

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Aug. 1, 2011 through Aug.31, 2011 to the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). Where applicable, other acquisition related information is also provided.

If you are interested in more information on any of these subjects, the source document is referenced. FACs can be accessed at <http://www.acqnet.gov/far/index.html> , DFARS Change Notices at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>, and all proposed, final, and interim rules are published in the Federal Register (FR) at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

FAR CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
	NONE		

PROPOSED FAR CHANGES			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2009-042	A correction to a proposed change published in the Federal Register (FR) on June 28, 2011 was issued. The proposed rule concerns Documenting Contractor Performance and the comment closing date is extended by 30 days because text already in the FAR was inadvertently omitted from the restatement of section 42.1503. The text was not intended to be removed, and is being restored at 42.1503(d) and 42.1503(h)(1) in the proposed rule.	Aug. 9, 2011	Extended until Sep. 8, 2011
2009-042	The comment period for the proposed change for the case listed above was again extended.	Aug. 16, 2011	Extended until Sep. 29, 2011

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2011-D025	DoD is adopting an interim rule published March 17, 2011 as a final rule with minor changes. The interim rule implemented part of National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011, which provides a domestic nonavailability exception to the requirement known as the Berry Amendment to acquire only domestic hand or measuring tools.	Aug. 19, 2011	Change Notice 081911
2011-D023	DoD is issuing an interim rule to implement sections of the NDAA for FY 2008, which established minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions.	Aug. 19, 2011	Change Notice 081911
2010-D022	DoD issued a final rule from a proposed rule issued March 17, 2011 to add a contract clause that clearly identifies any items being purchased that are critical safety items so that the proper risk-based surveillance can be performed.	Aug. 19, 2011	Change Notice 081911
2009-D008	DoD issued a final rule based on a proposed rule published Dec. 3, 2010 regarding Government Property, to reflect the recent revisions to Government Property elsewhere in the Code of Federal Regulations. DoD is revising subparts 245.6 and 245.7 to be consistent with the changes to FAR subparts 45.6 and 45.7, published in the Federal Register on May 15, 2007.	Aug. 19, 2011	Change Notice 081911

PROPOSED DFARS REGULATIONS			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2011-D039	DoD is proposing to amend the DFARS to add a new subpart and associated contract clauses to address requirements for safeguarding unclassified DoD information. DoD published a proposed rule on June 29, 2011, with a request for comments by August 29, 2011. DoD is extending the comment period for 93 days to provide additional time for interested parties to review the proposed DFARS changes.	Aug. 22, 2011	Extended until Nov. 30, 2011

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OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
On July 20, 2011 GSA issued a notice of a public meeting to be held regarding the Federal Travel Regulation (FTR) announcing to the general public an effort to streamline travel policies, incorporate travel efficiency and effectiveness, and incorporate industry best practices. A second notice was issued to correct the dates from Sep. 7 and 8, 2011 to Sep. 20 and 21, 2011.	Aug. 2, 2011	Federal Register
NASA has adopted, without change, an interim final rule published Feb. 8, 2011 amending the NASA FAR Supplement (NFS) to implement the FAR Award Fee revision issued in Federal Acquisition Circular (FAC) 2005-46 which implemented section 814 of the NDAA and section 867 of the 2009 NDAA and which required agencies to implement changes and policies regarding in how award fees are linked, earned, and awarded.	Aug. 2, 2011	Federal Register
The Department of State (DoS) is amending the International Traffic in Arms Regulations (ITAR) in Section 126.1 to update country policies regarding Afghanistan, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Eritrea, Fiji, Iraq, Lebanon, Liberia, North Korea, Sierra Leone, Somalia, Sri Lanka, Yemen, and Zimbabwe, and to correct administrative and typographical errors.	Aug. 8, 2011	Federal Register
GAO issued a report entitled, "Acquisition Planning: Opportunities to Build Strong Foundations for Better Service Contracts." In this report GAO reviewed the practices of the Departments of Health and Human Services (HHS) and Homeland Security (DHS), the National Aeronautics and Space Administration (NASA), and the U.S. Agency for International Development (USAID). These agencies have established policies that set different requirements and levels of oversight for acquisition planning which includes written acquisition plans, requirements development, cost estimation, and incorporation of lessons learned, which are critical to the process. HHS, DHS, and NASA require written acquisition plans that align closely with elements defined in the FAR--USAID does not. GAO found that the agencies did not always take full advantage of acquisition planning to develop a strong foundation for the contracts GAO reviewed, but some have identified ways to encourage improved acquisition planning. The full report can be found at: http://www.gao.gov/products/GAO-11-672	Aug. 9, 2011	GAO Report 11-672
GSA issued Federal Travel Bulletin (FTR) 11-08 Relocation Allowances--Standard Mileage Rate for Moving Purposes. The Internal Revenue Service (IRS) Standard Mileage Rate for moving purposes is the rate at which agencies will reimburse an employee for using a privately owned vehicle for relocation on a worldwide basis. On June 23, 2011, the IRS announced that as of July 1, 2011, the relocation mileage rate would increase to \$0.235 until December 31, 2011. FTR Bulletin 11-08 and all other FTR Bulletins may be found at http://www.gsa.gov/federaltravelregulation .	Aug. 9, 2011	Federal Register

