



2016 Year in Review

A Summary of Acquisition Laws & Regulations

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Contents

Legislation	9
Appropriations Acts	9
Continuing Appropriations and Military Construction, Veterans Affairs and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (P.L. 114-223; 9/29/16)	9
Continuing Resolution, Fiscal Year 2017 (P.L. 114-254; 12/10/16)	9
Authorization Acts	9
Coast Guard Authorization Act of 2015 (P.L. 114-120; 2/8/16).....	9
Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016 (P.L. 114- 323; 12/16/16)	9
Fiscal Year 2017 National Defense Authorization Act (P.L. 114-328; 12/23/16)	10
Miscellaneous Laws	11
Grants Oversight and New Efficiency Act (“GONE” Act); (P.L. 114-117; 1/28/16)	11
Defend Trade Secrets Act (P.L. 114-153; 5/11/16)	11
FoIA Improvement Act of 2016 (P.L. 114-185; 6/30/16)	12
Fraud Reduction and Data Analytics Act of 2015 (P.L. 114-186; 6/30/16)	13
Foreign Aid Transparency and Accountability Act of 2016 (P.L. 114-191; 7/15/16)	13
MEGABYTE Act of 2016 (P.L. 114-210; 7/29/16)	13
21 st Century Cures Act (P.L. 114-255; 12/13/16)	13
GAO Civilian Task and Delivery Order Protest Authority Act of 2016 (P.L. 114-260; 12/14/26)	14
To Enhance Whistleblower Protection for Contractor and Grantee Employees (P.L. 114-261; 12/14/16)	14
Program Management Improvement Accountability Act (P.L. 114-264; 12/14/16)	15
SEC Small Business Advocate Act of 2016 (P.L. 114-284; 12/16/16)	15
Inspector General Empowerment Act of 2016 (P.L. 114-317; 12/16/16).....	15
American Innovation and Competitiveness Act (P.L. 114-329; 1/6/17)	15
Regulations	17
The President	17
Executive Order 13738: “Amendment to Executive Order 13673” (8/23/16)	17
Executive Order 13741: “To Establish Roles and Responsibilities of the National Background Investigations Bureau” (10/4/16)	17
Executive Order 13757: “Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities” (12/29/16).....	17
Federal Acquisition Regulation (FAR)	17

Payment of Subcontractors	17
Contractor Employee Internal Confidentiality Agreements (1/22/16).....	17
Prohibition on Reimbursement for Congressional Investigations and Inquiries (2/17/16).....	18
Federal Acquisition Circular (FAC) 2005-87 (3/7/16).....	18
Combatting Trafficking in Persons – Definition of “Recruitment Fees” (5/11/16).....	18
Administrative Cost to Issue and Administer a Contract (5/12/16)	18
Federal Acquisition Circular (FAC) 2005-88 (5/16/16).....	18
System for Award Management Registration (5/20/16)	19
Public Disclosure of Greenhouse Gas Emissions and Reduction Goals – Representation.....	19
Removal of Regulations Relating to Telecommunications	19
Acquisition Threshold for Special Emergency Procurement Authority (6/20/16).....	20
Strategic Sourcing Documentation (6/20/16).....	20
Federal Acquisition Circular (FAC) 2005-89 (7/14/16).....	20
Fair Pay and Safe Workplaces.....	20
Audit of Settlement Proposals (9/14/16).....	21
Federal Acquisition Circular (FAC) 2005-91 (9/30/16).....	21
Clarification of Requirement for Justifications for 8(a) Sole Source Contracts (11/15/16).....	22
Federal Acquisition Circular (FAC) 2005-92 (11/18/16).....	22
Effective Communication between Government and Industry (11/29/16)	22
Set-asides Under Multiple Award Contracts (12/6/16)	23
FAC 2005-93 (12/16/16)	23
FAC 2005-94 (12/20/16)	23
Defense Federal Acquisition Regulation Supplement (DFARS).....	23
Uniform Procurement Identification (2/26/16).....	23
Independent Research and Develop (IR&D) Expenses	23
Enhancing the Effectiveness of IR&D.....	24
Warranty Tracking of Serialized Items (3/25/16)	24
Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units (3/25/16)	24
Clauses with Alternatives – Small Business Programs (3/25/16).....	24
Buy American and Balance of Payments Program – Clause Prescription (3/25/16)	24
Prohibition on Requiring Use of Fire-resistant Rayon Fiber (3/25/16).....	25
Prohibition on Use of Cost-Plus Contracting for Military Construction and Family Housing	25

Instructions for Wide-Area WorkFlow Reparable Receiving Report (3/25/16).....	25
Treatment of Interagency and State and Local Purchases (3/25/16).....	25
Costs Related to Counterfeit Parts (3/25/16).....	25
Long-Haul Telecommunications (5/10/16).....	25
Duty-Free Entry Threshold (5/10/16).....	26
Multi-year Contract Requirements (5/10/16).....	26
Contract Term Limit for Energy Savings Contracts (5/10/16).....	26
Disclosure to Litigation Support Contractors (5/10/16).....	26
Rights in Technical Data.....	26
Display of Hotline Posters.....	26
Food Services for Dining Facilities on Military Installations (6/7/16).....	27
Rights in Technical Data and Validation of Proprietary Data Restrictions (6/16/16).....	27
Deletion of Supplemental Coverage for Definition of “Simplified Acquisition Threshold” (6/30/16).....	27
Pilot Program on Acquisition of Military Nondevelopmental Items.....	27
Defense Contractors Performing Private Security Functions (6/30/16).....	27
Contract Financing.....	27
Administrative Cost to Issue and Administer Contracts (6/30/16).....	28
Detection and Avoidance of Counterfeit Electronic Parts – Further Implementation (8/2/16).....	28
Amendments Related to Sources of Electronic Parts (8/2/16).....	28
New Qualifying Countries – Japan and Slovenia (8/2/16).....	28
Procurement of Commercial Items (8/11/16).....	28
Pilot Program for Streamlining Awards for Innovative Technology Projects (8/30/16).....	28
Instructions for the Wide-Area Workflow Reparable Receiving Report (8/30/16).....	28
Costs Related to Counterfeit Electronic Parts (8/30/16).....	29
Technical Amendments – Market Research File Documentation (9/23/16).....	29
New Designated Country – Moldova (9/23/16).....	29
Temporary Extension of Comprehensive Small Business Subcontracting Plans Test Program (9/23/16).....	29
Amendment to Mentor-Protégé Program (9/23/16).....	29
Defense Industrial Base Cybersecurity Activities (10/4/16).....	29
Undefinitized Contract Action Definitization (10/21/16).....	29
Use of the Government Property Clause (10/21/16).....	30
Network Penetration Reporting and Contracting for Cloud Services (10/21/16).....	30

Contiguous United States (11/4/16)	30
Offset Costs (11/4/16)	30
New Qualifying Country – Estonia (12/22/16).....	30
Competition for Religious-Related Services Contracts (12/22/16).....	30
Federal Civil Penalties Inflation Adjustment Act Improvements Act – Civil Monetary Penalties “Catch-up” Adjustment Regulations.....	30
Department of Agriculture.....	33
Fire Suppression and Liability (2/12/16).....	33
Department of Commerce	33
Guidance on Charging and Penalty Determinations in Settlement of Enforcement Cases (6/22/16).....	33
NIST Technology Innovation – Personnel Exchanges.....	33
Updated Statement of Legal Authority for Export Administration Regulation (EAR) (7/11/16)	33
Revisions to EAR: Harmonization of Destination Control Statements (8/17/16)	33
Updated Statement of Legal Authority for EAR (9/1/16)	34
Wassenaar Arrangement: Removal of Foreign National Review Requirements (9/20/16)	34
Bayh-Dole Act Regulation Revisions (11/7/16).....	34
Department of Defense	34
Defense Industrial Base Cybersecurity Activities (10/4/16)	34
Withholding Unclassified Technical Data and Technology from Public Disclosure (10/31/16).....	34
Indemnification or Defense, or Providing Notice, Relating to Third-Party Environmental Claims (12/7/16).....	34
Department of Energy	35
Energy Savings Performance Contract Energy Sales Agreement (2/16/16)	35
Non-displacement of Qualified Workers Under Service Contract; Purchasing System Clause (4/26/16).....	35
Contractor Business Systems – Definition and Administration (7/6/16).....	35
Technical and Administrative Changes (7/15/16).....	35
Procedural Rules for DoE Nuclear Activities – Whistleblower Protection (8/12/16)	35
Tax Treatment of ESPC Energy Sales Agreements (8/12/16).....	35
Department of Homeland Security.....	36
Invoices for Over-Age Firm-Fixed-Price Contracts (10/3/16)	36
Burden Reduction (10/11/16).....	36
Department of Housing and Urban Development.....	36
HUD Acquisition Regulation (HUDAR) (3/15/16).....	36

Department of the Interior	36
Revision of Non-procurement Suspension and Debarment Regulations (9/26/16).....	36
Department of Labor	36
Establishing Paid Sick Leave for Federal Contractors	36
Implementation of OMB Guidance on Non-procurement Debarment and Suspension.....	37
Defining and Delimiting Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (5/23/16)	37
Defining and Delimiting Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (5/23/16)	37
Discrimination on the Basis of Sex (6/15/16)	37
Final Guidance for Fair Pay and Safe Workplaces (8/25/16)	37
Establishing a Minimum Wage for Contractors – Notice of Rate Change (9/20/16).....	38
Department of State	38
Department of State Acquisition Regulation (DOSAR)	38
ITAR: Revisions to Definition of Export and Related Definitions	38
ITAR: Procedures for Obtaining State Department Authorization to Export Items Subject to EAR; Revisions to the Destination Control Statement; and Other Changes (8/17/16).....	38
Request for Information for 2017 Trafficking in Persons Report (12/13/16).....	39
Department of Transportation	39
Termination of Transportation Board of Contract Appeals (10/17/16)	39
Department of the Treasury	39
Prompt Payment Interest Rate (7/6/16).....	39
Incremental Funding of Fixed-Price, Time & Materials (T&M) or Labor-Hour Contracts During a Continuing Resolution (CR)	39
Tax on Certain Foreign Procurement (8/18/16)	39
Enhanced Cyber Risk Management Standards (10/26/16).....	39
Terrorism Risk Insurance Program.....	40
Iranian Transactions and Sanctions Regulations (12/23/16)	40
Environmental Protection Agency	40
Institutional Oversight of Life Sciences Dual Use Research of Concern (4/26/16).....	40
Small Business Programs, Solicitation Provisions and Contract Clauses (5/13/16).....	40
Improper Business Practices and Personal Conflicts of Interest (5/18/16).....	40
General, Publicizing Contract Actions, Types of Acts (5/19/16)	40
Clause for Level of Effort – Cost Reimbursement Contract (5/20/16).....	41

Update to Construction and Architect/Engineer and Key Personnel Requirements (6/24/16)	41
Participation by Disadvantaged Business Enterprises Under EPA Financial Assistance Agreements	41
Equal Employment Opportunity Commission.....	41
Revision of Employer Information Report (EEO-1) (2/1/16).....	41
General Services Administration.....	41
Removal of Unnecessary Construction Clauses and Editorial Changes (1/27/16)	41
Unenforceable Commercial Supplier Agreement Terms (5/3/16)	42
Rewrite of GSAR Part 515, Contracting by Negotiation (6/6/16)	42
Rewrite of GSAR Part 517, Special Contracting Methods (6/6/16)	42
Purchase by Non-Federal Entities (6/6/16)	42
Transactional Data Reporting (6/23/16).....	42
GSAR/FSS: Order Level Materials (9/9/16)	42
GSAR: Construction Contract Administration (9/9/16)	42
Inflation of Acquisition-Related Thresholds (10/4/16).....	42
Gulf Coast Ecosystem Restoration Council	42
Local Contracting Preference (7/22/16)	42
National Archives and Records Administration (NARA)	43
Controlled Unclassified Information (9/14/16)	43
NASA	43
Discrimination Based on Disability in Federally Conducted Programs (1/22/16).....	43
Cooperative Agreements with Commercial Firms.....	43
NASA Suspending and Debaring Official (3/9/16)	43
Removal of Grant Handbook References.....	44
Removal of Outdated and Duplicative Guidance.....	44
Clarification of Award Fee Evaluations and Payments	44
Revision to Uniform Administrative Requirements for Federal Awards	44
Contractor Financial Reporting of Property.....	45
Engineering Change Proposals.....	45
Revised Voucher Submission and Payment Process.....	45
Award Terms (12/9/16)	45
Office of Management and Budget	45
Office of Federal Procurement Policy (OFPP): Benchmark Compensation Amount for Certain Executives and Contractor Employees (3/15/16)	45

Federal Source Code Policy (3/11/16)	46
Category Management (10/7/16)	46
Anti-Trafficking Risk Management Best Practices & Mitigation Consideration Guidance (12/8/16)	46
Small Business Administration	46
Employee-Based Size Standards in Wholesale and Retail Trade (1/25/16)	46
Inflation Adjustment to Monetary Based Size Standards (1/25/16)	46
Small Business Size Standards: Industries with Employee-Based Standards Not Part of Manufacturing, Wholesale Trade or Retail Trade (1/26/16)	46
Small Business Size Standards for Manufacturing (1/26/16)	47
Women-Owned Small Business Federal Contract Program: Identification of Eligible Industries (3/3/16)	47
SBIR/STTR Policy Directive (4/7/16)	47
Small Business Size Standards (5/24/16)	47
Small Business Government Contracting and FY13 NDAA Amendments (5/31/16)	47
Affiliation for Business Loan and Surety Bond Guarantee Programs (6/27/16)	47
Small Business Mentor-Protégé Programs (7/25/16)	47
HUBZone and NDAA FY16 Amendments (8/4/16)	48
Rules of Procedure Governing Cases Before Office of Hearings and Appeals (10/7/16)	48
Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation	48
Task and Delivery Order Contracts, Bundling and Consolidation Correction (10/3/16)	48
Credit for Lower Tier Small Business Subcontracting (12/23/16)	48
USAID	48
Participation by Religious Organizations in USAID programs (6/29/16)	48
Preference for Privately Owned U.S. Flag Commercial Vessels	49
Administrative Changes (7/26/16)	49
Agency Warrant Program for Individual Cooperating Country National Personal Services Contractors (8/19/16)	49
Requirement for Non-discrimination Against End-Users of Supplies or Services (“Beneficiaries”) Under USAID-Funded Contracts	49
Government Property – USAID Reporting Requirements (11/29/16)	50

Legislation

Appropriations Acts

Continuing Appropriations and Military Construction, Veterans Affairs and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (P.L. 114-223; 9/29/16)

This Act provides FY17 appropriations for military construction, the Department of Veterans Affairs and Related Agencies, a continuing resolution for all other federal agencies through December 9, 2016, and FY16 supplemental appropriations to respond to the Zika virus.

