

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from Feb. 1, 2011 through Feb. 28, 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
2010-005	DoD, GSA, and NASA are proposing to amend the FAR to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP). In June 2009, the FASB announced, in its Statement Number 168, that effective for financial statements issued for interim and annual periods ending after September 15, 2009, the FASB ASC would become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. The FASB stated that this codification supersedes existing references in U.S. GAAP. Consequently, DoD, GSA, and NASA are updating the superseded references in three FAR sections with the GAAP Codification references. The revisions to the three FAR sections are intended to have no effect other than to simply replace the superseded references with updated references. The references to the prior GAAP in FAR 31.205-6(o)(2)(iii)(A)(1) will be handled in a separate FAR case.	Feb. 16, 2011	Apr. 18, 2011

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-D050	DoD issued a final rule amending the DFARS to require contractors to tag, label, or mark Government-furnished property items identified in the contract as subject to serialized item management. This rule finalizes a proposed rule published on May 7, 2010. It provides a clause DFARS 252.245-7001, Tagging, Labeling, and Marking of Government-Furnished Property (GFP), requiring contractors to tag, label, or mark GFP items identified in the contract when such items are subject to serialized item management.	Feb. 2, 2011	Change Notice 020311
2008-D049	DoD issued a final rule to a proposed rule published April 30, 2010 which requires contractors to report loss of Government property to the Defense Contract Management Agency (DCMA) eTools application. This final rule provides a clause at DFARS 252.245-7002, Reporting Loss of Government Property.	Feb. 2, 2011	Change Notice 020311
2006-D021	DoD issued a final rule amending the DFARS to address award-fee contracts based on a proposed rule published on Apr. 30, 2010. This final rule eliminates the use of provisional award-fee payments, prohibits roll-over of unearned award fee, and requires that at least 40% of the award-fee pool be available for the final performance evaluation with the intent of incentivizing the contractor throughout performance of the contract. A new clause 252.216-7005 Award Fee sets forth the use of award fees in DoD contracts.	Feb. 14, 2011	Change Notice 021411
2009-D033	DoD is adopting as final, without change, an interim rule published an July 13, 2010, amending the DFARS to implement the Fiscal Year (FY) 2010 National Defense Authorization Act (NDAA), section 820, entitled "Publication of Notification of Bundling of Contracts of the Department of Defense." The interim rule added a requirement at DFARS 205.205-70 to publish a notification of the intention to bundle a DoD procurement at least 30 days prior to the release of a solicitation or placing an order without a solicitation. This notification requirement is in addition to the existing requirements for market research at DFARS 210.001.	Feb. 22, 2011	Change Notice 022411
2009-D027	DoD is adopting without change an interim rule published on June 8, 2010 amending the DFARS to implement section 806 of the NDAA for FY 2010 which authorizes an agency that is an element of the intelligence community to award a contract for supplies or services in excess of the simplified acquisition threshold for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency. The public comment period closed August 9, 2010 with no comments received.	Feb. 22, 2011	Change Notice 022411

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DFARS CHANGES (Cont'd)			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2011-D001	DoD is issuing a final rule to implement section 1335 of the Small Business Jobs Act of 2010 which repealed the Small Business Competitiveness Demonstration Program. This final rule amends the DFARS by deleting subpart DFARS 219.10	Feb. 22, 2011	Change Notice 022411

PROPOSED DFARS REGULATIONS			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
N/A	DoD issued a proposed rule to update the Rules of the Armed Services Board of Contract Appeals (ASBCA). The proposed rule proposes to amend DFARS Appendix A, ASBCA, Part 2--Rules, to implement statutory increases in the thresholds relating to the submission and processing of contract appeals, update statutory references, and other administrative information.	Feb. 11, 2011	Mar. 14, 2011
2009-D043	DoD is proposing to amend the DFARS to revise and expand reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources. DoD initially published this proposed rule in the FR on Dec. 22, 2010 with a request for comments by Feb. 22, 2011 (see Contracting News to Note for Dec. 2010.) DoD is extending the comment period for 45 days to provide additional time for interested parties to review the proposed DFARS changes. DoD is planning a public meeting and detailed information on the meeting will be published in the Federal Register at a later date.	Feb. 18, 2011	Apr. 8, 2011
2010-D014	DoD is proposing to amend the DFARS to update requirements relating to the use of passive Radio Frequency Identification (RFID). Section 211.275, Radio frequency identification is proposed to be changed, to” --Clarify that the RFID requirement pertains solely to “passive RFID”; --Supply a link to a web site in lieu of individually listing ship-to addresses; --Enable contracting officers to add tagging requirements to contracts shipping to DoD Activity Address Codes (DoDAACs) not specifically listed at the web site; --Make pharmaceuticals subject to the Class VIII RFID tagging requirements; and --Revise the clause at 252.211-7006, including the title, to reflect the changes above.	Feb. 22, 2011	Apr. 25, 2011

