



OFFICE OF THE CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

March 5, 2019

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF OF THE NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Directive-Type Memorandum (DTM) 19-003, "Small Entity Compliance Guides"

References: Administrative Instruction 102, "Office of the Secretary of Defense (OSD) Federal Register (FR) System," November 6, 2006
DoD Directive 5105.82, "Deputy Chief Management Officer of the Department of Defense," October 17, 2008
DoD Instruction 5025.13, "DoD Plain Language Program," April 11, 2013, as amended
Public Law 104-121, Title II, Section 212, "Small Business Regulatory Enforcement Fairness Act of 1996," March 29, 1996, as amended
Secretary of Defense Memorandum, "Disestablishment of the Deputy Chief Management Officer and Establishment of the Chief Management Officer," February 1, 2018
United States Code, Title 5, Section 605(b)

Purpose. In accordance with the authority in DoD Directive 5105.82 and the February 1, 2018 Secretary of Defense Memorandum, this DTM:

- Establishes policy, assigns responsibilities, and provides procedures for the publication of small entity compliance guides pursuant to Title II, Section 212 of Public Law 104-121, also known and referred to in this DTM as the "Small Business Regulatory Enforcement Fairness Act of 1996," as amended.

- This DTM is effective March 5, 2019; it will be incorporated into the next revision of Administrative Instruction 102. This DTM will expire effective March 5, 2020.

Applicability. This DTM applies to OSD, 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 (referred to collectively in this DTM as the “DoD Components”).

Policy. Small entity compliance guides:

- Will be published for each DoD rule, or group of related rules, for which a DoD Component is required by any law, regulation, or policy to prepare a final regulatory flexibility analysis in accordance with Section 605(b) of Title 5, United States Code.
- Contain suggestions to assist small entities; however, the guides must not include additional requirements, or diminish requirements, relating to any DoD rule or group of rules.

Responsibilities. See Attachment 1.

Procedures. See Attachment 2.

Releasability. Cleared for public release. Available on the DoD Issuances Website at <http://www.esd.whs.mil/DD/>.



Lisa W. Hershman
Acting Chief Management Officer of the
Department of Defense

Attachments:
As stated

ATTACHMENT 1
RESPONSIBILITIES

1. CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE (CMO). The CMO:

a. Provides guidance to the DoD Components regarding implementation of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, and the publication of small entity compliance guides.

b. Posts or links, as appropriate, DoD Component compliance guides in an easily identified location on the DoD Regulatory Program website.

c. Prepares an annual report describing the status of DoD compliance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, to be submitted by May 15th of each year to the Committee on Small Business and Entrepreneurship of the Senate; the Committee on Small Business of the House of Representatives; and any other committee of relevant jurisdiction.

d. Coordinates activities in Paragraphs 1.a through c in this attachment with each Director, Office of Small Business Programs, for the DoD and any pertinent DoD Component.

2. DOD COMPONENT HEADS. The DoD Component heads:

a. Ensure that their Component publishes one or more small entity compliance guides for each DoD rule, or group of related rules, for which the DoD Component is required by any law, regulation, or policy to prepare a final regulatory flexibility analysis in accordance with Section 605(b) of Title 5, United States Code. These guides must meet the standards and publication and distribution requirements of this DTM.

b. Provide certification of Component compliance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, to the Office of the CMO at osd.mc-alex.ocmo.mbx.osdfederalregister@mail.mil no later than April 30th of each year.

c. Establish procedures to:

(1) Assign responsibility for publishing Component's small entity compliance guides and for certifying Component compliance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, to the Component chief management officer.

(2) Assign responsibilities for providing compliance guidance to small entities under Sections 212 and 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended.

(3) Require coordination with the Component small business, legal, and other offices of relevant functional or subject matter expertise.

d. Incorporate the procedures in Paragraphs 2.c.(1) through (3) in their rulemaking process.

ATTACHMENT 2

COMPLIANCE GUIDE REQUIREMENTS

1. COMPLIANCE GUIDE CONTENTS.

a. Small entity compliance guides will explain to small entities, in plain language in accordance with DoD Instruction 5025.13, what is required of them regarding compliance with DoD regulations. Each guide must include:

(1) A description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met.

(2) A description of possible procedures, such as conducting tests that may assist a small entity in meeting such requirements, except that compliance with any procedures described pursuant to this section does not establish:

(a) Compliance with the rule; or

(b) Presumption or inference of such compliance.

b. In any civil or administrative action against a small entity for a violation occurring after the effective date of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties, or damages.

2. PUBLICATION AND DISTRIBUTION. Each compliance guide must be published, posted, and distributed on the same date as the date of publication of the final rule, but not later than the date on which the requirements of the rule become effective.

a. Compliance guides must be posted in an easily identified location on the DoD Component website, and the link must be provided to the Office of the CMO at osd.mc-alex.ocmo.mbx.osdfederalregister@mail.mil.

b. Compliance guides must be distributed to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

3. OTHER CONSIDERATIONS. DoD Components may:

a. Prepare separate compliance guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides.

b. Prepare one or more compliance guides that apply to a rule or a group of related rules.

GLOSSARY

ABBREVIATIONS AND ACRONYMS

CMO	Chief Management Officer of the Department of Defense
DTM	directive-type memorandum