

Federal Contracting Review FAR – DFARS Cases - 2016

NCMA-WI
2016-Year End Update
January 17, 2017

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Overview: FAR/DFARS Changes

Federal Acquisition Regulation (FAR)

- FAR is overseen by 2 councils working together under the Office of Procurement Policy (OFPP)
 - Defense Acquisition Regulatory Council (DARC) chaired by DOD with NASA
 - Civilian Agency Acquisition Council (CAAC) chaired by General Services Administration (GSA)
 - GSA leads the FAR Secretariat to track case load / status of FAR update requirements

Defense Federal Acquisition Regulation Supplement (DFARS)

- DFARS is administered by the Department of Defense (DoD)

Overview: FAR/DFARS Changes

- Standard practice: FAR Changes are published as PROPOSED in the Federal Register and “the Public” is offered to review and comment
- After the proper time-span for comments has elapsed, the FAR Councils will do one of the following:
 - Publish the FAR update as FINAL with no changes to the proposed rule
 - Publish the FAR updates as FINAL with minor updates to the proposed rule based on comments received
 - Update and re-publish a Proposed FAR update based on comments
 - Publish Interim Rules while proposed updates are returned to public for further comments

Publication of Rules on Federal Register



FEDERAL REGISTER

The Daily Journal of the United States Government

Ⓜ Rule

Federal Acquisition Regulation: Establishing a Minimum Wage for Contractors

A Rule by the [Defense Department](#), the [General Services Administration](#), and the [National Aeronautics and Space Administration](#) on 12/04/2015

PUBLISHED DOCUMENT		DOCUMENT DETAILS
	AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).	Printed version: PDF
	ACTION: Final rule.	Publication Date: 12/04/2015
	SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order (E.O.) Establishing a Minimum Wage for Contractors, and a final rule issued by the Department of Labor (DOL).	Agencies: Department of Defense General Services Administration National Aeronautics and Space Administration
	DATES:	Dates: Effective: December 4, 2015.
		Effective Date: 12/04/2015
		Document Type: Rule
		Document Citation: 80 FR 75915

Data in Federal Register posting

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at [79 FR 74544](#) on December 15, 2014, to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, and a final rule issued by DOL at [29 CFR part 10](#). A correction to the interim rule was published at [79 FR 75434](#) on December 18, 2014 establishing the rule's effective date as December 15, 2014. For a discussion of the FAR implementation of the E.O., see the interim rule. One respondent submitted a public comment on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment submitted in the development of the final rule. A discussion of the comment follows.

A. Changes

The interim rule is converted to a final rule with only minor changes.

B. Analysis of Public Comment

One respondent submitted one comment.

Comment: Although the respondent was generally supportive of the intent of the E.O. raising the minimum wage for workers performing on or in connection with Federal contracts, the respondent expressed deep concern that the E.O. and the implementing FAR rule will have a negative impact on the employment of individuals with significant disabilities, specifically those who earn commensurate wages under special subminimum wage certificates issued by

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts,

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

Start Printed
Page 75916

This rule is needed to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and associated Department of Labor (DOL) regulatory requirements at [29 CFR part 10](#).

The interim rule published December 15, 2014 (and correction published

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending [48 CFR parts 22](#) and [52](#), which was published in the **Federal Register** at [79 FR 74544](#) on December 15, 2014, is adopted as final with the following changes:

1. The authority citation for [48 CFR parts 22](#) and [52](#) continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Amend section 22.1904 by revising the first two sentences in paragraph (b)(1) and paragraph (b)(2) to read as follows:

Overview: FAR/DFARS Changes

- FAR “Cases” are tracked based on a numbering scheme:
 - First four digits are the Government Fiscal year
 - Last four digits are the sequential number of case issued
 - i.e. FAR case 2015-0002 is the second case issued in FY15
- DFARS “Cases” are tracked based on similar scheme:
 - First four digits are the Government Fiscal year
 - Last four digits begin with “D” for DOD followed by sequential number of case issued
 - i.e. DFARS case 2015-D002 is the second case issued in FY15

Comments to Proposed Rulings:

- If a Proposed Rule will affect your company,
 - Read the proposal, do your best to understand the ramifications
 - Put together the best thought out statement of issues
 - Send comments to the noted locations, by the specified dates.
- Professional Organizations such as NCMA, NDIA and others work in an advocacy role for their members. Use them as well.

Federal Acquisition Regulation: Audit of Settlement Proposals

A Proposed Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 09/14/2016

PUBLISHED DOCUMENT



AGENCY:

Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION:

Proposed rule.

SUMMARY:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to \$750,000.

DATES:

Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before November 14, 2016 to be considered in the formation of the final rule.

