

CONTRACTING NEWS TO NOTE
Compiled by NCMA Saguaro Chapter

The following is a summary of key or significant proposed rules and actual changes from May 1, 2011 through May 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
2011-004	A correction to an interim rule published Mar. 16, 2011 to implement section 1347 of the “Small Business Jobs Act of 2010” was issued to correct a technical error. Section 1347 clarifies the contracting officer's (CO’s) ability to use discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a), HUBZone, or Service-disabled veteran-owned (SDVOSB) programs. There is no order of priority among small businesses in the 8(a) Business Development program, the HUBZone program, or the SDVOSB program.	May 6, 2010	FAC 2005-50 Correction
FAC 2005-52 issued May 31, 2011 w/ technical amendments, 1 interim, & 4 final rules:			
2010-001	An interim rule was issued to implement Executive Order (E.O.) 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and E.O. 13423, Strengthening Federal Environmental, Energy, and Transportation Management. This interim rule requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency's environmental management system.	May 31, 2011	FAC 2005-52
2008-020	A final rule was issued which provides procedures for closing out contract files. This case revises procedures for clearing final patent reports, quick-closeout procedures, and sets forth a description of an adequate final indirect cost rate proposal and supporting data. Comments from a proposed rule published on Aug, 20, 2009 were considered in the publication of the final rule.	Jun. 30, 2011	FAC 2005-52

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CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2008-009	An interim rule published on July 1, 2009 was adopted as final, with changes, to implement section 743 of Division D of the Omnibus Appropriations Act, 2009 which prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one. For Fiscal Year (FY) 2010, the same restrictions were continued under section 740 of Division C of the Consolidated Appropriations Act, 2010.	May 31, 2011	FAC 2005-52
2009-039	An interim rule published on Sep. 29, 2010 was adopted as final, without change, to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010, to authorize exemption from the Buy American Act for acquisition of information technology that is a commercial item.	May 31, 2011	FAC 2005-52
2010-017	A final rule was issued to add to the list of contract administration functions, the function to ensure that contractors have implemented the mandatory contractor business ethics program requirements. This final rule amends the FAR in response to recommendations from the Government Accountability Office (GAO) Report GAO-09-591, Defense Contracting Integrity--Opportunities Exist to Improve DoD's Oversight of Contractor Ethics Programs. The ethics program requirement flows from FAR 52.203-13, Contractor Code of Business Ethics and Conduct. This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function to ensure that contractors have implemented the mandatory contractor business ethics program requirements of FAR 52.203-13.	Jun. 30, 2011	FAC 2005-52

PROPOSED FAR CHANGES			
CASE NO.	DESCRIPTION	DATE PUBLISHED	COMMENTS DUE
2010-010	A correction to the preamble to a proposed rule published on Apr. 20, 2011, was published which adds text that was inadvertently omitted. This proposed change involved Service Contracts Reporting Requirements.	May 2, 2011	Jun. 20, 2011

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
2009-D028	DoD has adopted as final, with changes, the interim rule published Sep. 8, 2010 that implemented section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, which required DoD to develop guidance on personal services contracts. Section 831 required DoD to mitigate the risks associated with personal services by developing guidance enabling contracting officers to better distinguish between personal services and non-personal services.	May 5, 2011	Change Notice 20110505
2009-D037	DoD issued a final rule to amend the DFARS to address electronic business procedures for placing orders. A proposed rule was published on Oct. 1, 2010. The final rule adds the requirement to use DFARS 252.216-7006, Ordering, in lieu of the clause at FAR 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.	May 5, 2011	Change Notice 20110505
2009-D004	DoD issued a final rule to implement the requirements for minimizing the use of materials containing hexavalent chromium in items acquired by DoD (deliverables and construction materials hereafter referred to as deliverables). Hexavalent chromium is a chemical that has been used in numerous DoD weapons systems and platforms due to its corrosion protection properties; however, hexavalent chromium is a known carcinogen. This rule codifies a DoD policy for addressing the serious human health and environmental risks related to its use. The rule prohibits the delivery of items containing more than 0.1 percent by weight hexavalent chromium in any homogeneous material under DoD contracts unless there is no acceptable alternative to the use of hexavalent chromium.	May 5, 2011	Change Notice 20110505
N/A	DoD is making a technical amendment to the DFARS to add a mailing address of the General Services Administration (GSA) Debarment and Suspension Official to the DFARS at 209.405(a). Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the GSA Suspension and Debarment Official.	May 11, 2011	Change Notice 20110511

