

**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