ADDRESSES:

Submit comments in response to FAR case 2015-039 by any of the following methods:

- **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-039". Select the link "Comment Now" that corresponds with "FAR Case 2015-039." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015-039" on your attached document.
- **Mail:** General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2015-039, in all

DOCUMENT DETAILS

Printed version:

[PDF](#)

Publication Date:

09/14/2016

Agencies:

[Department of Defense](#)
[General Services Administration](#)
[National Aeronautics and Space Administration](#)

Dates:

Interested parties should submit written comments to the

Document Type:

Proposed Rule

Document Citation:

81 FR 63158

Page:

63158-63159 (2 pages)

CFR:

48 CFR 49

Agency/Docket Numbers:

FAR Case 2015-039
Docket No. 2015-0039,
Sequence No. 1

RIN:

9000-AN26

Document Number:

2016-22070

DOCUMENT DETAILS

ENHANCED CONTENT

[regulations.gov](http://www.regulations.gov)

Docket Number:

FAR-2015-0039

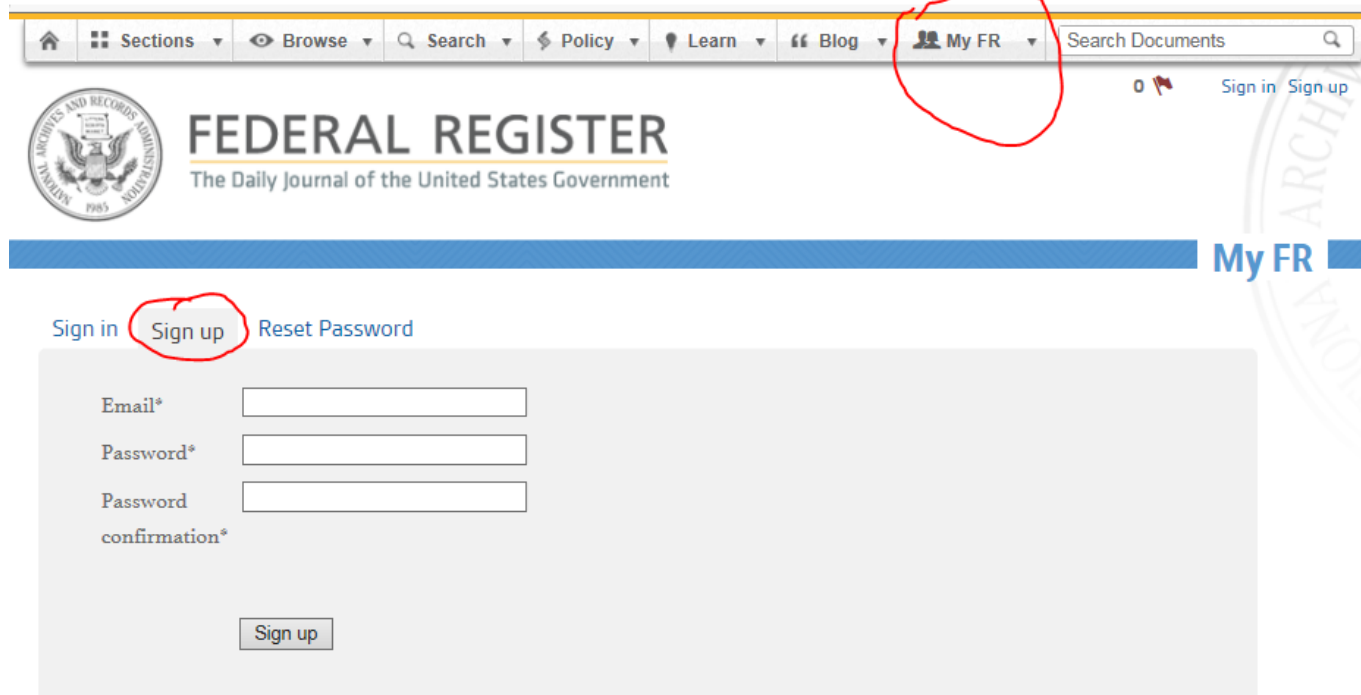
Docket Name:

How to keep current

- Federal Register:
 - <https://www.federalregister.gov/>
- Pay options
- Free review options
 - National Contract Management Association (NCMA)
 - <http://www.wifcon.com/rules.html>
- Open FAR / DFARS Cases:
 - http://www.acq.osd.mil/dpap/dars/far_case_status.html
 - http://www.acq.osd.mil/dpap/dars/case_status.html

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- <https://www.federalregister.gov/>



The screenshot shows the Federal Register website interface. At the top, there is a navigation bar with links for Sections, Browse, Search, Policy, Learn, Blog, and My FR. The 'My FR' link is circled in red. To the right of the navigation bar is a search box labeled 'Search Documents'. Below the navigation bar is the Federal Register logo and the text 'FEDERAL REGISTER The Daily Journal of the United States Government'. On the right side, there are links for 'Sign in' and 'Sign up'. Below this is a blue bar with the text 'My FR'. In the main content area, there are three links: 'Sign in', 'Sign up' (circled in red), and 'Reset Password'. Below these links is a sign-up form with three input fields: 'Email*', 'Password*', and 'Password confirmation*'. At the bottom of the form is a 'Sign up' button.

