

FEDERAL CONTRACTS PERSPECTIVE

Federal Acquisition Developments, Guidance, and Opinions

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022 ENACTED

On December 27, President Biden signed into law the \$768 billion National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Public Law 117-81). Most of the provisions of NDAA for FY 2022 that address issues involving acquisition are in Title VIII, Acquisition Policy, Acquisition Management, and Related Matters (Sections 801-878). While Title VIII of previous NDAA's usually included provisions that changed how the Department of Defense (DOD) conducts its acquisitions, this year's NDAA concentrates on establishing pilot programs, providing reports, preparing plans, and collecting data for future decisions. Nevertheless, there are some provisions of the 2165-page NDAA for FY 2022 that will have a more immediate effect on DOD's acquisitions. The following are some of those:

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■ **Section 802, Prohibition on Acquisition of Personal Protective Equipment from Non-Aligned Foreign Nations:** The Department of Defense (DOD) may not procure any personal protective equipment for use in preventing the spread of disease (including nitrile and vinyl gloves, surgical masks, respirator masks and powered air purifying respirators and required filters, face shields and protective eyewear, surgical and isolation gowns, and head and foot coverings) that is manufactured in China, Iran, North Korea, or Russia. This prohibition does not apply to purchases of \$150,000 or less.

■ **Section 803, Authority to Acquire Innovative Commercial Products and Commercial Services Using General Solicitation Competitive Procedures:** DOD may "acquire innovative commercial products and commercial services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals...Contracts or agreements entered into using [this] authority...shall be fixed-price, including fixed-price incentive fee contracts."

■ **Section 806, Annual Report on Highest and Lowest Performing Acquisition Programs of the Department of Defense:** Each DOD organization shall rank each major defense acquisition program and submit to the congressional defense committees a report that contains a ranking of the five highest performing and five lowest performing covered acquisition programs

for such element or organization based on such criteria. For the five lowest performing programs, the report must include: (1) a description of the factors that contributed to the ranking of the program as low performing; (2) an assessment of the underlying causes of the poor performance of the program; and (3) a plan for addressing the challenges of the program and improving performance, including specific actions that will be taken and proposed timelines for completing such actions.

■ **Section 817, Repeal of Preference for Fixed-Price Contracts:** The Defense Federal Acquisition Regulation Supplement (DFARS) preference for fixed-price contracts is repealed (see paragraph (1) of DFARS 216.102, Policies [for selecting contract types]).

■ **Section 836, Cadre of Software Development and Acquisition Experts:** DOD is to “establish a cadre of personnel who are experts in software development, acquisition, and sustainment to improve the effectiveness of software development, acquisition, and sustainment programs or activities of the Department of Defense...Civilian personnel from within the Office of the Secretary of Defense, Joint Staff, military departments, defense agencies, and combatant commands may be assigned to serve as members of the cadre...In establishing the cadre, the Under Secretary [of Defense for Acquisition and Sustainment] shall give preference to civilian employees of the Department of Defense.”

■ **Section 847, Plan and Report on Reduction of Reliance on Services, Supplies, or Materials from Covered Countries:** DOD is to consult with the Department of State to develop and implement a plan to reduce the reliance of the United States on services, supplies, or materials obtained from sources located in geographic areas controlled by China, Iran, North Korea, and Russia, and mitigate the risks to national security and the defense supply chain arising from the reliance of the United States on such sources for services, supplies, or materials to meet critical defense requirements.

■ **Section 848, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region:** DOD may not knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR) or from an entity that has used labor from within or transferred from the XUAR.

■ **Section 855, Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China:** DOD shall require each entity in the People's Republic of China to disclose, when the entity submits a bid or proposal, if the entity employs one or more individuals who will perform work in the People's Republic of China on a DOD contract or subcontract exceeding \$5,000,000, excluding contracts for commercial products or services.

Vivina McVay, Editor-in Chief

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TWO CLEAN-UP FACs ISSUED

Most Federal Acquisition Circulars (FACs) consist of several final and interim rules that amend the Federal Acquisition Regulation (FAR) in a variety of ways. Not so with the FACs issued in December. Both consist of single rules that catch up the FAR to what has already taken place.