Continuing Resolution, Fiscal Year 2017 (P.L. 114-254; 12/10/16)

This Act provides further appropriations for all federal agencies other than VA through April 28, 2017.

Authorization Acts

Coast Guard Authorization Act of 2015 (P.L. 114-120; 2/8/16)

This Act creates a two-year authorization for the Coast Guard.

Section 101 requires the Commandant to periodically submit manpower requirements plans for each mission of the Coast Guard, including information on the adequacy of the acquisition workforce.

Section 204 provides for acquisition reform. It establishes minimum performance standards, a capital asset plan, and a long-term major acquisition plan. For each current major acquisition program, the Commandant is required to submit to Congress quarterly an update on the risks associated with the program.

Section 218 provides authority for the Coast Guard to enter into sole source contracts or cooperative agreements with a qualified organization (as defined in the section) active in federal, state or other educational research grants.

Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016 (P.L. 114-323; 12/16/16)

Title I of the bill provides for embassy security and personnel protection.

Section 112 provides that, in evaluating proposals for local guard contracts, the Secretary of State may award contracts on the basis of best value as determined by the cost-technical tradeoff analysis and, with respect to contracts that are not high risk, high threat posts (as defined elsewhere in the Act) relating to diplomatic security.

Section 115 provides that a determination by the Department to use other than competitive procedures in order to meet emergency security requirements, including physical security upgrades, protective equipment, and other immediate threat mitigation projects, shall not be subject to a protest at either GAO or the Court of Federal Claims.

Section 121 provides that individuals assigned permanently or long-term to high risk, high-threat posts, including contractors, shall receive mandatory security training specified in this section in order to prepare such individuals for living and working at such posts.

Title II of the bill addresses the Office of Inspector General of the Department of State and Broadcasting Board of Governors.

Section 202 requires that, within one year after enactment, and annually thereafter, the Secretary shall submit to Congress a certification of the integrity and independence of information technology systems of the Inspector General of the Department of State and Broadcasting Board of Governors.

Title III relates to International Organizations.

Section 307 provides direction to the U.S. Ambassador to the United Nations to seek whistleblower protection for United Nations personnel.

Title IV relates to personnel and organizational issues.

Section 404 requires the department to create a three-year pilot program to recruit and place mid-career civil servants and private sector individuals with “extremely valuable” skills and experience into the Foreign Service at non-entry level grades.

Section 415 authorizes the department to suspend the duties of a Foreign Service member when (1) the member’s security clearance is suspended; or (2) reasonable cause exists to believe the person has committed a crime for which a prison sentence may be imposed. The member is provided specific due process rights.

Title V relates to consular activities.

Title VI establishes the Western Hemisphere Drug Policy Commission.

Title VII includes miscellaneous provisions.

Section 708 requires the Secretary, not later than 90 days after enactment, to submit to Congress an implementation plan, including timelines and resources, required to establish a hub for analytics, data science, strategy, and knowledge management; and migrate suitable information technology to a cloud computing service or cloud-based solution.

Section 711 requires the Secretary, not later than 90 days after enactment, to submit to Congress a report detailing the Department’s information technology acquisition practices that addresses specific elements provided for in the Section, including data center consolidation and optimization.

Fiscal Year 2017 National Defense Authorization Act (P.L. 114-328; 12/23/16)

See separate FY17 NDAA analysis.

Miscellaneous Laws

Grants Oversight and New Efficiency Act (“GONE” Act); (P.L. 114-117; 1/28/16)

Section 2 requires OMB to instruct each agency to submit a report to Congress and the Department of Health and Human Services by December 31 of the first calendar year after enactment, and annually thereafter, that:

- Lists each federal grant award held by such agency;
- Provides the total number of grant awards, including the number of grants by expiration date, the number with zero balances and the number with undisbursed balances;
- Describes the challenges leading to delays in grant closeout; and
- Explains, for the 30 oldest federal grant awards, why each has not been closed out.

If the information is not available, the report must include an explanation of why information is not available.

The Inspector General of an agency with more than \$500 million in annual grant funding, within one year after such agency has provided the notice, shall conduct a risk assessment to determine if an audit is required.

OMB, within six months after the second annual report is submitted, shall report to Congress on recommendations for legislation to improve accountability and oversight of grants management, including the timely closeout of federal grant awards.

Defend Trade Secrets Act (P.L. 114-153; 5/11/16)

Section 2 creates a federal civil cause of action for trade secret misappropriation by amendment to the Economic Espionage Act of 1996. It creates a unified federal law but does not override or displace existing state laws.

It defines “trade secret” to include proprietary commercial information where (1) the owner has taken reasonable measures to keep such information secret; and (2) the information derives independent actual or potential economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

It defines “misappropriation” consistently with the Uniform Trade Secrets Act (USTA) already adopted by most states, where (1) there is an acquisition of a trade secret of another by a person who knows, or has reason to know, that the trade secret was acquired by improper means; or (2) disclosure or use of the trade secret of another, without consent, by a person who (a) used improper means to acquire knowledge of the trade secret; (b) had reason to know that the trade secret was acquired by improper means or under circumstances giving rise to a duty of secrecy; or (c) before a material change in position, had reason to know that the trade secret was disclosed by accident or mistake.

It defines “improper means” to include theft, bribery, misrepresentation, breach or inducement of breach of a duty to secrecy, or espionage through electronic or other means. It does not include reverse engineering, independent derivation, or any lawful means of acquiring a trade secret.

Section 7 provides immunity from liability when trade secrets are disclosed in the following ways:

- Confidential disclosure to a government official or an attorney for the purpose of reporting a suspected violation of law;
- Disclosure in a complaint or other document filed in a lawsuit or other proceeding, when filed under seal;
- Disclosure to a court or an attorney in a lawsuit for retaliation by an employer for reporting a suspected violation of law, provided any documents containing the trade secret are filed under seal.

For any agreement entered into after 5/11/16, it also requires employers to provide notice that immunity in any agreement with an “employee” that governs the use of a trade secret or confidential information. An “employee” includes any individual performing work as a contractor or consultant. A failure to comply precludes the employer from obtaining punitive damages or attorneys’ fees under an action against an employee to whom notice was not provided.

Remedies mirror remedies under the USTA and include injunctive relief and damages.

The period of limitation for claims is three years, which mirrors the limitation period under the USTA.

In extraordinary circumstances, it provides for expedited relief on an ex parte basis in the form of seizure of property from the party accused of misappropriation.

FoIA Improvement Act of 2016 (P.L. 114-185; 6/30/16)

Section 2 makes various amendments to the Freedom of Information Act (“FoIA”), including:

- Requiring agencies to make available in electronic format copies of all records that have been requested three or more times.
- Imposing additional limitations on assessing search fees if the response time is delayed.
- Permitting agencies to withhold information under FoIA only if the agency “reasonably foresees that disclosure would harm an interest protected by an exemption” (the “foreseeable harm” standard) or disclosure is prohibited by law.
- Requiring agencies to make available their FoIA reference material or guides in electronic format.
- Expanding the role and authority of the Office of Government Information Services within the National Archives in furtherance of the FoIA Ombudsman role.
- Requiring each agency to designate a “Chief FoIA officer” at no less than the Assistant Secretary level and specifying the functions and roles and responsibilities of that officer.
- Creating a “Chief FoIA Officers Council,” co-chaired by the Justice Department’s Director of Information Policy and the NARA Director of Government Information Services, to include each agency Chief FoIA officer along with other designated government officials.

Section 3 requires the head of each agency within 180 days after enactment to issue regulations on procedures for the disclosure of records in accordance with the amendments made by Section 2.

Section 4 makes proactive disclosure an ongoing part of agency record management by requiring the heads of government agencies to include in an agency’s records management system procedures for identifying records of general interest or use to the public that are appropriate for public disclosure and making those records publicly available in electronic format.

Section 5 provides that no additional funds are authorized to carry out the provisions of the Act.

Section 6 provides that the amendments shall become effective on enactment and apply to requests for information made after the effective date.

Fraud Reduction and Data Analytics Act of 2015 (P.L. 114-186; 6/30/16)

Section 2 provides definitions for the Act.

Section 3 requires the director of the Office of Management and Budget (OMB), in consultation with the Comptroller General of the U.S., to establish guidelines for agencies to establish financial and administrative controls to identify and assess fraud risks, and to design and implement control activities in order to prevent, detect, and respond to fraud, including improper payments.

Foreign Aid Transparency and Accountability Act of 2016 (P.L. 114-191; 7/15/16)

Section 3 requires the president, within 18 months of enactment, to establish guidelines for establishing measurable goals, performance metrics, and monitoring and evaluation plan that can be applied with reasonable consistency to covered U.S. foreign assistance.

Section 4 requires the Secretary of State, within 90 days after enactment, to update the Department's website on foreign assistance to make comprehensive, timely and comparable information on covered U.S. foreign assistance programs. Within two years after enactment, the Secretary shall also provide on its website specific types of information provided for in the law.

MEGABYTE Act of 2016 (P.L. 114-210; 7/29/16)

Section 1 provides that the title of the bill is the "Making Electronic Government Accountable by Yielding Tangible Efficiencies Act of 2016," or the "MEGABYTE Act of 2016."

Section 2 requires the OMB Director to issue a directive to require the CIO of each agency to develop a comprehensive software licensing policy for managing enterprise software license agreements and commercial software licenses. Each CIO shall submit to the Director a report on the financial savings or avoidance of spending that resulted from improved software licensing management.

21st Century Cures Act (P.L. 114-255; 12/13/16)

Section 2002 provides authorization and procedures for Eureka prize competitions to be conducted by the Director of the National Institutes of Health (NIH).

Section 2013 provides for the protection of identifiable and sensitive information and authorizes the Secretary of Health and Human Services to exempt from disclosure under FOIA biomedical information about an individual that is gathered during the course of medical research under certain circumstances.

Section 2014 provides that NIH may require recipients of awards to share scientific data, to the extent feasible, generated from such awards, but nothing authorizes the Secretary of Health and Human Services to disclose any information that is a trade secret or other confidential information under FOIA.

Section 2034 provides for reducing the administrative burden for researchers by requiring the Secretary of Health and Human Services to develop a plan and implement measures to reduce administrative burdens. The Secretary shall consider modifying the timeline for conflict-of-interest to just-in-time information, modifying the definition of "investigator," and updating applicable NIH training modules relating to federal financial interest disclosure. It directs NIH to reduce the administrative burden

relating to monitoring of sub-recipients of grants by primary awardee. The Secretary shall evaluate financial expenditure reporting procedures and requirements for recipients. The Secretary shall evaluate applicability of guidelines relating to documentation of personnel expenses, The OMB Director shall establish a Research Policy Board, to include non-federal members, through 9/30/2021, to provide information on the effects of regulations relating to federal research requirements.

Section 2035 provides an exemption for NIH from the Paperwork Reduction Act requirements applicable to the voluntary collection of information during the conduct of research by NIH.

Section 3082 provides clarifying contracting authority for BARDA to use procurement contracts, grants, and cooperative agreements in carrying out the programs funded by the Special Reserve Fund for the procurement of security countermeasures.

Section 3085 provides for streamlining Project Bioshield Procurement by making the special reserve fund available for the procurement of such countermeasures.

Section 3087 provides for a waiver of the Paperwork Reduction Act requirements with respect to the voluntary collection of information during the immediate investigation of, and response to, a public health emergency, and provides for the termination of such waiver.

Section 5003 amends the Social Security Act to provide that for violations of grants, contracts and other agreements by persons who knowingly present a claim that the person knows or should have known is false or fraudulent; or knowingly make , use or cause to be made a false statement; or knowingly make, use or cause to be made a false record or statement material to a false claim; or knowingly make, use, or cause to be made a false record or statement material to an obligation to pay or transmit funds; or fail to grant timely access upon reasonable request by the Inspector General; such persons shall, as a result, be subject to a civil monetary penalty as provided for in this section. In addition, such persons shall be subject to an assessment of not more than three times the amount claimed (as described above) or three times the total amount of funds described above. This section also includes definitions applicable to the provision.

GAO Civilian Task and Delivery Order Protest Authority Act of 2016 (P.L. 114-260; 12/14/26)

Section 2 removes the sunset authority imposed on the exclusive authority of GAO to hear protests of civilian agency Task and Delivery Orders.

To Enhance Whistleblower Protection for Contractor and Grantee Employees (P.L. 114-261; 12/14/16)

Section 1 extends the whistleblower protection under contracts or grants to personal services contractor employees and to sub-grantee employees, as the case may be. In addition, it makes permanent the pilot program for the enhancement of contractor protection from reprisal for disclosure of certain information. It also expands the prohibition on the reimbursement for contractor legal fees accrued in the defense against reprisal claims to cover subcontractors or personal services contractors. Finally, it directs the head of the contracting agency to make best efforts to include in the contract a clause providing for the application of the changes made by Section 827 of the FY13 NDAA at the time of any major modification to a contract awarded before the effective date of this Act.