Pay Options - example

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Professional Organizations

- NCMA, WPI, NDIA
 - Newsletters, Events, etc.

NCMA <ncma@ncmahq.org>

Contract Management News December 2, 2015

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What's New

The Never-Ending Appeals Process At VA Hurts All Vets
PSC Says DHS Request Could Eliminate Competition
Congress Weighs In On Defense Procurement Cases

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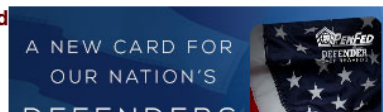
WEEKLY INSIDER
News and analysis for industry and government professionals

Tuesday, December 1, 2015

DEFENSE E-BRIEF

Defense Innovation Initiative Burdened by High Expectations

National Defense - 11/30/2015
The spotlight on the Pentagon's innovation initiative and the opening of a new office near



Events

Blog

FAQs

ACQUISITION ALERT

SMALL BUSINESS: Action Needed to Determine Whether DOD's Comprehensive Subcontracting Plan Test Program Should Be Made Permanent

Research on the Web

- <http://www.wifcon.com/rules.html>





FAR "LESS COMPLICATED" COURSE
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Federal Acquisition Regulation	Department of Defense	Civilian Agencies	White House, OMB, OFPP, CASB
<p>Federal Acquisition Circular 2005-85</p> <p>Introduction. (December 4, 2015)</p> <p>FAR Case 2015-011: Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction. Interim. (December 4, 2015)</p> <p>FAR Case 2015-013: Further Amendments to Equal Employment Opportunity. Final. (December 4, 2015)</p> <p>FAR Case 2015-036: Updating Federal Contractor Reporting of Veterans' Employment. Interim (December 4, 2015)</p> <p>FAR Case 2013-015: Pilot Program for Enhancement of Contractor Employee Whistleblower Protections. Final (December 4,</p>	<p>Department of Defense</p> <p>Department of Defense</p> <p>Defense Transportation Regulation, Part IV. (December 1, 2015)</p> <p>Contracting Support of Deployed Department of Defense Personnel and Units. (pdf) (December 1, 2015)</p> <p>Defense Federal Acquisition Regulation</p> <p>Technical Amendments. (November 30, 2015)</p> <p>DFARS Case 2015-D031: Eliminate Data Collection Requirement. (November 20, 2015)</p> <p>DFARS Case 2015-D007: Photovoltaic Devices from the U.S. (November 20, 2015)</p>	<p>Civilian Agencies</p> <p>National Aeronautics and Space Administration</p> <p>Safety and Health Measures and Mishap Reporting. (November 25, 2015)</p> <p>NFS Case 2015-N004: NASA Capitalization Threshold. (November 25, 2015)</p> <p>Agency for International Development Acquisition Regulation</p> <p>Various Administrative Changes and Clauses. (November 12, 2015)</p> <p>Department of Veterans Affairs</p> <p>VA Veteran-Owned Small Business Verification Guidelines. (November 6, 2015)</p>	<p>White House, OMB, OFPP, CASB</p> <p>Office of Government Ethics</p> <p>Solicitation and Acceptance of Gifts from Outside Sources. (November 27, 2015)</p> <p>Office of Management and Budget</p> <p>M-16-04: Cybersecurity Strategy and Implementation Plan (CSIP) for the Federal Civilian Government. (See page 20) (November 2, 2015)</p> <p>M-16-03: Fiscal Year 2015-2016 Guidance on Federal Information Security and Privacy Management Requirements. (See page 3) (November 2, 2015)</p> <p>Office of Federal Procurement Policy</p>

Research on the Web

The screenshot displays the Federal Register website interface. At the top, there is a navigation bar with links for Sections, Browse, Search, Policy, Learn, Blog, and My FR. A search box labeled "Search Documents" is on the right. Below the navigation bar is the Federal Register logo and the text "FEDERAL REGISTER The Daily Journal of the United States Government". The main content area features a blue header with the word "Rule" and a title: "Federal Acquisition Regulation: Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction". Below the title, it states "A Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 12/04/2015". There are social media icons for Facebook, Twitter, and Email. A grey box indicates "This document has a comment period that ends in 60 days (02/02/2016)" with a green button "SUBMIT A FORMAL COMMENT". The "ACTION" section is labeled "Interim Rule." The "SUMMARY" section begins with "DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a". On the right side, there are links for "Previous Document" and "Next Document", a "LEGAL DISCLAIMER" box, "Font Controls" with plus, minus, and font size icons, and a box with "PDF", "DEV", "PRINT", and "PUBLIC INSPECTION" icons, along with a "Publication Date:" label.