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OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
GAO issued a report entitled, “Contract Audits: Role in Helping Ensure Effective Oversight and Reducing Improper Payments.” In this report GAO states federal contract obligations—which have increased by \$100 billion in real terms since fiscal year (FY) 2005, from \$435 billion to \$535 billion in FY 2010—poses significant risk if effective contract oversight is not in place. GAO’s work has identified contract management weaknesses, significant problems with federal agency controls over contract payments, and internal control deficiencies throughout the contracting process, including contract auditing. GAO also found audit quality problems at DCAA offices nationwide, including compromise of auditor independence, insufficient audit testing, and inadequate planning and supervision. GAO made 17 recommendations to DOD and the DOD Inspector General (IG) to address the weaknesses it identified at DCAA. DOD and DCAA have taken a number of actions on these recommendations, and have actions under way on other recommendations. The full report is located at http://www.gao.gov/products/GAO-11-331T	Feb. 1, 2011	GAO Report GAO-11-331T
A proposed rule was published to update policies and responsibilities for the DoD Personnel Security Program (PSP) in accordance with the provisions of current U.S. Code, Public Laws, and Executive Orders (E.O.) DoD Directive (DoDD) 5200.2, Personnel Security Program (PSP), codified at 32 CFR 156, was issued April 9, 1999. DoD is reissuing this directive as a DoD Instruction to update existing policy regarding the DoD Personnel Security Program and also incorporate new policy related to Homeland Security Presidential Directive-12 (HSPD-12). This rule provides PSP policy fundamental to preventing unauthorized disclosure of sensitive and classified information that could cause irreparable damage to national security. The policy portion relating to HSPD-12 implements investigative and adjudicative policy for DoD’s personal identity verification credential.	Feb. 2, 2011 Comments by Apr. 4, 2011	Federal Register
The Small Business Administration (SBA) is amending its regulations to clarify the effect, across all small business programs, of initial and appeal eligibility decisions on the procurement in question; increase the amount of time that SBA has to render formal size determinations; require that SBA's Office of Hearings and Appeals (OHA) issue a size appeal decision within 60 calendar days of the close of the record, if possible; increase the amount of time that SBA has to file North American Industry Classification System (NAICS) code appeals; alter the NAICS code appeal procedures to comply with a Federal Court decision; clarify that contracting officers must reflect final agency eligibility decisions in Federal procurement databases and goaling statistics; and make other changes to size status protest and appeal rules. This final rule implements a proposed rule published Mar. 1, 2010.	Feb. 2, 2011 Effective Mar. 4, 2011	Federal Register

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OTHER CHANGES, NOTICES, AND MEMORANDA		
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<p>The Office of Management and Budget (OMB) issued a memorandum entitled, “‘Myth-Busting’: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.” The purpose of this memorandum is to: 1) identify common misconceptions about vendor engagement that may be unnecessarily hindering agencies’ appropriate use of the existing flexibilities, and provide facts and strategies to help acquisition professionals benefit from industry’s knowledge and insight; 2) direct agencies to remove unnecessary barriers to reasonable communication and develop vendor communications plans, consistent with existing law and regulation, that promote responsible and constructive exchanges; and 3) outline steps for continued engagement with agencies and industry to increase awareness and education. The memo concludes that information gathered from industry sources plays an invaluable role in the acquisition process. For this reason, agencies must develop practices that will ensure early, frequent, and constructive communication during key phases of the process. The federal government’s ability to achieve successful program outcomes, effectively and efficiently, depends upon agencies establishing effective strategies for industry engagement and supporting those strategies with senior-level commitment. The document can be found on the OMB website: http://www.whitehouse.gov/search/site/Myth%20Busting?filters=im_og_gid:10275</p>	Feb. 2, 2011	OMB Website
<p>NASA issued an interim rule which revises the NASA FAR Supplement (NFS) to implement the FAR Award Fee revision issued in Federal Acquisition Circular (FAC) 2005-46. FAC 2005-46 significantly revised FAR Parts 16.305, 16.401, and 16.405-2, incorporating new requirements relative to the use of award fee incentives.</p>	Feb. 8, 2011	Federal Register
<p>DoD, GSA, and NASA published a notice that they are withdrawing the advance notice of proposed rulemaking published on May 13, 2010 requesting information that would assist in determining how best to amend the FAR to enable public posting of contract actions, should such posting become a requirement in the future, without compromising (1) contractors' proprietary and confidential commercial or financial information or (2) Government-sensitive information. The transparency effort is intended to promote efficiency in Government contracting consistent with the Administration's memorandum entitled Transparency and Open Government (Jan. 21, 2009, available at: http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/).</p>	Feb. 10, 2011	Federal Register
<p>NASA issued a proposal to revise the requirements in the NASA FAR Supplement (NFS) for contractors to establish and maintain an Earned Value Management System (EVMS) for firm-fixed-price (FFP) major system acquisitions. The proposal recognizes the reduction in risk associated with FFP contracts and intends to relieve contractors of an unnecessary reporting burden.</p>	Feb. 10, 2011 Comments by Apr. 11, 2011	Federal Register