Program Management Improvement Accountability Act (P.L. 114-264; 12/14/16)

Section 2 requires the Deputy Director for Management of the Office of Management and Budget, within one year of enactment, to adopt government-wide standards, policies, and guidelines for program and project management for executive agencies; oversee implementation of the standards; chair the Program Management Policy Council established by this Act; engage with the private sector to identify best practices that would improve federal program and project management; and conduct annual portfolio reviews of agency programs to assess the quality and effectiveness of program management in the agencies. This section does not apply to the Department of Defense to the extent that the provisions are substantially similar to or duplicative of DoD policies.

SEC Small Business Advocate Act of 2016 (P.L. 114-284; 12/16/16)

Section 3 directs establishment within the Securities and Exchange Commission (SEC) the Office of the Advocate for Small Business Capital Formation and for the Commission to appoint “the Advocate for Small Business Capital Formation.” No individual currently employed by the Commission may be appointed to the position. Among the designated functions, the Advocate shall assist small business and small business investors in resolving significant problems they have with the commission or with self-regulatory agencies and identify problems that small businesses have with securing access to capital.

This section also creates within the Commission the “Small Business Capital Formation Advisory Committee” to provide the Commission with advice on regulations, but not to comment on the Commission’s enforcement program. The Federal Advisory Committee Act shall not apply to the Committee.

Inspector General Empowerment Act of 2016 (P.L. 114-317; 12/16/16)

Section 2 provides additional authority for inspectors general relating to computer matching programs.

Section 3 provides additional responsibilities of the Council of the Inspectors General on Integrity and Efficiency, including matters regarding allegations of wrongdoing against an Inspector General. However, the bill does not include subpoena authority to compel sworn testimony from former agency officials or from contractors.

Section 4 requires the Comptroller General to conduct a study of prolonged vacancies in Offices of the Inspectors General and report to Congress. It also requires the Council of the Inspectors General to take additional actions.

Section 5 provides that an Inspector General shall have full and prompt access to all documents of an agency, including grand jury materials under procedures established by the Attorney General.

Section 6 provides access to certain national security information for certain Inspectors General in the Intelligence Community.

American Innovation and Competitiveness Act (P.L. 114-329; 1/6/17)

Section 207 increases to \$10,000 (or such higher amount as determined by the head of the relevant executive agency based on the government’s internal institutional risk assessment) the micro-purchase threshold for procurement solicitations issued by the National Science Foundation (NSF), NASA, or the National Institute of Standards and Technology (NIST) to institutions of higher education, or related or affiliated nonprofit entities, or to nonprofit research organizations.

Section 401 provides that this section of the Act may be cited as the “Science Prize Competition Act.” Prize awards may be made through a grant, contract, cooperative agreement or other agreement with a private sector for-profit or nonprofit entity or state or local government to administer the prize competition, subject to the provisions of this section. Support for the prize competition, including financial support for the design and administration of the prize competition, or funds for a cash prize, may consist of federal funds and funds provided by for-profit or nonprofit entities.

Section 402 provides that this section of the Act may be cited as the “Crowdsourcing and Citizen Science Act.” The head of each science agency, or the heads of multiple science agencies working cooperatively may utilize crowdsourcing and citizen science to conduct projects designed to advance the mission of the respective federal science agency or the joint mission of federal science agencies, as applicable. Each federal science agency engaged in a crowdsourcing or citizen science project shall make public and promote each project to encourage broad participation. Federal science agencies shall endeavor to make technologies, applications, code, and derivations of intellectual property available to the public. Each participant shall agree to assume any and all risks and to waive all claims against the federal government except for claims based on willful misconduct, for any injury, death, damage or loss arising from participation in the project.

Section 601 provides for the expansion of the National Science Foundation’s Innovation Corps (“I-Corps”) to promote a strong and lasting foundation for the national innovation ecosystem and increase the positive economic and social impact of federally-funded research. The Director shall establish eligibility criteria and award grants for entrepreneurship and commercialization education, training and mentoring. Certain grants are limited to participants with innovations that, because of the early stage of development, are not eligible for the SBIR or STTR programs.

Section 604 provides that this section of the Act may be cited as the “United States Chief Technology Officer Act.” It provides that the president is authorized to designate one of the associate directors of the Office of Science and Technology Policy within the Executive Office of the President as a “United States Chief Technology Officer.”

Regulations

The President

Executive Order 13738: “Amendment to Executive Order 13673” (8/23/16)

This Executive Order makes amendments to the July 31, 2014 Executive Order 13673 relating to Fair Pay and Safe Workplaces. [See final implementing [FAR rules issued 8/25/16](#), infra, and final [Department of Labor guidance issued 8/25/16](#), infra.]

Executive Order 13741: “To Establish Roles and Responsibilities of the National Background Investigations Bureau” (10/4/16)

This Executive Order amends Executive Order 13467 (6/30/08) to establish the roles and responsibilities of the National Background Investigations Bureau (NBIB) created within the Office of Personnel Management.

Executive Order 13757: “Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities” (12/29/16)

This Executive Order amends Executive Order 13694 (4/1/15) to revise and expand the authority of the president to respond to significant malicious cyber-enabled activities. Specifically, the authority was expanded to address alleged activities by certain Russian intelligence and other agencies and specific individuals. As amended, the Order provides authority to block any property or interest of any person who is listed in an annex to the Order, any person determined by the Secretary of Treasury to be responsible for or complicit in, or to have engaged in cyber-enabled activities, or to have materially contributed to a significant threat to the U.S.

Federal Acquisition Regulation (FAR)

Payment of Subcontractors

A. Proposed Rule (1/20/16)

This proposed rule would amend the FAR to implement section 1334 of the 2010 Small Business Jobs Act that requires contractors to notify the contracting officer in writing if the contractor pays a reduced price to the small business subcontractor, or if the contractor’s payment to the small business is more than 90 days past due. The Small Business Administration (SBA) issued its final rule on 7/16/13.

B. Final Rule (12/20/16)

This final rule, effective 1/19/17, amends the FAR to implement section 1334 of the 2010 Small Business Jobs Act that requires contractors to notify the contracting officer in writing if the contractor pays a reduced price to the small business subcontractor, or if the contractor’s payment to the small business is more than 90 days past due.

Seven respondents submitted comments and the proposed rule is converted to final with changes. The rule is included in [FAC 2005-94](#).

Contractor Employee Internal Confidentiality Agreements (1/22/16)

This proposed rule would amend the FAR to prohibit the use of funds, appropriated or otherwise made available, for a contract with an entity that requires employees or subcontractors to sign an internal confidentiality agreement that restricts such employees or subcontractors from lawfully reporting

waste, fraud or abuse to a designated government representative authorized to receive such information. The provision implements provisions of the FY15 Consolidated and Further Continuing Appropriations Act and subsequent provisions.

Prohibition on Reimbursement for Congressional Investigations and Inquiries (2/17/16)

This proposed rule would amend the FAR to implement section 857 of the FY15 NDAA that disallows costs incurred in connection with a congressional investigation or inquiry into an issue that is the subject matter of a “proceeding” resulting in a disposition as described in law. While section 857 only applies to DoD, NASA and the Coast Guard, the proposed rule applies it to all agencies subject to the FAR to ensure consistency in the accounting systems of federal contractors.

Federal Acquisition Circular (FAC) 2005-87 (3/7/16)

This FAC contains one final rule and one final technical rule, including:

- a final rule, effective 4/6/16, amending the FAR to implement section 852 of the FY13 NDAA to include in the Federal Awardee Performance and Integrity Information System (FAPIIS), to the extent practicable, the identity of any immediate owner or subsidiary, and all predecessors, of an offeror that held a federal contract or grant within the last three years. Data on the immediate owner and direct subsidiaries was already required by a final FAR rule published 5/30/14.

A proposed rule was published 2/2/15; two comments were submitted and the proposed rule is converted to final without change.

Combatting Trafficking in Persons – Definition of “Recruitment Fees” (5/11/16)

This proposed rule would amend the FAR to provide a definition of “recruitment fees” as it relates to the prohibition on contractors charging employees under covered contracts such fees under the 1/29/15 final FAR rule on combatting trafficking in persons.

Administrative Cost to Issue and Administer a Contract (5/12/16)

This proposed rule would amend the FAR to revise the estimated administrative cost to award and administer a contract, for purposes of evaluating bids for multiple awards, at \$1000. The cost was last adjusted in 1990 as \$500. A related [DFARS proposed rule](#) was published on 6/30/16.

Federal Acquisition Circular (FAC) 2005-88 (5/16/16)

This FAC contains three final rules and one final technical rule, including:

1. a final rule, effective 6/15/16, amending the FAR to implement Executive Branch policy to procure, when feasible, alternatives to high global warming HFCs and require contractors to report annually the amount of HFCs contained in equipment delivered to the government or taken out of government equipment under service contracts where the equipment normally contain 50 or more pounds of HFCs. A proposed rule was published 5/11/15. sixteen comments were submitted and the proposed rule is converted to final with changes.
2. a final rule, effective 6/15/16, amending the FAR to reinstate a higher simplified acquisition threshold for overseas acquisitions in support of humanitarian or peacekeeping operations that was inadvertently deleted in the final rule published 12/20/04. A proposed rule was published

10/8/15; no comments were received and the proposed rule is converted to final without change.

3. a final rule, effective 6/15/16, amending the FAR to add a new subpart and contract clause for the basic safeguarding of contractor information systems that process, store or transmit federal contract information. A proposed rule was published 8/24/12; sixteen comments were submitted and the proposed rule is converted to final with changes.
4. a final rule, effective 6/15/16, amending the FAR to implement Section 814 of the FY15 NDAA that requires the head of the contracting activity to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition greater than \$4 million. A proposed rule was published 10/8/15; five comments were submitted and the proposed rule is converted to final with one change.

System for Award Management Registration (5/20/16)

This proposed rule would amend the FAR to update the instructions for System for Award Management (SAM) registration requirements and to correct an inconsistency with offer representation and certification requirements so as to now require offers to be registered in SAM prior to submission of an offer.

Public Disclosure of Greenhouse Gas Emissions and Reduction Goals – Representation

A. Proposed Rule (5/25/16)

This proposed rule would amend the FAR to create an annual representation within the System for Award Management for vendors to indicate if and where they publicly disclose greenhouse gas (GHG) emissions and greenhouse gas reduction goals or targets. This information will help the government assess supplier GHG management practices and assist agencies in developing strategies to engage with contractors to reduce supply chain emissions as directed by Executive Order 13693 (published 3/19/15). The representation would be mandatory for vendors who receive \$7.5 million or more in federal contract awards in the preceding federal fiscal year and would be voluntary for all other vendors registered in SAM. The proposed rule also asks for comments on possible additional FAR changes that might be considered in the future.

B. Final Rule (11/18/16)

This final rule, effective 12/19/16, amends the FAR to establish a representation for offerors to indicate if and where they publicly disclose greenhouse gas emissions and greenhouse gas reduction goals or targets.

Seventeen comments were received and the proposed rule is converted to final with two minor changes. The final rule is included in [FAC 2005-92](#).

Removal of Regulations Relating to Telecommunications

A. Proposed Rule (6/6/16)

This proposed rule would amend the DFARS to delete certain terms relating to telecommunications that are obsolete and no longer used and replace them with references to electronic communications.

B. Final Rule (11/18/16)

This final rule, effective 12/19/16, amends the DFARS to delete certain terms relating to telecommunications that are obsolete and no longer used and replace them with references to electronic communications.

Two comments were received on the proposed rule and the proposed rule is converted to final without change. The final rule is included in [FAC 2005-92](#).

Acquisition Threshold for Special Emergency Procurement Authority (6/20/16)

This proposed rule would amend the FAR to implement section 816 of the FY16 NDAA to increase the simplified acquisition threshold for special emergency procurement authority from \$300,000 to \$750,000 within the United States and from \$1 million to \$1.5 million outside the United States, to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack. A correction was published 6/28/16.

Strategic Sourcing Documentation (6/20/16)

This proposed rule would amend the FAR to implement section 836 of the FY15 NDAA that requires that the contract file contain certain documentation if the federal government makes a purchase of supplies and services offered under the Federal Strategic Sourcing Initiative (FSSI) but the FSSI is not used for the procurement.

Federal Acquisition Circular (FAC) 2005-89 (7/14/16)

This FAC contains four final rules, and one final technical amendment rule, including:

1. a final rule, effective 11/1/16, amending the FAR to implement regulatory changes made by a 7/16/13 SBA final rule to provide for a government-wide policy on small business subcontracting. A proposed rule was published 6/10/15; 27 comments were received and the proposed rule is converted to final with changes;
2. a final rule, effective 8/15/16, amending the FAR to update outdated OMB Circular citation references. No proposed rule was published for comment.
3. a final rule, effective 8/15/16, amending the FAR to amend five standard forms prescribed by the FAR for contracts involving bonds and other financial protections, aimed at clarifying liability limitations and expanding the options for organization types. A proposed rule was published 10/20/15; three comments were received and the proposed rule is converted to final without change.
4. a final rule, effective 8/15/16, amending the FAR to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries from \$3,000 to \$3,500, based on a resolution adopted by the UNICOR Board of Directors. No proposed rule was published for comment.

Fair Pay and Safe Workplaces

A. Final Rule (8/25/16)

This final rule, effective 10/25/16, amends the FAR to implement Executive Order 13673, as amended, to increase efficiency and cost savings in federal contracting by improving contractor compliance with labor laws. A proposed rule was published 5/28/15; 927 respondents submitted comments and the proposed rule is converted to final with changes. [See also the [Department of Labor 8/25/16 guidance](#), *infra*.]