■ **FAC 2022-02, Update to Certain Online References in the FAR:** This final rule replaces, throughout the FAR, references to Federal Business Opportunities (formerly FBO.gov) and Wage Determinations Online (formerly WDOL.gov) websites with the System for Award Management (SAM.gov) website because of their integration with and the increased functionality of SAM.gov.

SAM.gov is a federal website that consolidates the capabilities of Central Contractor Registration (CCR), Online Representations and Certifications Applications (ORCA), and the Excluded Parties List System (EPLS), and continues to incorporate the capabilities of other systems used in federal procurement processes. On April 26, 2021, legacy SAM.gov functionality was integrated with beta.SAM.gov and renamed to SAM.gov. As a result of the integration, SAM.gov now includes the site for users to execute actions formerly accomplished on FBO.gov and WDOL.gov. In response, the FAR needs to be updated to remove obsolete names and website references and incorporate in their place the new SAM.gov website.

EDITOR'S NOTE: FAC 2022-02 also contains a few technical amendments.

■ **FAC 2022-03, Trade Agreements Thresholds:** This final rule revises FAR part 25, Foreign Acquisition, particularly FAR subpart 25.4, Trade Agreements, to incorporate thresholds revised by the United States Trade Representative for application of the World Trade Organization Government Procurement Agreement (WTO GPA) and the Free Trade Agreements (FTAs). In addition, corresponding changes are required to FAR 52.204-8, Annual Representations and Certifications, and FAR 52.222-19, Child Labor – Cooperation with Authorities and Remedies.

This rule is *not* changing the Canada thresholds because the FAR Council has published a separate proposed rule to implement the United States-Mexico-Canada Agreement (USMCA) (see the article “FAR Changes Proposed to Implement USMCA” in this issue for more information on the proposed rule).

For more on the U.S. Trade Representative's biennial adjustment of these trade agreements thresholds, see the December 2021 *Federal Contracts Perspective* article “Trade Agreements Thresholds Increased.”

In a related action, the DOD issued a final rule amending the trade agreements thresholds referenced in various sections of DFARS part 225, Foreign Acquisition, and in the text of two clauses pertaining to photovoltaic devices: DFARS 252.225-7017, Photovoltaic Devices, and DFARS 252.225-7018, Photovoltaic Devices – Certificate. A week before, the Office of Defense Pricing and Contracting issued a deviation providing additional information and direction on implementing the USMCA.

FY 2021 CONTRACT SPENDING DOWN 5.1% TO \$631 BILLION

Federal contracting spending in Fiscal Year (FY) 2021 decreased to \$631.2 billion, down 5.1% from the \$665.5 billion spending level in FY 2020 because of all the funds expended combatting COVID-19 in 2020.

The big dollar increase winner was the Department of Energy, which saw its contract spending increase 7.2%, from \$36 billion in FY 2020 to \$38.6 billion in FY 2021. The biggest percentage increase winner was the Department of the Treasury, which saw its spending increase 45.6%, from \$6.6 billion in FY 2020 to \$9.6 billion in FY 2021. The biggest dollar decrease loser was the Department of Defense, which saw its spending decrease by \$34 billion, from \$421 billion in FY 2020 to \$387 billion in FY 2021, an 8.2% decrease. The biggest percentage decrease loser was the Small Business Administration, which experienced a 24.8% decline, from \$1.5 billion to \$1.1 billion.

The following are the largest agencies' FY 2021 spending versus their FY 2020 spending:

