

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE COALITION FOR COMMON  
SENSE IN GOVERNMENT  
PROCUREMENT,

Plaintiff,

v.

UNITED STATES OF AMERICA and  
UNITED STATES DEPARTMENT OF  
DEFENSE,

Defendant.

Civil Action No. 08-996 (JDB)

**ORDER**

Upon consideration of [44] plaintiff's motion for partial summary judgment and [46] defendants' cross-motion for partial summary judgment, the parties' several memoranda, the entire record herein, and for the reasons stated in the Memorandum Opinion issued on this date, it is hereby

**ORDERED** that plaintiff's motion for partial summary judgment and defendants' motion for partial summary judgment are each **GRANTED in part and DENIED in part**; it is further

**ORDERED** that plaintiff's motion is **GRANTED** and defendants' motion is **DENIED** with respect to the Defense Department's conclusion that 10 U.S.C. § 1074g(f) required manufacturer refunds in the final rule; it is further

**ORDERED** that plaintiff's motion is **DENIED** and defendants' motion is **GRANTED** with respect to the Defense Department's conclusion that 10 U.S.C. § 1074g(f) required that the Federal Ceiling Prices apply to any TRICARE retail pharmacy program prescription filled on or

after January 28, 2008; it is further

**ORDERED** that the rule is **REMANDED without vacatur** for the Defense Department to consider in its discretion whether to readopt the current iteration of the rule or adopt another approach to implement 10 U.S.C. § 1074g(f); and it is further

**ORDERED** that the Defense Department shall file a status report by not later than March 1, 2010, documenting its consideration on remand.

**SO ORDERED.**

/s/ John D. Bates  
JOHN D. BATES  
United States District Judge

Date: November 30, 2009