B. Final Rule (12/16/16)

This final rule, effective 12/16/16, with an applicability date of 10/24/16, amends the FAR to address the preliminary injunction against implementation of portions of the rule effective 10/24/16. A final FAR rule was published 8/25/16 with a 10/25/16 effective date. The paycheck transparency provisions of the final

rule are not affected by the injunction and took effect on 1/1/16 according to the terms of the Department of Labor and FAR final rules. A memorandum containing the substance of this action was issued by the FAR Council on 10/25/16. No public comment period was provided. [The final rule is included in FAC 2005-90. See also [FAC 2005-93](#), *infra*.]

Audit of Settlement Proposals (9/14/16)

This proposed rule would amend the FAR to raise the dollar threshold requirement for the audit of prime contractor settlement proposals and subcontractor settlement proposals in the event of a contract termination, from \$100,000 to the threshold for obtaining certified cost or pricing data (currently \$750,000).

Federal Acquisition Circular (FAC) 2005-91 (9/30/16)

This FAC includes eleven interim and final rules, including:

1. a final rule, effective 9/30/16, amending the FAR to implement sections of the Consolidated Appropriations Act that prohibits the federal government from entering into a contract with any corporation that has a delinquent federal tax liability or a felony conviction, unless the agency has considered suspension and debarment and has made a determination that this further action is not necessary to protect the government's interest. An interim rule was published 12/4/15; three respondents submitted comments and the interim rule is converted to final without change.
2. a final rule, effective 9/30/16, amending the FAR to implement a 9/25/14 final rule issued by the Department of Labor Veterans' Employment and Training Service revised annual report on the total number of employees who belong to categories of veterans protected under law and the total number of those veterans who were hired during the period covered by the report. An interim rule was published 12/4/15; no comments were received on the interim FAR rule and it is converted to final without change.
3. an interim rule, effective 9/30/16, amending the FAR to implement Executive Order 13665 of 4/8/14 titled "Non-Retaliation for Disclosure of Compensation Information," and the Department of Labor final rule published 9/11/15. The rule applies to solicitations and contracts issued on or after the effective date of the FAR rule. No comments were solicited in advance of the publication of the interim rule.
4. a final rule, effective 9/30/16, amending the FAR to adopt as final a 12/31/15 interim FAR rule that provides authority to award sole source contracts to economically disadvantaged women-owned small business (WOSB) concerns and to WOSB concerns eligible for the WOSB program. Four comments were received on the interim rule and it is converted to final without change.
5. a final rule, effective 10/31/16, amending the FAR to adopt an 11/18/15 proposed rule to redesignate the terminology for unique identification of entities receiving federal awards to remove the proprietary standard or number. Ten comments were received on the proposed rule and it is converted to final without change. A correction was published 10/1/16.
6. a final rule, effective 10/31/16, amending the FAR to implement sections of the 2010 Small Business Jobs Act and the 10/2/13 SBA final rules providing a government-wide policy on consolidation and bundling. A proposed FAR rule was published 6/3/15; numerous comments were made on the proposed rule and it is converted to final with changes.

7. a final rule, effective 10/31/16, amending the FAR to implement Section 811 of the FY16 NDAA to require that “significant” savings would be achieved through the use of multi-year contract authority for the acquisition of property. No proposed rule was published for comment.
8. a final rule, effective 10/31/16, amending the FAR to add Ukraine and Moldova as new designated countries under the WTO Government Procurement Agreement. The U.S. Trade Representative published notices waiving the Buy American Act for Ukraine on 5/18/16 and for Moldova on 7/29/16. No proposed rule was published for comment. The [DFARS was amended on 9/23/16](#).
9. a final rule, effective 10/31/16, amending the FAR to remove DoD-unique requirements for contractors performing private security functions outside the U.S. and provide a definition of “full cooperation” within the associated clause. A proposed rule was published 5/27/15; one comment was received on the proposed rule and it is converted to final without change. A technical correction was published 10/21/16.
10. a final rule, effective 9/30/16, amending the FAR to revise the allowable cost limitation relative to the compensation of contractor and subcontractor employees. The rule also provides the targeted exemption to the allowable cost limitation for scientists, engineers, or other specialists upon an agency determination that such exceptions are needed to ensure that the agency has continued access to needed skills and capabilities. An interim rule was published 6/24/14; several comments were received on the interim rule and it is converted to final with changes.

Clarification of Requirement for Justifications for 8(a) Sole Source Contracts (11/15/16)

This proposed rule would amend the FAR to clarify when justifications need to be written for sole source contracts exceeding \$22 million, in response to recommendations made by GAO in its report GAO 13-118 (12/12/12). A final rule to implement the requirement was published 4/18/12.

Federal Acquisition Circular (FAC) 2005-92 (11/18/16)

This FAC contains three final rules, including:

1. a final rule, effective 12/19/16, amending the FAR to establish an annual representation requirement to indicate whether or not and where contractors publicly disclose GHG emissions and GHG reduction goals or targets. A [proposed rule was published 5/25/16](#), see supra.
2. a final rule, effective 12/19/16, amending the FAR to delete certain terms relating to telecommunications that are obsolete and no longer used and replace them with references to electronic communications. A [proposed rule was published 6/6/16](#), see supra.
3. a final rule, effective 11/18/16, amending the FAR to make editorial changes, including a revised definition of earned value management systems (EVMS) and amended language related to the SBA WOSB program. No proposed rule was published for comment.

Effective Communication between Government and Industry (11/29/16)

This proposed rule would amend the FAR to implement Section 887 of the FY16 NDAA to clarify that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry as long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms.

Set-asides Under Multiple Award Contracts (12/6/16)

This proposed rule would amend the FAR to implement regulatory changes made by SBA in its final rule published 10/2/13 that provides government-wide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts. An interim FAR rule was published 11/2/11.

FAC 2005-93 (12/16/16)

This FAC contains one interim and one final rule, including:

1. an interim rule, effective 1/1/17, amends the FAR to implement Executive Order 13706 (9/7/15) and the [Department of Labor final rule \(9/30/16\)](#) establishing paid sick leave for federal contractors. No proposed rule was published for comment.
2. a final rule, effective 12/16/16, with an applicability date of 10/24/16, amends the FAR to address the preliminary injunction against implementation of portions of the rule effective 10/24/16. A [final FAR rule](#) was published 8/25/16 with a 10/25/16 effective date. The paycheck transparency provisions of the final rule are not affected by the injunction and will go into effect on 1/1/16 according to the terms of the Department of Labor and FAR final rules. A memorandum containing the substance of this action was issued by the FAR Council on 10/25/16. No proposed rule was published for comment.

FAC 2005-94 (12/20/16)

This FAC contains two final rules, including:

1. a final rule, effective 1/19/17, amends the FAR to require contractors whose employees have access to a system of records or handle personally identifiable information to complete privacy training. A proposed rule was published 10/14/11; fifteen respondents submitted comments and the proposed rule is converted to final with changes.
2. a final rule, effective 1/19/17, amends the FAR to implement Section 1334 of the Small Business Jobs Act of 2010 that requires contractors to notify the contracting officer in writing if the contractor pays a reduced price to a small business subcontractor or if the contractor's payment to a small business subcontractor is more than 90 days past due. A proposed rule was published 1/20/16; seven respondents submitted comments and the proposed rule is converted to final with changes.

Defense Federal Acquisition Regulation Supplement (DFARS)

Uniform Procurement Identification (2/26/16)

This final rule, effective 2/26/16, amends the DFARS to conform to the uniform procurement identification procedures of the FAR. A proposed rule was published 5/26/15. Three comments were received and the proposed rule is converted to final with changes.

Independent Research and Develop (IR&D) Expenses

A. Advance Notice of Proposed Rulemaking (2/8/16)

This advance notice of proposed rulemaking would amend the DFARS to ensure that substantial future IR&D expenses as a means to reduce evaluated bid prices in competitive source selection are evaluated in a uniform way during competitive source selections.

B. Proposed Rule (11/4/16)

This proposed rule would amend the DFARS to ensure that substantial future IR&D expenses, as a means to reduce evaluated bid prices in competitive procurements, are evaluated in a uniform way during competitive source selection.

Related [proposed and final rules on “Enhancing the Effectiveness of IR&D”](#) were published on 2/16/16 and 11/4/16, see infra.

Enhancing the Effectiveness of IR&D

A. Proposed Rule (2/16/16)

This proposed rule would amend the DFARS to improve the effectiveness of IR&D investments by the defense industrial base that are reimbursed as allowable costs.

B. Final Rule (11/4/16)

This final rule, effective 11/4/16, amends the DFARS to improve the effectiveness of IR&D investments by requiring contractors to engage in technical interchanges with DoD before costs are generated.

Nine sets of comments were received and the proposed rule is converted to final with changes.

A related [ANPR and proposed rule on “IR&D Expenses”](#) were published on 2/8/16 and 11/4/16, see supra.

Warranty Tracking of Serialized Items (3/25/16)

This final rule, effective 3/25/16, amends the DFARS to require use of the electronic contract attachments accessible via the Product Data Reporting and Evaluation Program to record and track warranty data and source of repair information for serialized items. A proposed rule was published 9/30/15. No comments were received and the proposed rule is converted to final with two editorial changes only.

Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units (3/25/16)

This final rule, effective 3/25/16, amends the DFARS to implement section 811 of the FY15 NDAA to extend and modify contract authority for advanced component development and prototype units. A proposed rule was published 11/20/15. No comments were received and the proposed rule is converted to final without change.

Clauses with Alternatives – Small Business Programs (3/25/16)

This final rule, effective 3/25/16, amends the DFARS to clarify clauses and the prescriptions for small business programs and to create basic and alternate clauses structured in a manner to facilitate use in automated contract writing systems. A proposed rule was published 9/30/15. No comments were received and the proposed rule is converted to final with editorial changes only.

Buy American and Balance of Payments Program – Clause Prescription (3/25/16)

This final rule, effective 3/25/16, amends the DFARS to clarify how the clause prescription addresses applicability when an exception to the Buy American Act or Balance of Payments Program applies. A proposed rule was published 11/20/15. No comments were received and the proposed rule is converted to final without change.

Prohibition on Requiring Use of Fire-resistant Rayon Fiber (3/25/16)

This final rule, effective 3/25/16, amends the DFARS to delete obsolete text that prohibits requiring the use of fire-resistant rayon fiber in any solicitation issued before 1/1/15, implementing section 821 of the FY11 NDAA. Since the effective period of the statute passed, the provision should be deleted. No proposed rule was published for comment.

Prohibition on Use of Cost-Plus Contracting for Military Construction and Family Housing

A. Proposed Rule (3/25/16)

This proposed rule would amend the DFARS to implement section 2801 of the FY12 NDAA prohibiting any form of cost-plus contracting for military construction projects or military family housing projects.

B. Final Rule (9/23/16)

This final rule, effective 9/23/16, amends the DFARS to prohibit any form of cost-plus contracting for military construction projects or military family housing projects.

Three respondents submitted comments and the proposed rule is converted to final with minor changes.

Instructions for Wide-Area WorkFlow Repairable Receiving Report (3/25/16)

This proposed rule would amend the DFARS to add instructions for the use, preparation and distribution of the Wide-Area WorkFlow Repairable Receiving Report created to differentiate between deliveries of new government assets and the return of government property that has been repaired or overhauled.

Treatment of Interagency and State and Local Purchases (3/25/16)

A. Proposed Rule (3/25/16)

This proposed rule would amend the DFARS to implement section 897 of the FY16 NDAA to provide that contracts executed by DoD as a result of the transfer of contracts from GSA, or for which DoD serves as the item manager on behalf of GSA, shall not be subject to certain domestic source restrictions if the contracts are for the purchase of products by other federal agencies or state or local governments.

B. Final Rule (6/30/16)

This final rule, effective 6/30/16, amends the DFARS to implement section 897 of the FY16 NDAA that requires contracts executed by DoD as a result of the transfer of contracts from GSA or for which DoD serves as the item manager for products on behalf of GSA not be subject to the provisions of certain domestic source restrictions, to the extent that such contracts are for the purchase of products of other federal agencies or state or local governments.

One comment was received on the proposed rule and it is converted to final without change.

Costs Related to Counterfeit Parts (3/25/16)

This proposed rule would amend the DFARS to implement section 885(a) of the FY16 NDAA relating to the allowability of costs of counterfeit electronic parts or suspected counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

Long-Haul Telecommunications (5/10/16)

This final rule, effective 5/10/16, amends the DFARS to add a definition of the term “long-haul telecommunications” to the telecommunications services definitions and identify DISA as the procurer of long-haul telecommunications services for DoD. A proposed rule was published 11/20/15. No comments were received and the proposed rule is converted to final without change.

Duty-Free Entry Threshold (5/10/16)

This final rule, effective 5/10/16, amends the DFARS to update the threshold for duty-free entry on foreign supplies that are not from qualifying countries. A proposed rule was published 11/20/15. No comments were received and the proposed rule is converted to final without change.

Multi-year Contract Requirements (5/10/16)

This final rule, effective 5/10/16 amends the DFARS to implement section 816 of the FY15 NDAA that addresses various requirements for multiyear contracts. A proposed rule was published 12/30/15. No comments were received and the proposed rule is converted to final without change.

Contract Term Limit for Energy Savings Contracts (5/10/16)

This final rule, effective 5/10/16, amends the DFARS to clarify that the contracting officer may enter into an energy savings contract for a period not to exceed 25 years and makes consistent the term limit for all contracts. A proposed rule was published 11/20/15. Ten respondents submitted comments and the proposed rule is converted to final with changes.

Disclosure to Litigation Support Contractors (5/10/16)

This final rule, effective 5/10/16, amends the DFARS to implement section 802 of the FY12 NDAA that provides DoD authority to allow its litigation support contractors access to “sensitive information” subject to certain restrictions on using and disclosing information. An interim rule was published 2/28/14. Two comments were received and the interim rule is converted to final with changes.