Department/Agency	FY 2021 Spending	FY 2020 Spending
Defense	\$387,046,038,734	\$421,461,423,956
Health and Human Services	38,834,885,437	40,688,230,412
Energy	38,558,766,491	35,978,470,585
Veterans Affairs	34,393,200,191	36,895,860,529
Homeland Security	19,775,488,709	19,547,473,312
National Aeronautics and Space Admin	19,319,538,398	18,898,391,552
General Services Administration	17,845,691,034	17,469,104,664
State	9,764,168,730	10,601,217,389
Treasury	9,565,448,975	6,567,609,859
Justice	9,514,658,317	8,483,948,386
Agriculture	9,351,855,290	10,102,435,357
Transportation	7,835,504,363	7,780,326,282
Agency for International Development	5,565,324,362	6,145,877,505
Interior	5,091,000,054	4,513,149,869
Commerce	4,530,964,385	5,791,666,832
Education	2,684,476,528	2,878,674,148
Labor	2,365,893,959	2,186,700,477
Social Security Administration	1,833,827,574	2,127,481,592
Environmental Protection Agency	1,198,264,898	1,161,816,957
Small Business Administration	1,148,082,382	1,525,991,135
Housing and Urban Development	683,110,907	737,950,358
Securities and Exchange Commission	549,950,121	521,488,832
National Science Foundation	497,714,659	503,338,621
Office of Personnel Management	465,922,392	335,263,275
Smithsonian Institution	398,330,462	393,575,015
Pension Benefit Guaranty Corporation	376,563,221	359,226,653
Others	2,048,740,392	1,827,995,271
TOTAL	\$631,243,410,965	\$665,484,688,823

For more on FY 2020 spending, see the February 2021 *Federal Contracts Perspective* article “FY 2020 Contract Spending Up 13% to \$665 Billion.”

SBA RELEASES FY 2020 “DISAGGREGATED” CONTRACTING DATA

On December 2, 2021, the Biden administration released, through the Small Business Administration (SBA), Fiscal Year (FY) 2020 federal contracting data “disaggregated” by race, ethnicity, and geography.

In a statement released simultaneously with the data, the Biden administration observed that “for years, the federal government has relied on topline data to benchmark contracting spend to small businesses and socioeconomic small businesses. This data, while insightful, offers only a partial illustration of performance in reaching certain groups. For example, while we typically award roughly 10% of federal contracting dollars to SDBs [small disadvantaged businesses], in FY 2020 just 1.7% went to black-owned small businesses, 1.8% went to Hispanic-owned small businesses, and 2.8% went to Asian American and Pacific Islander-owned small businesses. Similarly, high-level data obscures inequitable geographic distribution of federal contracts. Beginning with FY 2020 data, the federal government will publicly release this disaggregated data on an annual basis so that procurement officials, business owners, and the American people can use it as a tool to track equity and progress over time. This data will also allow agencies to assess their performance across industries and sectors, helping them better target interventions to areas with the greatest opportunity for growth.”

In addition, the Biden administration is “asking agencies to increase their goals so that governmentwide spending results in 11% of contracting dollars being awarded to small disadvantaged businesses, up from the current statutory goal of 5%. This is the first step towards meeting the president’s goal of ensuring that 15% of federal contracts go to SDBs by 2025.”

The Office of Management and Budget (OMB) issued a memorandum explaining the management actions agencies should take to achieve this goal and others that employ “federal contract spending to support small businesses and advance equity.”

The following are the disaggregated federal contract data released by SBA:

Business Type*	Percent	Eligible Dollars**
Asian-Pacific American Owned Small	1.23%	\$6,885,893,213
Subcontinent Asian American Owned Small	1.55%	\$8,688,436,628
Black Owned Small	1.67%	\$9,366,550,757
Hispanic Owned Small	1.78%	\$9,953,668,578
Native American Owned Small	2.69%	\$15,081,622,197
Other Minority Owned Small	0.48%	\$2,680,329,763
Other Small Business	15.64%	\$87,556,529,300
Not a Small Business	74.96%	\$419,768,134,824
TOTAL ELIGIBLE DOLLARS	100.00%	\$559,981,165,260

*Racial and ethnic categories are reflected here as they appear in the System for Award Management ([SAM.gov](https://sam.gov)) when an entity registers to do business with the government. Classifications are self-reported. The “other small business” category reflects those firms who did not report as being minority-owned.

**This includes all federal contracts except those excluded by SBA's Goaling Guidelines. This data does not apply to the double-credit and subcontracting adjustments required by statute for SBA's annual scorecard.

FAR CHANGES PROPOSED TO IMPLEMENT USMCA

The FAR Council is proposing to amend various sections of the FAR to implement the United States-Mexico-Canada Agreement (USMCA) Implementation Act (Public Law 116-113), which was signed into law on January 9, 2020, and replaced the North American Free Trade Agreement (NAFTA) (Public Law 103-182).

