

CLIENT ALERT

DoD Directive Mobilizes Agency Action on Climate Change

Feb.01.2016

On January 14, 2016, the U.S. Department of Defense (DoD) issued Directive 4715.21 to organize comprehensive agency-wide action to address and mitigate the risks of climate change on U.S. military assets and operations. The Directive implements for DoD Executive Order 13653 (Preparing the United States for the Impacts of Climate Change), which directed each federal agency to develop and institute policies designed to improve climate resilience. It also follows several DoD reports and assessments of the military's 7,000 bases, installations and facilities, which found that climate change poses a present security threat.

The Directive states that to maintain an effective military, DoD "must be able to adapt current and future operations to address the impacts of climate change" and must do so by (1) identifying the effects of climate change on DoD's mission, (2) taking those effects into consideration when developing plans and implementing procedures, and (3) anticipating and managing climate change risks.

The Directive establishes and assigns responsibilities for integrating climate change considerations into DoD planning throughout the Office of the Secretary of Defense (OSD). The Undersecretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) is charged with control and management of overall DoD climate risk policy and the management of climate-related risks. Under the oversight of the USD(AT&L) and others:

- The Assistant Secretary of Defense for Energy, Installations and Environment (ASD(EI&E)) will serve as the primary DoD adaptation official, and have responsibility for inter-agency coordination and providing guidance and direction on relevant technologies, standards and approaches.
- The Assistant Secretary of Defense for Logistics and Materiel (ASD(L&MR)) will have responsibility for considering climate change risks posed to logistics infrastructure, materiel acquisition and supply, and transportation modes.
- The Assistant Secretary of Defense for Acquisition (ASD(A)) will oversee integration, in accordance with DoDD 5000.01 and DoDI 5000.02, of climate change considerations - including greenhouse gas and lifecycle analyses, in (i) DoD acquisitions of weapon systems, platforms, equipment, and products, (ii) acquisition strategies, and (iii) defense acquisition workforce training and education.

In addition, the twelve OSD offices along with DoD Component Heads, the Chairman of the Joint Chiefs of Staff, and the Combatant Commanders, are charged with: integrating climate change considerations into DoD policy, guidance, plans and operations; assessing and managing risks to infrastructure (e.g. construction, asset management, utility systems), capabilities and capacity (e.g. force structure, basing, military operations, stability); managing vulnerabilities to acquisition and supply chains, and integrating resource considerations and cost management, including life-cycle costs, into DoD plans, business processes, material management, acquisition strategies, and all associated investment and risk management processes at "all relevant levels" within the DoD.

While the Directive provides broad, top-level climate change policy, there will likely be multiple new or modified policies, standards, guidelines and DoD regulations to implement the Directive's broad policies. As with so much federal policy today, government contractors will be on the front lines of implementation. Consequently, in the coming months there are a variety of questions that may be answered, including:

- When will DoD contracting activities begin adding climate change considerations into evaluation criteria? How will DoD measure such climate change considerations in competitive acquisitions?
- When will DoD implement the climate change policy in the Defense Federal Acquisition Regulation Supplement (DFARS)? What shape will the DFARS implementation take?&
- What impact will the Directive have on existing DoD contracts and programs?
- How widely will DoD require considering, monitoring, and reporting on greenhouse gas emissions and lifecycle impacts? To what extent will contractors be required to measure and mitigate climate change risks?
- Will all energy-related infrastructure, or transport modes and equipment, be evaluated based on long-term climate resilience metrics?
- Will additional energy and fuel usage requirements be imposed on contract awardees?
- What opportunities exist for contractors to shape the answers to these questions? What new risks do contractors face from the Directive and forthcoming implementation efforts?

As DoD continues to build energy and environmental considerations into its operations and acquisitions, we are available to assist our clients in monitoring the Directive's implementation, seeking opportunities to provide input into the process, incorporating these new requirements into companies' business plans, and ensuring compliance so as to navigate and mitigate the associated risks.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Mark A. Ries

Senior Counsel – Washington, D.C.

Phone: +1 202.624.2794

Email: mrries@crowell.com