Rights in Technical Data

A. Proposed Rule (5/10/16)

This proposed rule would amend the DFARS to implement section 813(a) of the FY16 NDAA that addresses rights in technical data relating to major weapons systems, expanding application of the presumption that a commercial item has been developed entirely at private expense.

B. Final Rule (9/23/16)

This final rule, effective 9/23/16, amends the DFARS to implement section 813(a) of the FY16 NDAA that addresses rights in technical data relating to major weapons systems, expanding application of the presumption that a commercial item has been developed entirely at private expense.

No public comments were submitted in response to the proposed rule and it is converted to final with no significant changes.

Display of Hotline Posters

A. Proposed Rule (5/10/16)

This proposed rule would amend the DFARS to consolidate the multiple hotline posters into one poster that delineates multiple reportable offenses.

B. Final Rule (10/21/16)

This final rule, effective 10/21/16, amends the DFARS to consolidate the multiple hotline posters into one poster that delineates multiple reportable offenses.

One respondent submitted comments and the proposed rule is converted to final without change.

Food Services for Dining Facilities on Military Installations (6/7/16)

This proposed rule would amend the DFARS to provide policy and procedures for soliciting offers, evaluating proposals, and awarding contracts for the operation of a military dining facility.

Rights in Technical Data and Validation of Proprietary Data Restrictions (6/16/16)

This proposed rule would amend the DFARS to implement section 815 of the FY12 NDAA that adds special provisions for handling technical data, codifies and revises policies and procedures regarding deferred ordering of technical data necessary to support DoD major systems or subsystems or non-commercial items or processes, expands the period in which DoD can challenge an asserted restriction on technical data from three years to six years, and codifies government purpose rights as the default rights for technical data related to technology development with mixed funding.

Deletion of Supplemental Coverage for Definition of “Simplified Acquisition Threshold” (6/30/16)

This final rule, effective 6/30/16, amends the DFARS to delete the supplemental coverage of the definition of “simplified acquisition threshold” for humanitarian or peacekeeping operations because the FAR was amended to add this definition.

Pilot Program on Acquisition of Military Nondevelopmental Items

A. Interim Rule (6/30/16)

This interim rule with a request for comment, effective 6/30/16, amends the DFARS to implement section 892 of the FY16 NDAA that modifies the criteria for use of the pilot program on the acquisition of military purpose non-developmental items to remove the requirement for competitive procedures, for awards to be made to nontraditional defense contractors and to increase the threshold for use of the pilot program to \$100 million. DoD does not intend to apply the pilot program to contracts below the simplified acquisition threshold or for the acquisition of commercial items. No proposed rule was published for comment.

B. Final Rule (11/4/16)

This final rule, effective 11/4/16, amends the DFARS to implement Section 892 of the FY16 NDAA that changes the criteria for the pilot program for acquisition of military purpose non-developmental items.

Two respondents submitted comments and the interim rule is converted to final with minor changes.

Defense Contractors Performing Private Security Functions (6/30/16)

This final rule, effective 6/30/16, amends the DFARS to consolidate all requirements for contractors performing private security functions outside the U.S. applicable to DoD contracts in the DFARS and make changes regarding the applicability and high-level quality assurance standards. A proposed rule was published 12/30/15; one respondent submitted comments and the proposed rule is converted to final without change.

Contract Financing

A. Proposed Rule (6/30/16)

This proposed rule would amend the DFARS regarding the use of customary contract financing other than loan guarantees and advance payments on certain fixed-price contracts with a period of performance greater than one year that meet the dollar thresholds without further justification.

B. Final Rule (12/22/16)

This final rule, effective 12/22/16, amends the DFARS by providing that contracting officers are not required to further justify a decision to provide customary contract financing other than loan guarantees and advance payments for certain fixed-price contracts.

No public comments were submitted on the proposed rule and it is converted to final without change.

Administrative Cost to Issue and Administer Contracts (6/30/16)

This proposed rule would amend the DFARS to increase the estimated administrative cost to award and administer a contract for the purpose of evaluating bids for multiple awards from \$500 to \$1000. The last adjustment was made in 1990. A related [FAR proposed rule](#) was published on 5/12/16.

Detection and Avoidance of Counterfeit Electronic Parts – Further Implementation (8/2/16)

This final rule, effective 8/2/16, amends the DFARS to further implement Section 818 of the FY12 NDAA, as modified by Section 817 of the FY15 NDAA, to require contractors and subcontractors, except in limited circumstances, to acquire electronic parts from trusted suppliers in order to further address the avoidance of counterfeit electronic parts. DoD contractors and subcontractors that are not the original component manufacturer are required to notify the contracting officer if it is not possible to obtain an electronic part from a trusted supplier. A proposed rule was published 9/21/15; numerous comments were received on the proposed rule it is converted to final with changes.

Amendments Related to Sources of Electronic Parts (8/2/16)

This proposed rule would amend the DFARS to implement Section 885(b) of the FY16 NDAA, which amends a portion of Section 818 of the FY12 NDAA, to make contractors and subcontractors subject to approval (as well as review and audit) by appropriate DoD officials when identifying a contractor-approved supplier of electronic parts.

New Qualifying Countries – Japan and Slovenia (8/2/16)

This final rule, effective 8/2/16, amends the DFARS to add Japan and Slovenia as qualifying countries based on reciprocal defense procurement agreements signed with these countries. No proposed rule was published for comment.

Procurement of Commercial Items (8/11/16)

This proposed rule would amend the DFARS to implement provisions of the FY13 and FY16 NDAA's relating to commercial item acquisitions. A related proposed rule, published 8/3/15, has been closed and the comments received on that rule have been incorporated as appropriate in this new case.

Pilot Program for Streamlining Awards for Innovative Technology Projects (8/30/16)

This proposed rule would amend the DFARS to implement Section 873 of the FY16 NDAA that provides exceptions from the certified cost and pricing data requirements and from the records examination requirements for certain awards to small business or “non-traditional” defense contractors.

Instructions for the Wide-Area Workflow Repairable Receiving Report (8/30/16)

This proposed rule would amend the DFARS to add instructions for utilizing the Wide-Area WorkFlow Repairable Receiving Report.

Costs Related to Counterfeit Electronic Parts (8/30/16)

This proposed rule would amend the DFARS to implement Section 885(a) of the FY16 NDAA that provides that the costs of counterfeit electronic parts or suspect electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable unless (1) the covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspected counterfeit electronic parts that had been reviewed and approved by DoD; (2) the parts are government-furnished parts or were obtained by the contractor from approved sources; and (3) the contractor (i) becomes aware of the part through inspection, testing and authentication efforts, through a Government-Industry Data Exchange Program (GIDEP) alert, or other means and (ii) provides timely (within 60 days after becoming aware) written notice to the contracting officer and to GIDEP.

Technical Amendments – Market Research File Documentation (9/23/16)

This final rule, effective 9/23/16, amends the DFARS to provide direction to contracting officers to follow the procedures in Procedures, Guidance, and Instructions (PGI) regarding market research file documentation. No proposed rule was published for comment.

New Designated Country – Moldova (9/23/16)

This final rule, effective 9/23/16, amends the DFARS to add Moldova as a new designated country under the World Trade Organization Government Procurement Agreement. No proposed rule was published for comment. The [FAR was amended on 9/30/16](#).

Temporary Extension of Comprehensive Small Business Subcontracting Plans Test Program (9/23/16)

This proposed rule would amend the DFARS to implement sections of the FY 15 and FY16 NDAs, both of which revise the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. Among the statutory changes are increasing the threshold for participation in the test program from \$5 million to \$100 million; extending the period of the test program through 12/31/17; prohibiting use of the comprehensive test program with contractors who failed to meet subcontracting goals; and other changes.

Amendment to Mentor-Protégé Program (9/23/16)

This proposed rule would amend the DFARS to implement Section 861 of the FY16 NDAA that provided amendments to the DoD Pilot Mentor-Protégé Program.

Defense Industrial Base Cybersecurity Activities (10/4/16)

This final rule, effective 11/3/16, amends the DoD regulations to update the Defense Industrial Base Cybersecurity activities. An interim rule was published 10/2/15; 28 comments were received on the interim rule and it is converted to final with changes.

Undefinitized Contract Action Definitization (10/21/16)

This proposed rule would amend the DFARS to provide a more transparent means of documenting the impact of costs incurred during the undefinitized period of an undefinitized contract action on allowable profit, and to recognize when contractors demonstrate efficient management and internal cost control systems through the submission of a timely, auditable proposal to definitize contracts.

Use of the Government Property Clause (10/21/16)

This proposed rule would amend the DFARS to expand the prescription for the use of the FAR government property clause. DoD has identified a gap in the current process that hinders full implementation of achieving accountability for government property due to an exception on the use of the FAR clause.

Network Penetration Reporting and Contracting for Cloud Services (10/21/16)

This final rule, effective 10/21/16, amends the DFARS to implement Section 941 of the FY13 NDAA and Section 1632 of the FY15 NDAA, both of which require contractor reporting on network penetrations, as well as providing DoD policy on the purchase of cloud computing services. Two interim rules were published: on 8/26/15 and on 12/30/15; twenty-five respondents submitted comments and the interim rules are converted to final with changes.

Contiguous United States (11/4/16)

This final rule, effective 11/4/16, amends the DFARS to remove the acronym for contiguous United States. No proposed rule was published for comment.

Offset Costs (11/4/16)

This proposed rule would amend the DFARS to implement Section 812 of the FY16 NDAA related to costs associated with indirect offsets under foreign military sales agreements. An interim rule was published 6/2/15 that provided guidelines to contracting officers when an indirect offset is a condition of a foreign military acquisition. Comments received in response to the interim rule were taken into account in the development of this proposed rule, along with the changes required by the FY16 NDAA.

New Qualifying Country – Estonia (12/22/16)

This final rule, effective 12/22/16, amends the DFARS to add Estonia as a qualifying country based on a 9/23/16 reciprocal defense procurement agreement. Estonia is already a designated country under the WTO. No proposed rule was published for comment.

Competition for Religious-Related Services Contracts (12/22/16)

This proposed rule would amend the DFARS to implement Section 898 of the FY16 NDAA that directs DoD to not preclude a non-profit organization from competing for a contract for religious-based services to be performed on a military installation.

Federal Civil Penalties Inflation Adjustment Act Improvements Act – Civil Monetary Penalties “Catch-up” Adjustment Regulations

On November 2, 2015, the president signed the Federal Civil Penalties Inflation Adjustment Act of 2015 (P.L. 114-74). The Act requires each agency to issue rules to (1) adjust the level of civil monetary penalties within the jurisdiction of the agency with an initial “catch-up” adjustment by July 1, 2016, to take effect no later than August 1, 2016, and (2) make subsequent annual adjustments for inflation beginning January 15, 2017 based on OMB guidance. OMB is required to provide to agencies no later than December 15, 2016, and each December 15 thereafter, the adjustment rate based on inflation in the Consumer Price Index as of the most recent October. [Note: OMB published implementing guidance in Memo M-17-11 on December 16, 2016.] The Act exempts penalties under the Internal Revenue Code or the Tariff Act.

Interim final rules to adjust the civil monetary penalties within agencies were published as follows:			
Issued	Effective	Issuing Agency	Notes
5/2/16	8/1/16	Railroad Retirement Board	
5/19/16	8/1/16	Small Business Administration	
5/26/16	5/26/16	Department of Defense	A final rule was published 9/12/16
6/7/16	7/7/16	Department of Commerce Office of the Secretary	No comments were received on the interim rule and it is converted to final without change, published 12/28/16 and effective 1/15/17
6/8/16	8/1/16	Department of State	
6/15/16	8/16/16	Department of Housing and Urban Development	
6/21/16	6/21/16	National Credit Union Administration	A final rule was published 11/7/16 and provides a clarification regarding the prospective effect of the law and regulations
6/22/16	6/22/16	Department of Veterans Affairs	
6/23/16	8/1/16	Corporation for National and Community Service	
6/27/16	8/1/16	Social Security Administration	No comments were received on the interim rule and it is converted to final without change, published 12/29/16 and effective 1/15/17
6/27/16	8/1/16	Commodities Futures Trading Commission	
6/27/16	8/1/16	Department of Transportation Federal Motor Carrier Safety Administration	
6/27/16	8/1/16	National Science Foundation	
6/28/16	8/1/16	Office of Government Ethics	
6/28/16	7/28/16	Department of Energy	No comments were received on the interim rule and it is converted to final without change, published 12/30/16 and effective 12/30/16
6/28/16	7/28/16	Department of the Interior Office of the Secretary	Correcting amendments were published on 8/8/16 and on 9/20/16
6/28/16	7/28/16	Department of the Interior Bureau of Land Management	
6/28/16	7/28/16	Department of the Interior Bureau of Safety and Environmental Enforcement	
6/28/16	7/28/16	Department of the Interior Fish and Wildlife Service	No comments were received on the interim rule and it is converted to final without change, published 12/23/16 and effective 12/23/16
6/28/16	7/28/16	Department of Transportation Saint Lawrence Seaway Development Corporation	
6/30/16	8/1/16	Federal Maritime Commission	
6/30/16	8/1/16	Department of the Interior Bureau of Indian Affairs	
6/30/16	8/1/16	Postal Service	

6/30/16	8/1/16	Department of the Treasury Financial Crimes Enforcement Network	
6/30/16	8/1/16	Department of Justice	
6/30/16	8/1/16	Department of Transportation Maritime Administration	
7/5/16	8/4/16	Department of Transportation National Highway Traffic Safety Administration	Several comments were received on the interim rule and it is converted to final with, published 12/28/16 and effective 1/27/17
7/19/16	8/1/16	Office of Personnel Management	
8/10/16	8/10/16	Department of Transportation Office of the Secretary	
9/6/16	9/6/16	Department of Health and Human Services for the Centers for Medicare and Medicaid Services, the Administration for Children and Families, and the Office of Inspector General	
10/20/16	10/20/16	Surface Transportation Board	
12/7/16	12/7/16	Department of the Treasury for the Terrorism Risk Insurance Program	
Final rules were published as follows:			
Issued	Effective	Issuing Agency	Notes
6/30/16	8/1/16	Federal Communications Commission	
6/30/16	8/1/16	Department of Justice and its Bureaus	Published as an interim final rule, effective 8/1/16, to adjust the penalties under the False Claims Act. Applies to false claims made after 11/2/15.
7/1/16	8/1/16	Department of Labor and its Bureaus	Published as an interim final rule, effective 8/1/16
7/1/16	8/1/16	Department of Labor jointly with the Department of Homeland Security	To adjust the penalties associated with the H- 2B temporary guest worker program
9/12/16	9/12/16	Department of Defense Office of the Secretary	An interim rule was published 5/26/16; no comments were received on the interim rule and it is converted to final without change
11/23/16	1/1/17	Consumer Product Safety Commission	

Department of Agriculture

Fire Suppression and Liability (2/12/16)

This final rule, effective 3/14/16, amends the Agriculture Acquisition Regulation (AGAR) by adding a new clause entitled “Fire Suppression and Liability” to implement a provision in the Agricultural Act of 2014 that the agency use a fire liability provision in all stewardship contracts and agreements that is in substantially the same form as the provisions in a designated timber contract.