USMCA Chapter 13, Government Procurement, establishes certain obligations between the United States and Mexico with respect to government procurement of goods and services, as specified in Annex 13-A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada. (**EDITOR'S NOTE:** Although Canada is still a “designated country” under the World Trade Organization Government Procurement Agreement (WTO GPA) [see FAR 25.003, Definitions], Canada is no longer a “Free Trade Agreement country” [see FAR 25.003] because USMCA Chapter 13 applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country are proposed for deletion, including the \$25,000 threshold above which the Buy American statute and other discriminatory provisions have been waived for eligible products from Canada. Mexico’s thresholds remain unchanged.)

To implement the USMCA, the following changes to the FAR are proposed:

- FAR 18.120, Use of Patented Technology Under the North American Free Trade Agreement, would be removed because there is no longer a need for a waiver to NAFTA.
- FAR subpart 22.15, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, does not apply to certain countries identified in paragraph (b) of FAR 22.1503, Procedures for Acquiring End Products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor. Canada currently appears as such a country in paragraph (b)(1), so the language on Canada would be removed from FAR 22.1503(b)(1) where the anticipated value of the acquisition is \$25,000 or more (the NAFTA threshold), and Canada would be added to the list of countries at FAR 22.1503(b)(3) where the anticipated value of the acquisition is \$182,000 (the WPO GPA threshold).
- Paragraph (a) of FAR 22.1505, Solicitation Provision and Contract Clause [prohibiting products produced by forced or indentured child labor], directs the contracting officer to exclude from the solicitation any end products from countries identified at FAR 22.1503(b). The \$25,000 threshold is the free trade agreement threshold for Canada, which is no longer a free trade country agreement country. The \$25,000 threshold would be changed to \$50,000, which is the threshold for Israel.
- In FAR 25.003, Definitions, “Canada” would be removed from the definitions of “designated country” and “Free Trade Agreement country.”
- Table 1 to paragraph (b) of FAR 25.402, General [pertaining to trade agreements], lists the thresholds applicable to the various trade agreements. “Canada” and the thresholds for Canada would be removed from Table 1.

- Paragraph (b)(1)(i)(A) of FAR 25.1101, [Provisions and clauses applicable to the] Acquisition of Supplies, prescribes the use of FAR 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act, in solicitations and contracts for supplies when the acquisition value is \$25,000 or more but less than \$183,000. The \$25,000 threshold, which applies only to Canada, would be removed and replaced with the \$50,000 threshold for Israel. In addition, the prescription for Alternate I of FAR 52.225-3 in FAR 25.1101(b)(1)(ii) would be removed because Alternate I applies only to the acquisition of Canadian end products between the \$25,000 Canadian threshold and the \$50,000 Israeli threshold, so it is no longer necessary.
- The \$25,000 Canadian Free Trade Act threshold would be removed from FAR 52.204-8, Annual Representations and Certifications and FAR 52.222-19, Child Labor – Cooperation with Authorities and Remedies.
- “Canada” would be removed from the list of Free Trade Agreement countries in FAR 52.225-5, Trade Agreements, FAR 52.225-11, Buy American – Construction Materials under Trade Agreements, and FAR 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods – Buy American Statute – Construction Materials Under Trade Agreements.
- “NAFTA” would be replaced with “USMCA” wherever else it occurs.

Comments on this proposed rule must be submitted no later than February 11, 2022, identified as “FAR Case 2020-014,” through the Federal eRulemaking Portal at <http://www.regulations.gov>.

GOVERNMENT’S PURCHASING POWER TO REDUCE EMISSIONS

On December 8, 2021, President Biden issued Executive Order (EO) 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, to establish policy “for the federal government to lead by example in order to achieve a carbon pollution-free electricity sector by 2035 and net-zero emissions economy-wide by no later than 2050.”