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DFARS CHANGES			
CASE NO.	DESCRIPTION	EFFECTIVE DATE	SOURCE
N/A	DoD is making technical amendments to the DFARS to direct CO's to additional guidance on supporting contingency operations and in-theater security cooperation efforts. This final rule adds language at 225.7404 to direct COs to additional guidance available on contract administration considerations when supporting contingency operations. The rule also adds language and a new subpart at 225.78 directing contracting officers to guidance on theater security cooperation efforts conducted in support of the geographic combatant commander, which may include support such as military exercises/training, base operations, and weapons procurement.	May 11, 2011	Change Notice 20110511
N/A	DoD is issuing a final rule to update the Rules of the Armed Services Board of Contract Appeals (ASBCA). The final rule implements Statutory increases in the thresholds relating to the submission and processing of contract appeals and updates statutory references and other administrative information.	May 11, 2011	Change Notice 20110511
2009-D038	DoD published an interim rule to improve the effectiveness of DoD oversight of contractor business systems. DoD published an initial proposed rule on Jan. 15, 2010. Based on the comments received and revisions made to the proposed rule, DoD published a second proposed rule on Dec. 3, 2010. The public comment period closed January 10, 2011. On January 7, 2011, the NDAA for FY 2011 was signed into law. NDAA section 893, Contractor Business Systems, set forth statutory requirements for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. Based on the comments received, the requirements of the NDAA, and subsequent revisions to the proposed rule, DoD is publishing this interim rule with request for comments.	May 18, 2011	Change Notice 20110518

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OTHER CHANGES, NOTICES, AND MEMORANDA		
DESCRIPTION	DATE	SOURCE
The Undersecretary of Defense, Acquisition, Technology, and Logistics (USD AT&L) issued a memo on “Federally Funded Research and Development Center (FFRDC) Management Plan and Associated How-To Guides.” This memo forwards a Management Plan and How-To Guides which supplement the previously issued memo dated Dec. 9, 2010. The full memo can be found at: http://www.acq.osd.mil/	May 2, 2011	USD AT&L Website
NASA is revising the NASA FAR Supplement (NFS) to update internal processing procedures related to suspension and debarment. Although the procedures do not impact the public and will not be codified in the Code of Federal Regulations, one related change does impact the public and that is a new requirement for contracting officers to notify prospective contractors if they are found to be non-responsible. Notification provides the prospective contractor with the opportunity to take corrective action prior to future solicitations. Any comments should be submitted on or before July 5, 2011.	May 5, 2011	Federal Register
NASA is also proposing to revise the NFS to consolidate and make changes to three currently-existing cross-waiver of liability clauses. The changes include consolidation of the three clauses into two clauses and changing the titles of two clauses to more closely align the clauses with current mission programs including International Space Station (ISS) activities, and Science or Space Exploration activities unrelated to the ISS. The existing Expendable Launch Vehicle (ELV) clause will be broadened to apply to contracts and subcontracts related to a launch of any kind other than one involving the International Space Station. The International Space Station (ISS) activities cross-waiver of liability clause is revised and its applicably broadened to include Space Shuttle activities related to the ISS. Accordingly, the Space Shuttle services clause will be deleted in its entirety with all Space Shuttle activity falling under one of the two remaining clauses. These proposed changes to the NFS are being made to align contract clauses with the regulatory authority established by a final rule published February 26, 2008, which established NASA’s cross-waiver of liability authority in two categories of NASA agreements. Any comments should be submitted on or before July 5, 2011.	May 5, 2011	Federal Register
The Director, Defense Procurement and Acquisition Policy (DPAP) published a memo entitled, “Class Deviation 2011-00011, Extension of Restrictions on Use of Mandatory Arbitration Agreements.” This memo requires that effective immediately, CO’s shall use the clause at DFARS 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, as prescribed at DFARS 222.7405, except that the prescription also applies to the use of funds appropriated or otherwise made available by the NDAA for FY 2011. This deviation is required to implement section 8102 of the NDAA and can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA002780-11-DPAP.pdf	May 6, 2011	DPAP website