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The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, published a final rule to eliminate the exemption from regulations regarding Cost Accounting Standards for contracts executed and performed entirely outside the U. S., its territories, and possessions.	Aug. 9, 2011 Effective Oct. 11, 2011	Federal Register
The DoD, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L) published a final rule which establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract during contingency operations, combat operations or other significant military operations. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel. This Rule supplements DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," which provides guidance for all DoD contractors operating in contingency operations. This Rule was published as an Interim Final Rule on July 17, 2009 because there was insufficient policy and guidance regulating the actions of DoD and other governmental PSCs and their movements in operational areas. This Rule ensures compliance with laws and regulations pertaining to Inherently Governmental functions, and ensures proper performance by armed contractors.	Aug. 10, 2011 Effective Sep. 12, 2011	Federal Register
USD AT&L issued a memo entitled, "Upcoming Changes to the Purchasing and Industrial/Contract Property Management Curriculum in FY 12." This memorandum notifies the contracting workforce of changes to the curriculum and DAWIA certification standards for the Purchasing, and industrial/Contract Property Management career fields, effective Oct. 1, 2011. The changes are driven by the new contracting curriculum. Many of the core contracting courses are part of the certification requirements for the Purchasing, and Industrial/Contract Property Management career fields. The full memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004677-11-DPAP.pdf	Aug. 10, 2011	DPAP Website
The Department of the Interior is amending the Department of the Interior Acquisition Regulation to be consistent with the FAR, and to add a new clause covering contract administration roles and responsibilities. A proposed rule was published in the F.R. on Mar. 22, 2011 and no comments were received.	Aug. 12, 2011	Federal Register
President Obama issued an extension to Executive Order (E.O.) 13222 which declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the U. S. in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond	Aug. 16, 2011	Federal Register

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August 17, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), the President continued for 1 year the national emergency declared in this E.O.		
DPAP issued a memo announcing the issuance of a draft “DoD Guidebook for Contract Government Property Administration.” Comments on the document must be made by Aug. 31, 2011. The full text can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004754-11-DPAP.pdf .	Aug. 17, 2011	DPAP Website
GSA issued a final rule that revises the rules governing proceedings before the Civilian Board of Contract Appeals (Board). The rules are amended to provide procedures for the electronic filing of documents in proceedings before the Board. Electronic filing is increasingly available in judicial and administrative tribunals to provide parties with a faster, more efficient, and less costly way to submit their documents. In addition, although electronically filed documents will be docketed as received only during Board working hours, they may be transmitted at any time from any location with Internet access. This amendment is a non-substantive change to the Rules that is intended to improve the efficiency and effectiveness of the Board's programs by providing parties with an additional option for filing their documents with the Board. It does not affect any of the other methods currently available, including the delivery of documents in person, by courier or United States Postal Service, or by facsimile transmission.	Aug. 18, 2011	Federal Register
DPAP issued a memo entitled, “Maximizing Small Business Utilization under Multiple Award Contracts.” This memorandum at provides further guidance to award contracts to small businesses under a Multiple Award Schedule (MAS) or a Federal Supply Schedule (FSS). This memo reminds the contracting community of the requirement to consider small businesses when ordering from the FSS and to consider more than one small business as currently required when using FAR 8.405-5(b) prior to making an award under an order or blanket purchase agreement. The full memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA004674-11-DPAP.pdf .	Aug. 19, 2011	DPAP Website
USD AT&L issued a memo entitled, “Should-cost and Affordability.” This memo discusses the confusion as to how to implement both “should-cost” and “affordability as a requirement” particularly early in the program’s life cycle before engineering and manufacturing development and production. The full memo is available at: http://www.acq.osd.mil/docs/Should-cost%20and%20Affordability.pdf .	Aug. 24, 2011	ACQ Website
GSA issued Per Diem Bulletin 12-01, for FY 2012 Continental United States (CONUS) per diem rates. This Per Diem Bulletin updates the maximum per diem amounts in existing per diem localities. The CONUS per diem rates prescribed in Bulletin 12-01 may be found at http://www.gsa.gov/perdiem . In conjunction with the annual lodging study, GSA identified one new non-standard area (NSA): Alexandria/Leesville/ Natchitoches, Louisiana (Allen, Jefferson Davis, Natchitoches, Rapides, and	Aug. 25, 2011	Federal Register