The EO directs the federal government to use its scale and procurement power “as the single largest land owner, energy consumer, and employer in the nation” to achieve seven goals:

- 100% carbon pollution-free electricity (CPE) by 2030, at least half of which will be locally supplied clean energy to meet 24/7 demand;
- 100% zero-emission vehicle (ZEV) acquisitions by 2035, including 100% zero-emission light-duty vehicle acquisitions by 2027;
- Net-zero emissions from federal procurement no later than 2050, including a Buy Clean policy to promote use of construction materials with lower embodied emissions;
- A net-zero emissions building portfolio by 2045, including a 50% emissions reduction by 2032;

- Net-zero emissions from overall federal operations by 2050, including a 65% emissions reduction by 2030;
- Climate resilient infrastructure and operations; and
- A climate- and sustainability-focused federal workforce.

Federal acquisition is expected to contribute directly to this effort as follows:

- **Section 203, Transitioning to 100 Percent Carbon Pollution-Free Electricity:** “Each agency shall increase its percentage use of carbon pollution-free electricity, so that it constitutes 100% of facility electrical energy use on an annual basis, and seek to match use on an hourly basis to achieve 50% 24/7 carbon pollution-free electricity, by fiscal year 2030. In addition, agencies shall facilitate new carbon pollution-free electricity generation and energy storage capacity by authorizing use of their real property assets, such as rooftops, parking structures, and adjoining land, for the development of new carbon pollution-free electricity generation and energy storage through leases, grants, permits, or other mechanisms, to the extent permitted by law.”
- **Section 204, Transitioning to a Zero-Emission Fleet:** “Each agency with a fleet comprising at least 20 vehicles shall develop and annually update a zero-emission fleet strategy that shall include optimizing fleet size and composition; deploying zero-emission vehicle refueling infrastructure; and maximizing acquisition and deployment of zero-emission light-, medium-, and heavy-duty vehicles where the General Services Administration (GSA) offers one or more zero-emission vehicle options for that vehicle class.”
- **Section 208, Sustainable Acquisition and Procurement:** “Agencies shall reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services by prioritizing products that can be reused, refurbished, or recycled; maximizing environmental benefits and cost savings through use of full lifecycle cost methodologies; purchasing products that contain recycled content, are biobased, or are energy and water efficient, in accordance with relevant statutory requirements; and, to the maximum extent practicable, purchasing sustainable products and services identified or recommended by the Environmental Protection Agency (EPA)...The Chair of the Council on Environmental Quality (CEQ) shall consider establishing federal food procurement policies to reduce associated greenhouse gas emissions and drive sustainability in the federal food supply chain.”
- **Section 301, Federal Supply Chain Sustainability:** “Agencies shall pursue procurement strategies to reduce contractor emissions and embodied emissions in products acquired or used in federal projects.”
- **Section 303, Buy Clean:** “The Buy Clean Task Force established pursuant to Section 508 of this order shall provide recommendations to the Chair of CEQ and the Director of OMB [Office of Management and Budget], through the Administrator of the Office of Federal Procurement Policy [OFPP], on policies and procedures to expand consideration of embodied emissions and

pollutants of construction materials in federal procurement and federally funded projects, to include: (a) identifying and prioritizing pollutants and materials, such as concrete and steel, to be covered under a Buy Clean policy, taking into account the availability of relevant data, including from environmental product declarations, and consistency with existing environmental reporting requirements; (b) providing recommendations to increase transparency of embodied emissions, including supplier reporting; procedures for auditing environmental product declarations and verifying accuracy of reported emissions data; and recommendations for grants, loans, technical assistance, or alternative mechanisms to support domestic manufacturers in enhancing capabilities to report and reduce embodied emissions in priority materials they produce; and (c) recommending pilot programs that incentivize federal procurement of construction materials with lower embodied emissions.”

Simultaneously with the execution of EO 14057, OMB issued a memorandum to federal agencies providing direction for agency compliance with the EO. The following are some of the directions provided in the memorandum:

■ **Compliance with EO Section 203:** “Transitioning to 100% CFE, and achieving 50% 24/7 CFE, will require coordination across agencies to streamline energy purchasing, consolidate and aggregate procurements, and leverage the expertise of the Department of Defense (DOD), DOE [Department of Energy], and the General Services Administration (GSA) to contract for electricity for federal agencies. Agencies must coordinate with DOD, DOE, and GSA to develop procurement strategies to achieve CFE goals and targets. DOD, DOE, and GSA must develop, in consultation with EPA and DOE-FEMP [Federal Energy Management Program], robust accounting to facilitate tracking of CFE produced, used, or facilitated through such procurements.”