2016: FAR Changes: Sampling

- FAR CASE 2011-020, Basic Safeguarding of Contractor Information Systems. Final Rule issued 5/16/2016
 - New Subpart 52.204-21:
 - The Rule imposes a set of fifteen “basic” security controls for contractor information systems upon which “Federal contract information” transits or resides.
- FAR CASE 2014-003, Small Business Subcontracting Improvements. Final Rule issued 7/14/2016
 - Impacts 11 specific areas with clarifications or updates regarding the usage and requirements of Small Business Subcontracting Plans
 - Updated a significant number of FAR paragraphs and clauses
- FAR CASE 2014-025, Fair Pay and Safe Workplaces. Final Rule issued 8/25/2016
 - Intended to require Contracting Officers additional diligence in reviewing would be contractors to these standards
 - Federal temporary injunction issued on Dec 16, 2016. (Interesting case to follow the legal and political activities that affect how regulations are updated.)
- FAR CASE 2014-015, Consolidation and Bundling. Final Rule issued 9/30/2016
 - Intends to ensure government wide consistent methods for when and when not to bundle.

2016: FAR Changes: Sampling

- FAR CASE 2015-035: Removal of Regulations Relating to Telegraphic Communication, Final Rule issued 11/18/2016
 - Delete the use of “telegram,” “telegraph,” and related terms. The objective is to delete references to obsolete technologies no longer in use
 - Listed here, just because it is interesting to note that telegrams and telegraphs could have been used for proposals to the Government through 2016.
- FAR CASE 2010-013, Privacy Training, Final Rule issued 12/20/2016
 - Adds FAR 24.301 and 24.302, and contract clause 52.224-3
 - Included in Commercial Contract clause requirements
 - If your company is involved in handling data defined as “personally identifiable information”, make sure that the training and the proof of training requirements are understood and complied with.
- FAR CASE 2014-004, Payment of Subcontractors, Final Rule issued 12/20/2016
 - Adds subparagraphs to FAR 42.1502 and adds FAR clause 52.242-5
 - Large businesses that receive a contract with the new clause are subject to reporting requirements based on reduced payments to small business or payments later than 90 days from due date.

2016 DFARS Changes: Sampling

- DFARS 204.73: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (Revised October 21, 2016)
 - Updated to coincide with the FAR updates.
- DFARS Case 2016-D005, Detection and Avoidance of Counterfeit Electronic Parts; Further Implementation. Final Rule issued 8/2/2016
 - Addresses required sources of electronic parts for defense contractors and subcontractors..
- DFARS Case 2016-D004, Instructions for Wide Area WorkFlow Repairable Receiving Report. Final Rule issued 8/30/2016
 - Updated requirements for the use of the Wide Area Workflow system for this type of effort.
- DFARS Case 2016-D010, Costs Related to Counterfeit Electronic Parts, Final Rule issued 8/30/16
 - Amends the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective actions to remedy such parts.
- DFARS Case 2015-D040, Prohibition on Use of any Cost-Plus System of Contracting for Military Construction and Military Family Housing Projects. Final Rule issued 9/23/2016
 - Prohibition on Cost Plus Contracting is now in effect for this type of construction.

2016 DFARS Changes: Sampling

- DFARS Case 2016-D008, RIGHTS IN TECHNICAL DATA, Final Rule issued 9/23/2016
 - Updates DoDs stance on Tech Data rights, and clarifies presumption that commercial items must have been developed entirely at private expense.
- DFARS Case 2013-D018, Network Penetration Reporting and Contracting for Cloud Services, Final Rule issued 10/21/2016
 - Additional ruling in the area of cybersecurity. This is utmost importance in Government contracting right now.
- DFARS Case 2015-D026, Contract Financing, Final Rule issued 12/22/2016
 - Ruling reduces Contracting Officers requirement for justification of use of 'customary contract financing' methods for certain fixed-price contracts.

That's it for now, the rest is up to you.

- Handouts:
 - Chronological listing: 2016 FAR Cases actions
 - Chronological listing: 2016 DFARS Case actions
 - Open FAR Cases as of 12/22/2016
 - Open DFARS cases as of 12/22/2016