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<p>DPAP issued a memo entitled, “Class Deviation—Removal of Exception to Wide Area Workflow for Foreign Vendors.” Effective immediately, for awards made to foreign vendors for work performed outside the U.S., COs shall not use the exception to WAWF at DFARS 232.7002(a)(2). This class deviation remains in effect until incorporated in the DFARS or is otherwise rescinded. DFARS case 2011-D027 is in process. The full text of the memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA002770-11-DPAP.pdf</p>	May 6, 2011	DPAP website
<p>DPAP also issued a memo entitled, “Procurement Support of Theater Security Cooperation Efforts.” This memo forwards a revised Department of State (DoS) Cable, “Procurement Roles and Responsibilities — General Service Officer and Department of Defense Personnel,” along with text of recently published DFARS Procedures Guidance and Information (PGI) language that puts forth guidance on planning for and executing such support. This revision was necessary because of an increase in DoD unauthorized commitments and lack of planning for military exercises and training events with host nations. The memo is located at: http://www.acq.osd.mil/dpap/policy/policyvault/USA002398-11-DPAP.pdf</p>	May 6, 2011	DPAP website
<p>GAO issued a report entitled, “Space Acquisitions: DOD Delivering New Generations of Satellites, but Space System Acquisition Challenges Remain.” GAO found that over the past two decades, DOD has had difficulties with nearly every space acquisition program, with years of cost and schedule growth, technical and design problems, and oversight and management weaknesses with the exception of programs—such as the Space Based Infrared System High and Advanced Extremely High Frequency programs .In this report GAO found that a long-standing problem in DOD space acquisitions is that program and unit costs tend to go up significantly from initial cost estimates, while in some cases the capability that was to be delivered goes down. The report compares original cost estimates and current cost estimates for the broader portfolio of major space acquisitions for FY 2010 through 2015. The wider the gap between original and current estimates, the fewer dollars DOD has available to invest in new programs. The cost of major space acquisition programs have increased by about \$13.9 billion from initial estimates for FY 2010 through 2015, almost a 286% increase. The full report is found at: http://www.gao.gov/new.items/d11590t.pdf</p>	May 11, 2011	GAO-11-590T

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GSA, DoD, and NASA published a notification and request for comments for a new information collection requirement concerning the Office of Management and Budget (OMB) Control Number 9000-00XX, FAR Case 2008-025, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, (Final Rule). Section 841(a) requires the Administrator for Federal Procurement Policy to develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions, and an associated personal conflicts-of-interest clause or set of clauses.	May 12, 2011 Comments due Jun. 13, 2011	Federal Register
The DoS is amending the International Traffic in Arms Regulations (ITAR) to establish a policy to address those who are unable to implement the exemption for intra-company, intra-organization, and intra-government transfers of defense articles and defense services by approved end-users to dual national and third-country nationals who are employees of such approved end-users. Prior to making transfers to certain dual national and third-country national employees under this policy, approved end-users must screen employees, make an affirmative decision to allow access, and maintain records of screening procedures to prevent diversion of ITAR-controlled technology for purposes other than those authorized by the applicable export license or other authorization.	May 16, 2011 Effective Aug. 15, 2011	Federal Register
DoS is amending the ITAR to update the policy regarding Libya to reflect the United Nations Security Council arms embargoes adopted in February and March.	May 24, 2011	Federal Register
DoS issued a final rule to make an administrative change to the Department of State Acquisition Regulation (DOSAR). It revises the DOSAR to allow the appointment of selected non-U.S. citizen locally employed staff, i.e., Foreign Nationals and Third Country Nationals, as contracting officers for acquisitions at \$25,000 and below. This change will permit streamlined procurement processes at applicable Department of State overseas posts.	May 25, 2011	Federal Register
In a joint memo issued by the Director, DPAP and the Deputy Chief Finance Officer entitled, "Internal Control Systems for Acquisition," a list of required internal controls for procurement systems or groupings of systems that perform procurement processes were provided. Systems involved in the processes of recording commitments, obligations, and making payments related to contract actions were also included for the purpose of these controls. The full text of the memo can be found at: http://www.acq.osd.mil/dpap/policy/policyvault/USA003224-09-DPAP.pdf .	May 25, 2011	DPAP Website
GSA issued a final rule to amend the General Services Administration Acquisition Regulation (GSAR) to revise sections that provide requirements for acquiring leasehold interests in real property (ref: GSAR Case 2006-G508 (Change 48)).	May 27, 2011 Effective Jun. 27, 2011	Federal Register

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CASES/DECISIONS OF INTEREST		
SYNOPSIS	DATE	CASE NO.
None		