■ **Compliance with EO Section 204:** “For the purposes of meeting this requirement, plug-in hybrid vehicles may be considered zero-emission vehicles... To the extent permitted by law, agencies must purchase domestically assembled vehicles consisting of domestically manufactured component parts that are assembled and manufactured pursuant to strong labor standards that promote hiring and retention of high-quality, well-trained, and productive employees... To improve fleet efficiency and management capabilities, and facilitate effective planning for and acquisition, deployment, and use of zero-emission vehicles, agencies must convert agency-owned vehicles in the agency’s fleet to GSA’s leasing program, where appropriate, to more efficiently accelerate zero-emission vehicle acquisition and deployment;”

■ **Compliance with EO Section 208:** “Relevant requirements for purchasing preference established by statute include:

- “Recycled content products identified by EPA’s Comprehensive Procurement Guideline Program;
- “Biobased products in categories designated by the Department of Agriculture (USDA);
- ‘Energy efficient products certified by ENERGY STAR and energy and water efficient products designated by DOE-FEMP; and

- “Products made with or containing acceptable alternatives to ozone-depleting substances listed by EPA’s Significant New Alternatives Policy (SNAP) program.

“EPA programs that identify sustainable products and services include:

- “WaterSense;
- “Safer Choice;
- “SmartWay transport partners and SmartWay products; and
- “EPA Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing.

“EPA, DOE, USDA, in coordination with the Office of Federal Procurement Policy, GSA, and other agencies as appropriate, should support the development of federal training for the acquisition community and reporting systems to track implementation and progress to meet the requirements of Section 208. Agencies should ensure contracting officers and other relevant staff receive, at minimum, annual training on sustainable acquisition policy, practices, and reporting requirements.”

BIDEN’S CONTRACTOR VACCINE MANDATE PUT ON HOLD

President Biden’s Executive Order (EO) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, which requires vaccination of contractor employees and masking and physical distancing while in covered contractor workplaces, has been placed on hold until the U.S. Supreme Court rules on whether to allow the EO to go into effect. The Supreme Court is scheduled to hear arguments on January 7, 2022. The EO was originally to go into effect on November 14, 2021, but its implementation date was delayed until December 9, 2021 (for more on EO 14042, see the October 2021 *Federal Contracts Perspective* article “Biden Orders Federal Contractors to Protect Employees from COVID”).

In response to EO 14042, agencies throughout the government had issued directions, guidance, and contract clauses addressing compliance with the vaccine mandate (see the November 2021 *Federal Contracts Perspective* article “Agencies Expedite Actions to Protect Contractor Employees from COVID”).

On November 30, 2021, the U.S. District Court for the Eastern District of Kentucky enjoined the implementation of EO 14042 in Kentucky, Ohio, and Tennessee. Then, on December 7, 2021, U.S. District Court for the Southern District of Georgia enjoined implementation of EO 14042 in the U.S. and its territories.

Given the uncertainty surrounding the court orders, the Office of Management and Budget (OMB) provided the following notice: “The government will take no action to enforce the clause implementing requirements of Executive Order 14042...The court orders only apply to the application of requirements pursuant to Executive Order 14042. There is no change to the Safer Federal Workforce Task Force’s guidance for COVID-19 workplace safety protocols for federal

agencies [<https://www.saferfederalworkforce.gov/contractors/>]. Federal agency workplace safety protocols for federal buildings and federally controlled facilities still apply in all locations. Contractor employees working onsite in those facilities must still follow those federal agency workplace safety protocols.”

MILEAGE REIMBURSEMENT SET AT 58.5¢ PER MILE FOR AUTOS

The General Services Administration (GSA) is increasing the mileage reimbursement rates for use of a privately owned automobile on official travel from 56¢ per mile to 58.5¢ per mile, for use of a motorcycle on official travel from 54¢ per mile to 56.5¢ per mile, and for use of a privately owned aircraft from \$1.26 per mile to \$1.515 per mile.

These rates are effective for travel performed on or after January 1, 2022, through December 31, 2022.