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OMB published a notice of a revision to Circular A-94 which specifies certain discount rates in Appendix C which are to be used for cost-effectiveness analysis, including lease-purchase analysis. The revised discount rates are effective immediately and will be in effect through December 2011.	Feb. 11, 2011	Federal Register
The Department of Energy (DOE) is amending the DOE Acquisition Regulation (DEAR) regulations on contract appeals procedures, acquisition planning, and contracting methods and contract types to make changes to conform to the FAR, remove out-of-date coverage, and update references. This rule does not alter substantive rights or obligations under current law. DOE published a notice of proposed rulemaking on July 1, 2010.	Feb. 11, 2011 Effective date Mar. 14, 2011	Federal Register
The SBA published a rule to make changes to the regulations governing the section 8(a) Business Development (8(a) BD) program, the SBA's size regulations, and the regulations affecting Small Disadvantaged Businesses (SDBs). This change is the first comprehensive revision to the 8(a) BD program in more than ten years. Some of the changes involve technical issues such as changing the term "SIC code" to "NAICS code" to reflect the national conversion to the North American Industry Classification System (NAICS). On Oct. 28, 2009, SBA published a comprehensive proposal to revise the 8(a) BD program and several proposed revisions to SBA's size regulations. Some of the proposed changes involve technical issues. Others are more substantive and result from SBA's experience in implementing the current regulations. In addition, SBA has made changes in this final rule in response to comments received to its notice of proposed rulemaking. SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unduly preclude firms from being admitted to the program. In other cases, SBA determined that a rule is too expansive or indefinite and sought to restrict or clarify those rules. In one case, SBA made wording changes to correct past public or agency misinterpretation. Additionally, this rule makes changes to address situations that were not contemplated when the previous revisions to the 8(a) BD program were made.	Feb. 11, 2011 Effective date Mar. 14, 2011	Federal Register
DoD published a request for public comments indicating their understanding that some of its mandates, reporting requirements, and other acquisition practices encourage industry to adopt processes and make investments that increase costs, especially overhead costs, but do not contribute to value added in systems and services delivered to the Department. To implement the memorandum from Under Secretary of Defense (Acquisition, Technology, and Logistics) Dr. Ashton Carter, dated Sep. 14, 2010, Memorandum to Acquisition Professionals, DoD is requesting information from the industrial base to identify the sources of these costs, backed by specific, credible, convincing data. During the summer of 2010, industry voluntarily furnished nearly 500 suggestions to DoD as part of the first stage of Undersecretary Carter's Better Buying Power Initiative. Many of these suggestions were incorporated	Feb. 17, 2011 Comment by Mar. 31, 2011	Federal Register

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into the Sep. 14, 2010, memorandum; others involved changes that can only be made over the longer term or require additional follow-up data before they are ready for possible action. DoD hopes that the current request for comments will yield the additional data that it needs along with information about some additional areas of non-value-added cost. DoD's goal is to develop a fact-based program to reform cost-inflating practices.		
The Department of State (DoS) is proposing to amend the International Traffic in Arms Regulations (ITAR) to change the method of payment to electronic submission of registration fees. Definitions for "Foreign Ownership" and "Foreign Control" are to be added. Pursuant to the Paperwork Reduction Act, public comment is requested on the Statement of Registration, the form used for the submission of the registration fee.	Feb. 24, 2011 Comments by Apr. 25, 2011	Federal Register
The USD AT&L issued a memo entitled, "Improving Contractor Past Performance Assessments." This memo forwards the OFPP memo dated Jan. 21, 2011 on the same topic and stresses the importance of completing past performance assessments in a timely manner. It calls for guidance and controls to be improved. The full memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA000999-11-DPAP.pdf	Feb. 24, 2011	DPAP website

CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
NONE		