instances where a waiver request involves both DoD and Component issuances, then the request should be processed in accordance with the procedures outlined in this document.

c. Non-DoD waiver requests. Occasionally, reinvention laboratories request waivers to non-DoD issuances, such as aspects of the Federal Travel Regulation, maintained by the General Service Administration. Such waiver requests should be forwarded to OUSD(C)/MI through the originating Component's NPR office or POC. OUSD(C)/MI will review such requests and, if appropriate, staff the request with the OSD offices that have primary responsibility for the subject matter. If these OSD functional offices concur, OUSD(C)/MI will forward the request to the Reinvention Laboratory Coordinator at the applicable government agency.

XII. Assistance. Additional information or assistance involving these procedures may be obtained through the Office of the Under Secretary of Defense (Comptroller), Directorate for Management Improvement, at (703) 697-8580 (or DSN 227-8580).

Attachments