TERMINATION OF FURNITURE NONMANUFACTURER RULE WAIVER

The Small Business Administration (SBA) is proposing to terminate the class waiver to the nonmanufacturer rule for furniture frames and parts, metal, manufacturing under North American Industry Classification System (NAICS) code 337215, Showcase, Partition, Shelving, and Locker Manufacturing, and Product Service Code (PSC) 7195, Miscellaneous Furniture and Fixtures; furniture frames, wood, manufacturing under NAICS code 337215 and PSC 7195; furniture parts, finished plastics, manufacturing under NAICS code 337215 and PSC 7195; furniture, factory-type (for example, cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127, Institutional Furniture Manufacturing, and PSC 7110, Office Furniture; furniture, hospital (for example, hospital beds, operating room furniture) Manufacturing under NAICS code 339113, Surgical Appliance and Supplies Manufacturing, and PSC 7195; and furniture, laboratory-type (for example, benches, cabinets, stools, tables) manufacturing under NAICS code 339113 and PSC 7195.

Public Law 100-656, the Business Opportunity Development Reform Act of 1988, Section 303, Contractual Assistance, paragraph (h), Non-Manufacturer Rule, requires those with federal contracts that are set-aside for small businesses or awarded through the 8(a) program to provide the product of a small business manufacturer if the recipient is not the actual manufacturer (see paragraph (c) of FAR 19.505, Limitations on Subcontracting and Nonmanufacturer Rule). However, SBA may waive this requirement if there are no small business manufacturers of the product (see FAR 19.505(c)(4)).

The SBA regulations on the nonmanufacturer rule are in paragraph (b) of Title 13 of the Code of Federal Regulations (CFR), Section 121.406 (13 CFR 121.406), How Does a Small Business Concern Qualify to Provide Manufactured Products or Other Supply Items Under a Small Business Set-Aside, Service-Disabled Veteran-Owned Small Business Set-Aside, WOSB [women-owned small business] or EDWOSB [economically disadvantaged women-owned small business] Set-Aside, or 8(a) Contract? The SBA regulation on the waiver of the nonmanufacturer rule is 13 CFR 121.1202, When Will a Waiver of the Nonmanufacturer Rule Be Granted for a Class of Products?

On October 6, 2019, SBA received a request to terminate this waiver. The requester provided information that established the existence of several small business manufacturers of the

identified products that have provided these products to federal agencies within the past 24 months. Therefore, SBA is proposing to terminate the class waiver for equipment under these NAICS and PSC codes. SBA is inviting the public to comment or provide source information on the proposed termination of the nonmanufacturer rule waiver for these products by January 14, 2022, through the Federal Rulemaking Portal at <https://www.regulations.gov>.

If this nonmanufacturer rule waiver is terminated, small businesses receiving contracts for covered equipment through a set-aside (or the 8(a) program) will no longer be able to provide the product of any manufacturer regardless of the size of the business - the small business contractor will have to provide radiology equipment manufactured by a small business. More information on the nonmanufacturer rule and class waivers can be found at <https://www.sba.gov/partners/contracting-officials/small-business-procurement/non-manufacturer-rule>. A complete list of products for which the nonmanufacturer rule has been waived is available at <https://www.sba.gov/document/support--non-manufacturer-rule-class-waiver-list>.

OMB ACCEPTS 2022 REVISIONS TO NAICS

The Office of Management and Budget (OMB) has announced its acceptance of the recommendations of its Economic Classification Policy Committee (ECPC) on updating the North American Industry Classification System (NAICS) for 2022. The ECPC, which is comprised of representatives of the Bureau of Economic Analysis, Bureau of Labor Statistics, Census Bureau, and other federal agencies recommended an update of the industry classification system to clarify existing industry definitions and content, recognize new and emerging industries, combine industries, and correct errors and omissions in the 2017 version of the NAICS.