Department of Commerce

Guidance on Charging and Penalty Determinations in Settlement of Enforcement Cases (6/22/16)

This final rule, effective 7/22/16, revises the Bureau of Industry and Security (BIS) guidance regarding administrative enforcement cases based on violations of the EAR, setting forth the factors that the Office of Export Enforcement considers when setting penalties. A proposed rule was published 12/28/15; eleven comments were submitted and the proposed rule is converted to final with minor changes.

NIST Technology Innovation – Personnel Exchanges

A. Proposed Rule (6/27/16)

This proposed rule is intended to foster the exchange of scientific and technical personnel among academia, industry (including small business) and federal laboratories and to clarify the appropriate use of cooperative research and development agreement (CRADA) authority by a federal laboratory for personnel exchanges where the lab has an existing relationship with a potential partner through another legal mechanism.

B. Final Rule (10/24/16)

This final rule, effective 11/23/16, clarifies the appropriate use of CRADA authority by a federal laboratory for personnel exchanges with the federal laboratory has an existing relationship with the potential partner through another legal mechanism.

One written comment was received on the proposed rule and the proposed rule is converted to final with no substantive changes.

Updated Statement of Legal Authority for Export Administration Regulation (EAR) (7/11/16)

This final rule, effective 7/11/16, updated the Code of Federal Regulations (CFR) legal authority paragraphs in the Export Administration Regulation. This is a procedural rule only and does not alter any right, obligation or prohibition that applies to any person under the EAR. No proposed rule was published for comment.

Revisions to EAR: Harmonization of Destination Control Statements (8/17/16)

This final rule, effective 11/15/16, amends the EAR to revise the destination control statement of the EAR to harmonize the statement required for the export of items subject to the EAR with the destination control statement of the International Traffic in Arms Regulation (ITAR). A proposed rule was published 5/22/15; 17 comments were received on the proposed rule and it is converted to final with changes. A [companion final ITAR rule](#) was also published this day, infra.

Updated Statement of Legal Authority for EAR (9/1/16)

This final rule, effective 9/1/16, updated the CFR legal authority paragraphs in the EAR to reflect the presidential declaration extending the International Emergency Economic Powers Act. This is a procedural rule only and does not alter any right, obligation or prohibition that applies to any person under the EAR. No proposed rule was published for comment.

Wassenaar Arrangement: Removal of Foreign National Review Requirements (9/20/16)

This final rule revises the Commerce Control List (CCL), as well as corresponding parts of the EAR, to implement changes made by the Wassenaar Arrangement's (WA) list of dual-use goods and technologies, including the adjusted peak performance of high performance computers. It also makes changes not agreed to by the WA.

Bayh-Dole Act Regulation Revisions (11/7/16)

This proposed rule would amend the regulations relating to implementation of the Patent and Trademark Amendments Act of 1980 (the "Bayh-Dole" Act) governing the disposition of patent rights developed pursuant to certain types of government funding, including procurement contracts. Among the proposed changes are an expansion of the agency's authority to shorten the two-year election period "where necessary to protect the government's interest" and a clarification of what happens when a federal employee is a co-inventor of a subject invention.

Department of Defense

Defense Industrial Base Cybersecurity Activities (10/4/16)

This final rule implements mandatory cyber incident reporting requirements for DoD contractors and subcontractors who have agreements with DoD through the Defense Industrial Base (DIB) cybersecurity (CS) activities program. In addition, the rule modifies eligibility criteria to permit greater participation in the program. An interim rule was published 10/2/15; twenty-eight comments were received and the rule is converted to final with changes.

Withholding Unclassified Technical Data and Technology from Public Disclosure (10/31/16)

This proposed rule establishes policy, assigns responsibility, and prescribes procedures for the dissemination and withholding of certain unclassified technical data and technology subject to the ITAR and the EAR. It is meant to control the transfer of technical data and technology contributing to the military potential of any country or countries, groups or individuals that could be detrimental to U.S. national security or critical interests.

Indemnification or Defense, or Providing Notice, Relating to Third-Party Environmental Claims (12/7/16)

This proposed rule would amend the DoD regulations to identify the proper address and notification method for an entity making a request for indemnification or defense, or providing notice to DoD, of a third-party claim under provisions of the FY 1993 NDAA or the FY 2001 NDAA relating to environmental claims.

Department of Energy

Energy Savings Performance Contract Energy Sales Agreement (2/16/16)

This notice requests comments on potential obstacles associated with the implementation of privately-owned onsite renewable energy generation projects under the federal energy savings performance contract (ESPC) authority, including potential issues with regard to program eligibility for the federal solar investment tax credit. [Note: See [a related request for comment concerning the tax treatment of these agreements](#), published 8/12/16, *infra*.]

Non-displacement of Qualified Workers Under Service Contract; Purchasing System Clause (4/26/16)

This proposed rule would amend the Department of Energy Acquisition Regulation (DEAR) to address the applicability of Executive Order 13459 (Non-displacement of Qualified Workers) and the FAR to DoE management and operating contractors and subcontractors under such contracts. DoE is also proposing to increase dollar thresholds in its contracting purchasing system clause for management and operating contractors to conform to the FAR.

Contractor Business Systems – Definition and Administration (7/6/16)

DoE is withdrawing a proposed rule published 4/1/14 that would define the term “contractor business system” as an accounting system, estimating system, purchasing system, earned value management system, and property management system. The proposed rule would implement compliance enforcement mechanisms and would allow a contracting officer to withhold a percentage of payments when a contractor’s business system contained significant deficiencies. DoE has determined that it will not proceed with the rulemaking.

Technical and Administrative Changes (7/15/16)

This final rule, effective 8/15/16, amends the DEAR to make technical and administrative changes, including changes to conform to the FAR. A proposed rule was published 3/25/15; no comments were received on the proposed rule it is converted to final with one change.

Procedural Rules for DoE Nuclear Activities – Whistleblower Protection (8/12/16)

This proposed rule would amend the procedural rules for DoE nuclear activities to clarify that the Department may assess civil penalties against certain contractors and subcontractors for violations of the prohibition against retaliating against an employee who reports violations or law, mismanagement, waste, abuse, or dangerous/unsafe workplace conditions, among other protected activities. The rule clarifies that the prohibition against whistleblower retaliation is a DoE nuclear safety requirement to the extent it concerns nuclear safety.

Tax Treatment of ESPC Energy Sales Agreements (8/12/16)

This request for comment seeks information on the potential for an ESPC energy sales agreement to qualify as a service contract under provisions of the Internal Revenue Code and thus remain eligible for the solar investment tax credit. [Note: See a [related request for comment concerning these agreements](#), published 2/2/16, *supra*.]

Department of Homeland Security

Invoices for Over-Age Firm-Fixed-Price Contracts (10/3/16)

This notice states that DHS has contracts that are considered “over-age” as the period of performance or final delivery date has expired and the time allowed for contract closeout has elapsed. To clear the backlog of over-age contracts, DHS developed procedures that would enable DHS to close out these actions and has provided a list of “low-risk” firm-fixed-price contracts that could be readily closed. DHS requests that contractors identified on the list submit any outstanding invoices within 60 days of publication.

Burden Reduction (10/11/16)

This notice seeks comment on specific existing significant DHS regulations that the department should consider as candidates for streamlining or repeal. A semiannual progress report is posted on the DHS website.

Department of Housing and Urban Development

HUD Acquisition Regulation (HUDAR) (3/15/16)

This final rule, effective 4/14/16, amends the HUDAR to implement miscellaneous changes to update the HUDAR. A proposed rule was published 5/28/15. No comments were received on the proposed rule and the proposed rule was converted to final with minor changes.

Department of the Interior

Revision of Non-procurement Suspension and Debarment Regulations (9/26/16)

This final rule, effective 9/26/16, revises the Department of the Interior’s 6/18/07 non-procurement suspension and debarment regulations to enhance transparency of the existing process and to clarify the department’s procedures for resolving non-procurement suspension and debarment actions.

Department of Labor

Establishing Paid Sick Leave for Federal Contractors

A. Proposed Rule (2/25/16)

This proposed rule proposes to implement Executive Order 13706 issued by the president on 9/7/15 which requires certain parties that contract with the federal government to provide their employees with up to seven days of paid sick leave annually, including paid sick leave for family care.

B. Final Rule (9/30/16)

This final rule, effective 11/29/16, implements Executive Order 13706 issued by the president on 9/7/15 which requires certain parties that contract with the federal government to provide their employees with up to seven days of paid sick leave annually, including paid sick leave for family care.

Over 35,000 individuals and entities submitted comments and the proposed rule is converted to final with changes. This final rule is applicable to federal contracts only after the effective date of regulations issued by the FAR Council. [Note: An [interim FAR rule was published in FAC 2005-93](#) on 12/16/16, effective 1/11/17.]

Implementation of OMB Guidance on Non-procurement Debarment and Suspension

A. Direct Final Rule (4/29/16)

This direct final rule removes DoL regulations implementing the government-wide common rule on non-procurement debarment and suspension and adopting the OMB guidance to streamline and consolidate in one title of the CFR all federal regulations on non-procurement debarment and suspension.

B. Proposed Rule (4/29/16)

This proposed rule removes DoL regulations implementing the government-wide common rule on non-procurement debarment and suspension and adopting the OMB guidance to streamline and consolidate in one title of the CFR all federal regulations on nonprocurement debarment and suspension.

No comments were received on the direct final rule. Thus, on 9/30/16, DoL published notice confirming that the direct final rule became effective on 5/31/16. No comments were received on the proposed rule; however, since the identical direct final rule became effective on 5/31/16, on 9/30/16, DoL published notice withdrawing the proposed rule.

Defining and Delimiting Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (5/23/16)

This final rule, effective 12/1/16, updates the standard salary level and total annual compensation requirements under the Fair Labor Standards Act (FLSA) to qualify for an exemption from the overtime premium pay under the Act for executive, administrative, professional, outside sales and computer employees (referred to as the “EAP” or the “white collar” exemptions). The rule also adds a provision automatically updating the standard salary level every three years. On 3/13/14, President Obama issued a memo directing DoL to update the overtime standards. A proposed rule was published 7/6/15; hundreds of comments were submitted and the proposed rule is converted to final with changes.

Defining and Delimiting Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (5/23/16)

This DoL “announcement of policy,” effective 5/23/16, provides a time-limited non-enforcement policy for providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with fewer than 15 beds until March 17, 2019. No proposed rule was published for comment.

Discrimination on the Basis of Sex (6/15/16)

This final OFCCP rule, effective 8/15/16, details obligations that covered federal contractors and subcontractors and federally assisted construction contractors and subcontractors must meet to ensure nondiscrimination in employment on the basis of sex and to take affirmative action to ensure that applicants and employees are treated without regard to their sex. A proposed rule was published 1/30/15; numerous comments were received on the proposed rule and it is converted to final with significant changes.

Final Guidance for Fair Pay and Safe Workplaces (8/25/16)

This final guidance is issued to assist the FAR Council and the federal contracting agencies in the implementation of the Fair Pay and Safe Workplaces Executive Order and final FAR rules. In this final guidance, the Department provides detailed definitions used in the FAR rule and a summary of the processes through which contracting agencies will assess a contractor’s overall record of labor law

compliance and carry out their other duties under the Executive Order and the FAR rules. [[Final FAR rules implementing the Executive Order](#) were published 8/25/16, supra.]

Establishing a Minimum Wage for Contractors – Notice of Rate Change (9/20/16)

This notice announces the applicable minimum wage rate to be paid to workers performing work on or in connection with federal contracts covered by Executive Order 13658 (“Establishing a Minimum Wage for Contractors,” 2/12/14). Beginning 1/1/17, that rate will be \$10.20 per hour and the rate for tipped employees performing on government contracts will be \$6.80 per hour.

Department of State

Department of State Acquisition Regulation (DOSAR)

A. Proposed Rule (3/28/16)

This proposed rule would amend the DOSAR to provide procedural changes relating to simplifying the fact-finding processes of the suspension and debarment program, including using a single fact-finding official in lieu of a panel as currently provided for.

B. Final Rule (8/3/16)

This final rule, effective 9/2/16, amends the DOSAR to provide procedural changes relating to simplifying the fact-finding processes of the suspension and debarment program, including using a single fact-finding official in lieu of a panel as currently provided for.

No substantive comments were received on the proposed rule and it is converted to final without change.

