

# APTAC Body of Knowledge Competency Guide

## C. Basics of Contracting with the Government

### C.1 Statutes and Regulations

#### Description

Regulations, such as the Federal Acquisition Regulations (FAR), are central to procurement technical assistance. The large body of regulations that PTACs deal with is subject to frequent and significant additions, modifications and deletions, as well as changes in interpretation. It is useful for PTAC counselors to have a fundamental understanding of the process that gives rise to and/or changes regulations. This knowledge is essential to understand how and when current and future regulations must be applied.

#### Process

**Regulations** are founded upon laws (statutes). Laws are created or amended via legislative bills, which may direct specific actions of the executive branch agencies, or may provide broad responsibilities and authorize rulemaking to enable execution of those responsibilities.

PTAC counselors should be aware of the major statutes that drive the bodies of regulation that most affect government contracting. These can be found in the United States Code. For example, Title 15 – Commerce and Trade – includes most small business laws under Chapter 14a.

Most (but not all) new legislation that effects PTAC and PTAC clients appears in a pair of bills (House & Senate versions) known as the National Defense Authorization Act (NDAA). A new NDAA is put forward each year, one version by the House, and another by the Senate. After each has passed their version, a committee of conference resolves any differences, and a final, single bill is passed by both houses and signed by the President. This bill sets funding levels for the Department of Defense (including the PTAP), and often initiates changes to procurement regulations and amends the Small Business Act.

**Executive Orders** are not legislation, but are orders from the President which may require a change or addition to regulation.

PTAC counselors are most interested in regulation such as the FAR, which is authorized by 41 U.S.C. Chapter 13. The FAR is a part of the Code of Federal Regulations, specifically 48 CFR Chapter 1. Many other regulations apply to federal government contracting situations, but the FAR and its supplements (DFARS, VAAR, GSAR, etc.) are the single largest concentration of regulations of concern. A handful of Federal agencies are exempt from the FAR – FAA, USPS, TVA, BPA, and the U.S. Mint. They generally have their own acquisition regulations, which are highly parallel to the FAR. Grants and cooperative agreements are not covered by the FAR.

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The FAR was established and is maintained by the FAR Council, which is an interagency council operated by OMB comprised of the Secretary of Defense, and the Administrators of the GSA and NASA. Current legislation, if passed, will add the SBA Administrator as a member of the FAR Council.

The FAR Council takes up legislation, executive orders (EO), and agency rules that may require additions and changes to the FAR. A FAR Case is a body of related FAR changes driven by a particular law, or EO. FAR Cases can also be initiated from within the agencies, as long as there is statutory authority to make rules on the topic requested.

#### Sequence of Results

Bills are proposed in the legislative branch. These may or may not reflect the direction of future rules and policies; difficult to evaluate until final passage and presidential signature of the bill.

New law (or Executive Order), once enacted, **may** require **or** enable new rulemaking. This must be scheduled, and may take months, years, or even decades.

The rulemaking process usually includes the publication of **proposed rules** which affords the public an opportunity to comment on the draft. Comments may point out impacts, possible unintended consequences, and suggest alternatives to the draft rules. After the comment period concludes, the rulemaking body assesses any comments received, finalizes the rule, and publishes the **final rule**. This publication includes a listing of comments and responses to them. The rule will have an effective date, which can be immediate upon publication, or may have an implementation date in the future.

Sometimes rules beget other rules. For example, SBA creates new rules for Mentor-Protégé programs. New Mentor-Protégé rules may require changes to the FAR for full implementation.

#### Summary

The legislative and rulemaking processes are long and complex. Because rules may create business risk and business opportunities for PTAC clients, it is important for PTAC counselors not only to understand the body of rules as they exist today, but the processes by which they change.

#### REFERENCES

[https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf) : A Guide to the Rulemaking Process Prepared by the Office of the Federal Register

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<http://en.wikipedia.org/wiki/Rulemaking>

<http://uscode.house.gov/browse.xhtml> : Federal Laws

<http://www.ecfr.gov/cgi-bin/ECFR?page=browse> : Federal Regulations

[http://www.acq.osd.mil/dpap/dars/far\\_case\\_status.html](http://www.acq.osd.mil/dpap/dars/far_case_status.html) : FAR Cases