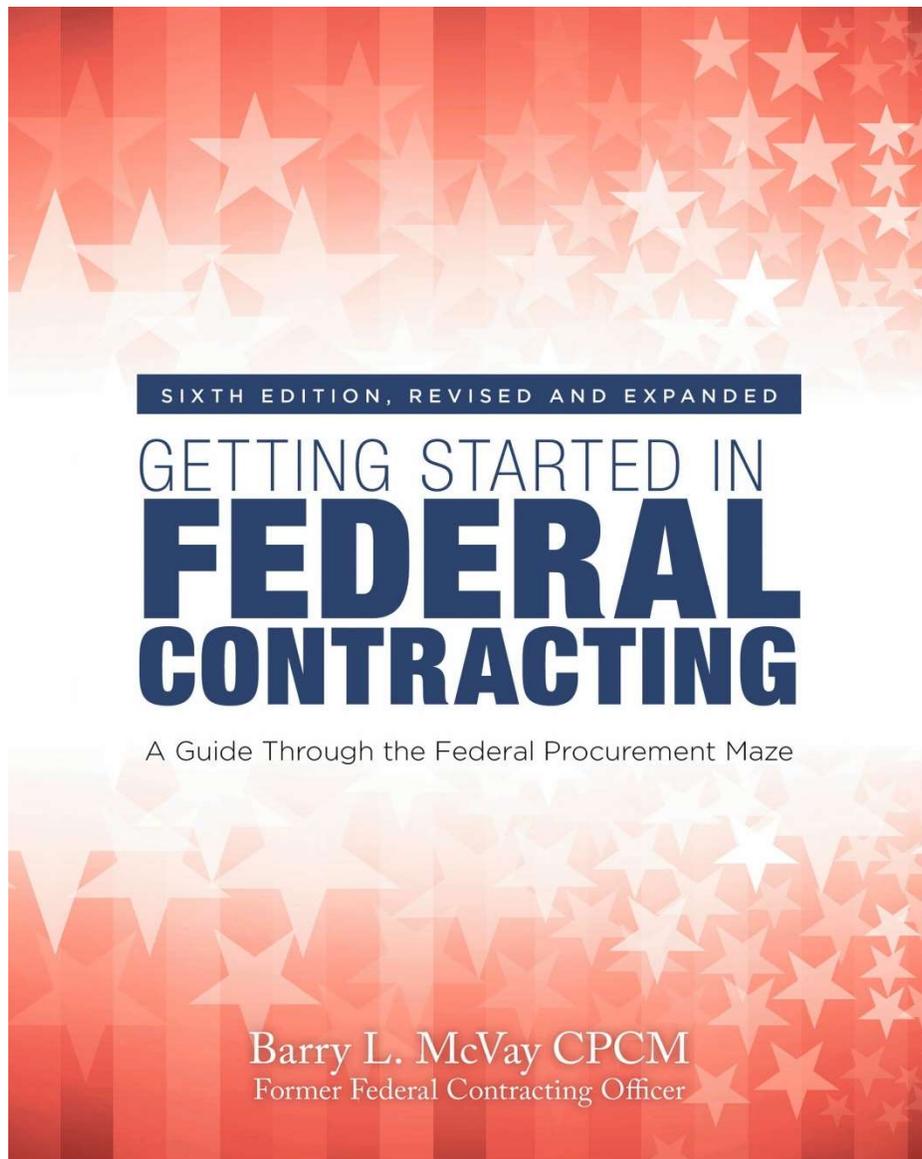
The NAICS is a system for classifying individual business locations (establishments) by type of economic activity. Its purposes are to: (1) provide a consistent framework for the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy. Mexico and Canada have collaborated on the NAICS with the ECPC to make the industry statistics produced by the three countries comparable.

The ECPC's recommendations were concentrated in Wholesale Trade (Sector 42), Retail Trade (Sector 45), and Information (Sector 51). In addition, the names of 31 industry sectors and subsectors were proposed to be changed for clarity and consistency. Finally, ECPC recommended content revisions to 141 subsectors.

Twenty-nine comments were submitted on the ECPC's recommendations, but ECPC recommended that OMB accept ECPC's recommendations without change. OMB has decided to accept all ECPC recommendations, making no changes to the scope and substance of those recommendations. For more on the ECPC's recommendations, see the August 2021 *Federal Contracts Perspective* article "OMB Seeks Comments on Proposed 2022 NAICS."

The 2022 NAICS is available at <https://www.census.gov/naics/>.

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