ITAR: Revisions to Definition of Export and Related Definitions

A. Interim Rule (6/3/16)

This interim final rule, effective 9/1/16, amends the ITAR to update the definition of “export” and “re-export or re-transfer,” and other definitions, to continue the process of harmonizing the definitions with the corresponding terms in the EAR to the extent appropriate. A proposed rule covering a portion of the rule was published 6/3/15; several comments were received on the proposed rule and the proposed rule is converted in part as part of this interim final rule.

B. Final Rule (9/8/16)

This final rule, effective 9/8/16, amends the ITAR to update the definition of “re-transfer” included in the interim rule and making other clarifying revisions.

Several comments were received on the interim rule and it is converted to final with changes.

ITAR: Procedures for Obtaining State Department Authorization to Export Items Subject to EAR; Revisions to the Destination Control Statement; and Other Changes (8/17/16)

This final rule, effective 11/15/16, amends the ITAR to add clarifying language to various provisions of the ITAR pertaining to the use of exemptions to the license requirements and the export of items subject to the Export Administration Regulation (EAR), when the EAR items are shipped with items subject to the ITAR. A proposed rule was published 5/22/15; 17 comments were received and the proposed rule is converted to final with changes. A companion EAR rule is also published today, supra.

Request for Information for 2017 Trafficking in Persons Report (12/13/16)

This notice requests written information to assist in reporting on the degree to which the United States and foreign governments meet the minimum standards for the elimination of trafficking in persons prescribed in the Trafficking Victims Protection Act of 2000, as amended, and will assist in the preparation of the Trafficking in Persons (TIP) report the Department submits annually.

Department of Transportation

Termination of Transportation Board of Contract Appeals (10/17/16)

This final rule, effective 10/17/16, amends the Transportation regulations to delete references to the repealed Transportation Board of Contract Appeals. No proposed rule was published for comment.

Department of the Treasury

Prompt Payment Interest Rate (7/6/16)

This notice provides that, for the period 7/1/16 through 12/31/16, the prompt payment interest rate is 1-7/8th percent per annum.

Incremental Funding of Fixed-Price, Time & Materials (T&M) or Labor-Hour Contracts During a Continuing Resolution (CR)

A. Proposed Rule (7/12/16)

This proposed rule would establish policies and procedures to facilitate successful, timely and economical execution of Treasury contractual actions during a CR. Specifically, this proposed rule sets forth procedures for using incremental funding for fixed-price, T&M or labor-hour contracts during a period in which funds are provided to Treasury under a CR. Bureaus may develop supplemental internal procedures as well as guidance to notify potential offerors, offerors, and contractors of these policies and procedures.

B. Final Rule (11/16/16)

This final rule, effective 12/16/16, amends the Treasury Acquisition Regulation (DTAR) by providing acquisition policy for incremental funding of fixed-price, T&M or labor-hour contracts during a CR.

No comments were received on the proposed rule and it is converted to final without change.

Tax on Certain Foreign Procurement (8/18/16)

This final rule, effective 8/18/16, and applicable 90 days after publication, provides coverage relating to the 2 percent tax on payments made by the U.S. government to foreign persons pursuant to certain contracts. The regulations affect U.S. government acquiring agencies and foreign persons providing certain goods and service. A proposed rule was published 4/22/15; several comments were received and the proposed rule is converted to final with changes.

Enhanced Cyber Risk Management Standards (10/26/16)

This joint advanced notice of proposed rulemaking, issued by the Comptroller of the Currency, Federal Reserve, and FDIC, regarding enhanced cyber risk management standards for large and interconnected entities under their supervision and those entities' service providers, addresses five categories: cyber risk governance, cyber risk management, internal dependency management, external dependency management, and incident response, cyber resilience and situational awareness.

Terrorism Risk Insurance Program

A. Proposed Rule (4/1/16)

This proposed rule would delete existing coverage and replace it in its entirety with revised Terrorism Risk Insurance Program (the “Program”) rules incorporating new Program financial and operational provisions contained in the 2015 Program Reauthorization Act, and includes additional coverage regarding data collection, the certification process, and the netting of payments.

B. Interim Rule (12/7/16)

This interim rule, effective 1/6/17, amends the Program regulations concerning only the certification process of an act of terrorism. This topic was covered in the proposed rule published 4/1/16. Ten comments were submitted on the certification process and the proposed rule relating to the certification process is converted to an interim rule with changes.

C. Final Rule (12/21/16)

This final rule, effective 1/17/17, implements further changes to the Program as required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 and as covered in the proposed rule published 4/1/16. Seventeen comments were submitted on the proposed rule and it is converted to final with changes.

Iranian Transactions and Sanctions Regulations (12/23/16)

This final rule, effective 12/23/16, amends the Office of Foreign Asset Control (OFAC) regulations relating to the Iranian Transactions and Sanctions Regulations to reflect OFAC licensing policies and addresses public comments relating to coverage of the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended, and clarifies the definition of the terms “goods of Iranian origin” and “Iranian-origin goods.” No proposed rule was published for comment.

Environmental Protection Agency

Institutional Oversight of Life Sciences Dual Use Research of Concern (4/26/16)

This direct final rule, effective 6/27/16, amends the EPA Acquisition Regulation (EPAAR) to include a new solicitation provision and contract clause to implement U.S. government policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (“iDURC”) by requiring certain domestic institutions that receive EPA contract funds to conduct or sponsor life sciences research to review and communicate their research responsibly in accordance with iDURC policy. The iDURC policy was published 9/24/14.

Small Business Programs, Solicitation Provisions and Contract Clauses (5/13/16)

This direct final rule, effective 7/12/16, amends the EPAAR to remove outdated information and to make administrative changes to the EPAAR relating to EPA’s small business programs.

Improper Business Practices and Personal Conflicts of Interest (5/18/16)

This direct final rule, effective 7/18/16, amends the EPAAR to make administrative changes to conform to the format of the FAR and to correct, clarify and update information. No proposed rule was published for comment.

General, Publicizing Contract Actions, Types of Acts (5/19/16)

This direct final rule, effective 7/18/16, amends the EPAAR to make administrative changes. No proposed rule was published for comment.

Clause for Level of Effort – Cost Reimbursement Contract (5/20/16)

This final rule, effective 6/20/16, amends the EPAAR to update policy, procedures and contract clauses to make the clauses more prescriptive in describing EPA’s responsibilities when the agency orders less level of effort than the maximum level of effort specified in the clause. A proposed rule was published 4/10/15; no comments were received on the proposed rule and it is converted to final without change.

Update to Construction and Architect/Engineer and Key Personnel Requirements (6/24/16)

This final rule, effective 7/25/16, amends the EPAAR to remove the evaluation of contracting performance and incorporate flexibility to identify the required number of days of key personnel commitment during the early stages of contractor performance under the Key Personnel clause. The rule also makes minor edits of an administrative nature. A proposed rule was published 8/12/14; no comments were submitted on the proposed rule and it is converted to final without change.

Participation by Disadvantaged Business Enterprises Under EPA Financial Assistance Agreements

A. Direct Final Rule (7/28/16)

This direct final rule, effective 10/26/16, revises EPA’s Disadvantaged Business Enterprise program to improve the practicability of the program, minimize burdens and clarify requirements that have been questioned. EPA views these changes as non-controversial but will withdraw the direct final rule if adverse public comments are received by 8/29/16. The rule applies to recipients of EPA financial assistance agreements, an identified loan under a financial assistance agreement, or a minority-owned, a woman-owned, or a small business. On 10/18/16, EPA published notice withdrawing the direct final rule because it received “what could be considered adverse public comments.”

B. Proposed Rule (7/28/16)

This proposed rule revises EPA’s Disadvantaged Business Enterprise program to improve the practicability of the program, minimize burdens and clarify requirements that have been questioned. The rule applies to recipients of EPA financial assistance agreements, an identified loan under a financial assistance agreement, or a minority-owned, a woman-owned, or a small business.

Equal Employment Opportunity Commission

Revision of Employer Information Report (EEO-1) (2/1/16)

This notice is a request for comment on the revised data collection of the Employer Information Report (EEO-1) covering federal contractors with more than 50 employees adding pay data to the report beginning in 2017.

General Services Administration

Removal of Unnecessary Construction Clauses and Editorial Changes (1/27/16)

This final rule, effective 1/27/16, amends the GSA Acquisition Regulation (GSAR) coverage on construction and architect-engineer contracts to remove unnecessary regulations. A proposed rule was published 7/30/15. No comments were received and the proposed rule is converted to final without change.

Unenforceable Commercial Supplier Agreement Terms (5/3/16)

This proposed rule would amend the GSAR to address common commercial supplier agreement terms that are inconsistent with or create ambiguity with federal law. On 7/31/15, GSA issued a class deviation to immediately address the order of precedence and commercial supplier agreement terms that are incompatible with federal law. A supplement to the class deviation was issued 9/30/15.

Rewrite of GSAR Part 515, Contracting by Negotiation (6/6/16)

This proposed rule would amend the GSAR to rewrite Part 515 relating to contracting by negotiation. A correction was published 6/29/16.

Rewrite of GSAR Part 517, Special Contracting Methods (6/6/16)

This final rule, effective 7/6/16, amends the GSAR to update requirements for special contracting methods by eliminating out-of-date requirements and reorganizing the text to align with the FAR. A proposed rule was published 6/15/15; no comments were received on the proposed rule and it is converted to final without change.

Purchase by Non-Federal Entities (6/6/16)

This final rule, effective 7/6/16, amends the GSAR to clarify the application of several federal laws relating to access privileges of certain non-federal entities to the GSA Schedules. Proposed rules were published in 2004, 2008 and 2014. Two comments were submitted on the proposed rules and they are converted to final without minor changes.

Transactional Data Reporting (6/23/16)

This final rule, effective 6/23/16, amends the GSAR to include clauses that require vendors to report transactional data from orders placed against certain Federal Supply Schedule contracts, government-wide contracts and IDIQ contracts. A proposed rule was published 3/4/15. 26 comments were received on the proposed rule and the proposed rule is converted to final with changes.

GSAR/FSS: Order Level Materials (9/9/16)

This proposed rule would amend the GSAR to clarify the authority to acquire order-level materials when placing a task order or establishing a Blanket Purchase Agreement (BPA) against a Federal Supply Schedule (FSS) contract.

GSAR: Construction Contract Administration (9/9/16)

This proposed rule would amend the GSAR coverage on construction contracting, including provisions and clauses for solicitations and resulting contracts, to clarify, update, and incorporate existing construction administration procedures.

Inflation of Acquisition-Related Thresholds (10/4/16)

This final rule, effective 10/4/16, amends the GSAR to update acquisition-related thresholds to align with the FAR. No proposed rule was published for comment.

Gulf Coast Ecosystem Restoration Council

Local Contracting Preference (7/22/16)

This final policy, effective 7/22/16, implements the local contracting preference requirement of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf

Coast States Act of 2012 (“RESTORE Act”). The Act requires the Council to develop standard terms to include in contracts for projects and programs awarded pursuant to the Council’s comprehensive plan that provides a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the Gulf Coast region. A proposed notice of policy was published 5/22/15; three comments were received and the proposed policy is converted to final with minor changes. The Council is an independent entity created by the RESTORE Act.

National Archives and Records Administration (NARA)

Controlled Unclassified Information (9/14/16)

This final rule, effective 11/14/16, establishes policy for agencies on designating, safeguarding, disseminating, marking, decontrolling, and disposing of controlled unclassified information (CUI), self-inspection and oversight requirements, and other aspects of the CUI program. A proposed rule was published 5/5/15; 29 written responses were received and the proposed rule is converted to final with changes.

NASA

Discrimination Based on Disability in Federally Conducted Programs (1/22/16)

This final rule, effective 2/22/16, revises the NASA regulations implementing Section 504 of the Rehabilitation Act that prohibits discrimination on the basis of disability by recipients of programs, services and activities conducted by NASA. A proposed rule was published 11/13/14. One comment was received and the proposed rule is converted to final with minor changes.

Cooperative Agreements with Commercial Firms

A. Proposed Rule (2/22/16)

This proposed rule would amend the NASA regulations on cooperative agreements with commercial firms to implement section 872 of the FY09 NDAA requiring agency official to consider applicants’ integrity and performance records prior to awarding a grant or cooperative agreement. The rule requires the agency to review records in the SAM database or the FAPIIS database to determine whether the prospective award recipient demonstrates a “satisfactory record” of integrity and business ethics, and the execution of grants, cooperative agreements or procurement awards.

B. Final Rule (6/3/16)

This final rule, effective 7/5/16, amends the NASA rules to require agency officials to consider applicants’ integrity and performance record prior to awarding a grant or cooperative agreement. The rule requires the agency to review records in the SAM database or the FAPIIS database to determine whether the prospective award recipient demonstrates a “satisfactory record” of integrity and business ethics, and the execution of grants, cooperative agreements or procurement awards.

One comment was received on the proposed rule and it is converted to final without change.

NASA Suspending and Debarring Official (3/9/16)

This final rule, effective 4/8/16, amends the NASA FAR Supplement (NFS) to re-assign the role of the NASA suspending and debarring official from the Assistant Administrator for Procurement to the Deputy General Counsel. No proposed rule was published for comment because the change effects only the government’s internal operating procedures.

Removal of Grant Handbook References

A. Proposed Rule (3/14/16)

This proposed rule would amend the NFS to remove references to NASA's Grant and Cooperative Agreement Handbook and related documents.

B. Final Rule (6/24/16)

This final rule, effective 7/25/16, amends the NFS to remove references to NASA's Grant and Cooperative Agreement Handbook and related documents.

No comments were received on the proposed rule and it is converted to final without change.

Removal of Outdated and Duplicative Guidance

A. Proposed Rule (3/28/16)

This proposed rule would amend the NFS to remove duplicative language of the FAR and superseded NFS guidance.

B. Final Rule (6/20/16)

This final rule, effective 7/20/16, amends the NFS to remove duplicative language of the FAR and superseded NFS guidance.

No comments were received on the proposed rule and it is converted to final without change.