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<p>Vernon Parishes). In addition, GSA reviewed all of the locations that changed from a NSA to the standard CONUS designation in FY 2011. Of those locations, the following areas will once again become NSAs in FY 2012: Montgomery, Alabama (Montgomery and Autauga Counties); Ocala, Florida (Marion County); Michigan City, Indiana (LaPorte County); Benton Harbor, Michigan (Berrien County); Mackinac Island, Michigan (Mackinac County); Mount Pleasant, Michigan (Isabella County); Jefferson City, Missouri (Cole County); and Sheboygan, Wisconsin (Sheboygan County).</p>		
<p>The OFPP, CAS Board, published public notification of the decision to discontinue the rulemaking on the development of an amendment to Cost Accounting Standard (CAS) 416 regarding the use of the term “catastrophic losses” at 48 CFR 9904.416-50(b)(1). This is part of the Board’s statutory rulemaking process, which requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard.</p>	Aug. 26, 2011	Federal Register
<p>The Department of Labor (DOL) issued final regulations to implement E. O. 13495, “Nondisplacement of Qualified Workers Under Service Contracts” dated Jan. 30, 2009. This E.O. established a general policy of the Federal Government concerning service contracts and solicitations for service contracts for performance of the same or similar services at the same location. This policy mandates the inclusion of a contract clause requiring the successor contractor and its subcontractors to offer those employees employed under the predecessor contract, whose employment will be otherwise terminated as a result of the award of the successor contract, a right of first refusal of employment under the successor contract in positions for which they are qualified. The effective date for this final rule is pending, and DOL will publish a notice in the Federal Register announcing the effective date once it is determined. Once effective, a change will be necessary to the FAR.</p>	Aug. 29, 2011	Federal Register
<p>DPAP issued a memo entitled, “Defense-Wide Contract Clause Logic Capability.” This memo provides a draft Functional Requirement Document (FRD) for an enterprise clause logic capability. The FRD establishes the high level working requirements for the capability and sets the vision for uniform implementation of FAR and DFARS provisions and clauses across DoD. Implementation of a shared clause logic capability will increase efficiency, lower costs and increase consistency and accuracy of clause selection in DoD. The full text of the memo and the FRD can be found at:</p> <p>http://www.acq.osd.mil/dpap/policy/policyvault/USA004983-11-DPAP.pdf</p>	Aug. 31, 2011	DPAP website

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CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
<p>PCCP Constructors, Joint Venture, of Fort Worth, TX, and Bechtel Infrastructure Corporation, of Frederick, MD, protested the award of a design-build contract to CBY Design Builders, of New Orleans, LA, under a request for proposals issued by the Department of the Army, U.S. Army Corps of Engineers, for permanent canal closures and pumps ("permanent pumps") along three outfall canals at or near Lake Pontchartrain, LA. The protesters challenged the agency's evaluation of their own and the awardee's technical proposals, and contended that CBY has an organizational conflict of interest (OCI), which the agency did not reasonably investigate or mitigate. GSA sustained the protest and found that the agency's investigation of the awardee's alleged unequal access to information OCI was unreasonable, where the agency concluded that the awardee's hiring of a high-level government employee from the office responsible for the project being procured created a potential conflict, but limited its review to what responsibility and role the government employee had in the procurement prior to his retirement without any consideration of the employee's access to non-public, source selection information, and where the record establishes the employee's continued daily contact with members of the source selection team and access to inside information concerning the agency's build-to-budget concept. The full decision can be found at: http://www.gao.gov/decisions/bidpro/405036.htm</p>	<p>Aug. 4, 2011 Redacted and released Aug. 12, 2011</p>	<p>405036; B- 405036.2; B- 405036.3; B- 405036.4; B- 405036.5; B- 405036.6,</p>