Clarification of Award Fee Evaluations and Payments

A. Proposed Rule (4/22/16)

This proposed rule would amend the NFS to clarify NASA's award fee process by incorporating terms used in award fee contracting, guidance relative to final award fee evaluations, release of source selection information, and the calculation of the provisional award fee payment percentage in NASA end-item award fee contracts.

B. Final Rule (8/1/16)

This final rule, effective 8/31/16, amends the NFS to clarify NASA's award fee process by incorporating terms used in award fee contracting, guidance relative to final award fee evaluations, release of source selection information, and the calculation of the provisional award fee payment percentage in NASA end-item award fee contracts.

One public comment was received on the proposed rule and it is converted to final without change.

Revision to Uniform Administrative Requirements for Federal Awards

A. Proposed Rule (4/27/16)

This proposed rule would amend the NASA regulations to modify the requirements related to information contained in a federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results.

B. Final Rule (10/27/16)

This final rule, effective 11/28/16, amends the NASA regulations to modify the requirements related to information contained in a federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions relating to indirect cost charges and access to research results.

Eight respondents submitted comments and the proposed rule is converted to final with changes.

Contractor Financial Reporting of Property

A. Proposed Rule (7/26/16)

This proposed rule would amend the NFS to add a monthly reporting requirement for contractors having custody of \$10 million or more in NASA-owned property, plant and equipment (PP&E).

B. Final Rule (12/16/16)

This final rule, effective 1/17/17, amends the NFS to add a monthly reporting requirement for contractors having custody of \$10 million or more in NASA-owned property, plant and equipment (PP&E). Two respondents submitted comments and the proposed rule is converted to final without change.

Engineering Change Proposals

A. Proposed Rule (8/17/16)

This proposed rule would amend the NFS to remove the Engineering Change Proposal (ECP) basic clause with alternates from the NFS because it is no longer used in procurements; the agency is using the FAR Changes clause to process engineering change proposals.

B. Final Rule (10/31/16)

This final rule, effective 11/30/16, amends the NFS to remove the ECP basic clause with its alternates.

Six comments were received on the proposed rule (but were advertisements and not substantive) and it is converted to final without change.

Revised Voucher Submission and Payment Process

A. Interim Rule (9/14/16)

This interim rule, effective 9/14/16, amends the NFS to implement revisions to the voucher submittal and payment process. The revisions are necessary because Section 893 of the FY16 NDAA prohibited DCAA from performing audit work for non-Defense agencies. NASA had delegated to DCAA the task or reviewing contractor requests for payment under NASA cost-type contracts.

B. Final Rule (12/14/16)

This final rule, effective 12/14/16, amends the NFS to implement revisions to the voucher submittal and payment process. The revisions are necessary because Section 893 of the FY16 NDAA prohibited DCAA from performing audit work for non-Defense agencies. NASA had delegated to DCAA the task or reviewing contractor requests for payment under NASA cost-type contracts.

No public comments were submitted on the interim rule and it is converted to final without change.

Award Terms (12/9/16)

This proposed rule would amend the NFS to add policy on the use of additional contract periods of performance, or “award terms,” as a contract incentive.

Office of Management and Budget

Office of Federal Procurement Policy (OFPP): Benchmark Compensation Amount for Certain Executives and Contractor Employees (3/15/16)

This notice announces benchmark compensation amount for certain executives and contractor employees in terms of allowable costs under federal covered contracts during the contractor’s fiscal years 2013 and 2014 at \$980,796 and \$1,444,888 respectively, for contracts awarded before 6/24/14.

[Note: Section 702 of the 2015 Balanced Budget Act lowered the benchmark cap to \$487,000, for contracts awarded after 6/24/15, as implemented by an interim rule published 6/24/15.]

Federal Source Code Policy (3/11/16)

This notice announces the request for public comment on a draft OMB memo entitled “Federal Source Code Policy – Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software,” to improve the way customer-developed government code is acquired and distributed.

Category Management (10/7/16)

This notice proposes a new OMB Circular, “Implementing Category Management for Common Goods and Services,” to codify category management, a strategic practice where federal contracting for common goods and services is managed by categories of spending across the government and supported by teams of experts. This circular establishes key principles, strategies and policies, roles and responsibilities, and metrics to measure success.

Anti-Trafficking Risk Management Best Practices & Mitigation Consideration Guidance (12/8/16)

This notice seeks comment on a draft memorandum developed in coordination with the Office to Monitor and Combat Trafficking in Persons in the Department of State and the Department of Labor to address anti-trafficking risk management best practices and mitigation considerations. This guidance is designed to help an agency determine if a contractor is taking adequate steps to meet its anti-trafficking responsibilities under the FAR.

Small Business Administration

Employee-Based Size Standards in Wholesale and Retail Trade (1/25/16)

This final rule, effective 2/26/16, increases 47 small business size standards based on a concern’s number of employees. SBA retains the size standards for the remaining industries in the sector and the 500-employee size standard for the federal government’s procurement of supplies under the non-manufacturer rule. A proposed rule was published 5/19/14; seven comments were received and the proposed rule is converted to final without change.

Inflation Adjustment to Monetary Based Size Standards (1/25/16)

This final rule, effective 1/25/16, amends the SBA size standards to adjust monetary small business size standards for inflation that has occurred since the 2008 inflation adjustment. SBA’s size standards regulations require SBA to examine the impact of inflation on monetary size standards and make adjustments at least once every five years. An interim final rule was published 6/12/14; comments were received on various changes and the interim rule is converted to final with changes.

Small Business Size Standards: Industries with Employee-Based Standards Not Part of Manufacturing, Wholesale Trade or Retail Trade (1/26/16)

This final rule, effective 2/26/16, modifies 36 employee-based small business size standards for industries and sub-industries that are not part of manufacturing, wholesale trade or retail trade. SBA also maintains the Information Technology Value Added Resellers (ITVAR) “exception” with the 150-employee size standard but requires compliance with the non-manufacturing performance requirements or non-manufacturer rule. A proposed rule was published 9/10/14; 202 comments were

received on the proposed rule, including 168 on the ITVAR, and it is converted to final with minor changes.

Small Business Size Standards for Manufacturing (1/26/16)

This final rule, effective 2/26/16, increases the size standards for 209 industries in manufacturing and the size standard for petroleum refiners. A proposed rule was published 9/10/14; 26 comments were received and the proposed rule is converted to final with minor changes.

Women-Owned Small Business Federal Contract Program: Identification of Eligible Industries (3/3/16)

This notice identifies the industries designated by SBA as eligible for the women-owned small business (WOSB) federal contract program, as required by section 825 of the FY15 NDAA. The industry eligibility is effective 3/3/16 and applies to solicitations issued on or after that date.

SBIR/STTR Policy Directive (4/7/16)

This notice revises the policy directive of the SBA SBIR and STTR programs by combining the two directives into one directive, clarifying the data rights and Phase III preference afforded SBIR and STTR small business awardees, adding definitions relating to data rights, and clarifying the benchmarks for progress toward commercialization.

Small Business Size Standards (5/24/16)

SBA published this Statement of General Policy #3, effective 5/24/16, of its intended application and interpretation of the inter-affiliate transactions exclusion from annual receipts between a concern and its domestic or foreign affiliates, regardless of the type of relationship that resulted in the finding of affiliation.

Small Business Government Contracting and FY13 NDAA Amendments (5/31/16)

This final rule, effective 6/30/16, amends the SBA regulations to implement provisions of the FY13 NDAA which pertain to performance requirements applicable to small business and socio-economic program set-aside contracts and small business subcontracting. It also allows a joint venture to qualify as small for any government procurement as long as each partner to the joint venture qualifies individually as small under the size standard corresponding to the NAICS code assigned in the solicitation. A proposed rule was published 12/29/14; 216 comments were received on the proposed rule and it is converted to final with changes. A technical correction, effective 9/30/16, was published on 9/30/16.

Affiliation for Business Loan and Surety Bond Guarantee Programs (6/27/16)

This final rule, effective 7/27/16, amends the SBA regulations pertaining to the determination of size eligibility based on affiliation by creating distinctive requirements for small business applicants for assistance from certain SBA loan programs and the surety bond guarantee program from the government contracting, business development or other programs. A proposed rule was published 10/2/15; 160 comments were received on the proposed rule and it is converted to final with changes.

Small Business Mentor-Protégé Programs (7/25/16)

This final rule, effective 8/24/16, amends the SBA regulations to implement provisions in the 2010 Small Business Jobs Act, and the FY 13 NDAA, to establish a government-wide mentor-protégé program for all small business concerns, consistent with SBA's current program for participants in the 8(a) business development program. The rule also makes other changes. A proposed rule was published 2/5/15; 113

comments were received and the proposed rule is converted to final with changes. Two corrections were separately published 10/19/16. A further correction was published 12/27/16.

HUBZone and NDAA FY16 Amendments (8/4/16)

This direct final rule, effective 10/3/16, amends the SBA regulations relating to the HUBZone program to implement Section 866 of the FY16 NDAA. The rule is effective without further action unless significant adverse comments are received by 9/6/16, in which case SBA will publish a withdrawal of the rule. [Note: No withdrawal notice was published.]

Rules of Procedure Governing Cases Before Office of Hearings and Appeals (10/7/16)

This proposed rule would amend the rules of practice of the SBA Office of Hearings and Appeals (OHA) to implement Section 809 of the FY16 NDAA that authorizes OHA to decide petitions for reconsideration of size standards after SBA publishes a final rule to revise, modify or establish a size standard.

Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

A. Technical amendment (9/30/16)

This final rule, effective 9/30/16, provides a technical correction to the final rule that was published 10/2/13.

B. Technical amendment (10/3/16)

This final rule, effective 10/3/16, provides a further technical amendment to the final rule that was published 10/2/13.

Task and Delivery Order Contracts, Bundling and Consolidation Correction (10/3/16)

This final rule, effective 10/3/16, amends the SBA final rule published on 10/2/14 that described how supply procurements should be classified; it mistakenly attempted to amend a regulation by removing words that did not exist. This rule removes that instruction. No substantive change is made by this change.

Credit for Lower Tier Small Business Subcontracting (12/23/16)

This final rule, effective 1/23/17, amends the SBA regulations to implement Section 1614 of the FY14 NDAA to provide that where a prime contractor has an individual subcontracting plan for a specific prime contract with an executive agency, the prime shall receive credit towards its subcontracting goals for awards made to small business concerns at any tier under the contract. The rule also requires subcontractors with subcontracting plans to monitor their subcontractors' performance and compliance toward reaching the goals and satisfying their reporting obligations. The rule also clarifies that the size standard for a particular subcontract must appear in the solicitation for the subcontract. A proposed rule was published 10/6/15; thirteen comments were received on the proposed rule and the proposed rule is converted to final with changes.

USAID

Participation by Religious Organizations in USAID programs (6/29/16)

This final rule, effective 7/29/16, amends the USAID regulations to address provisions with respect to the applicability of the Establishment Clause of the Constitution to the use of federal funds in USAID programs. The previous final rule was issued 10/20/14, and a prior proposed rule was published 3/25/11; nine comments were received on the proposed rule and the proposed rule and previous final rule are converted to final.

Preference for Privately Owned U.S. Flag Commercial Vessels

A. Direct Final Rule (7/20/16)

This direct final rule, effective 10/18/16, amends the USAID Acquisition Regulation (AIDAR) clause to conform to the current requirements of the Cargo Preference Act of 1954 and provide up-to-date submission instructions to the Maritime Administration (MARAD). It is published as a direct final rule since no adverse comments are expected; if adverse comments are received, USAID will withdraw the rule. A separate proposed rule was also published on this date as a companion to this rule.

B. Proposed Rule (7/20/16)

This proposed rule would amend the AIDAR clause to conform to the current requirements of the Cargo Preference Act of 1954 and provide up-to-date submission instructions to the Maritime Administration (MARAD). It is published as a companion to the direct final rule published on this date. If no adverse comments are received, the effective date of the direct final rule will go into effect and there will be no further action on this rule.

Administrative Changes (7/26/16)

This final rule, effective 8/25/16, amends the AIDAR to maintain consistency with federal and agency regulations and incorporates current and new USAID clauses into the regulations. A proposed rule was published 11/12/15; one comment was received on the proposed rule and it is converted to final with minor changes.

Agency Warrant Program for Individual Cooperating Country National Personal Services Contractors (8/19/16)

This proposed rule would amend the AIDAR to incorporate a warrant program for cooperating country national (CCN) personal service contractors into the regulation. In 2011, USAID approved a two-year worldwide CCN Administrative Contracting and Agreement Officer pilot warrant program to address the shortage of USAID contracting officers and build long-term, host country technical capacity to materially assist missions with procurement responsibility. A permanent program was launched in September 2014. Also in 2014, a two-year AIDAR class deviation was issued to establish the permanent program. By the end of calendar year 2016, there will be twelve warranted CCN contracting officers.

Requirement for Non-discrimination Against End-Users of Supplies or Services (“Beneficiaries”) Under USAID-Funded Contracts

A. Proposed Rule (8/22/16)

This proposed rule would amend the AIDAR to include a new clause that expressly states that USAID-funded contractors must not discriminate among end-users of supplies or services (referred to as “beneficiaries” or “potential beneficiaries”) in any way that is contrary to the scope of the activity as defined in the Statements of Work.

B. Final Rule (10/25/16)

This final rule, effective 10/25/16, amends the AIDAR to include a new clause that expressly states that USAID-funded contractors must not discriminate among end-users of supplies or services (referred to as “beneficiaries” or “potential beneficiaries”) in any way that is contrary to the scope of the activity that is defined in the Statements of Work.

Six comments were received on the proposed rule and it is converted to final with minor changes.

Government Property – USAID Reporting Requirements (11/29/16)

This proposed rule would amend the AIDAR to clarify accountability for all mobile Information Technology equipment provided as government-furnished property by government officials.