

THE NASH & CIBINIC REPORT

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from professors ralph c. nash and john cibinic

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¶ 46 HERE BE DRAGONS: Risk Management In The Revolutionary FAR Overhaul

A special column by John Krieger CPCM, NCMA Fellow, an independent acquisition consultant and charter president, Old Dominion Chapter, NCMA.

The project currently underway to rewrite the Federal Acquisition Regulation—the “Revolutionary FAR Overhaul”—presents multiple risks. The FAR Overhaul was initiated by President Trump’s April 15, 2025 Executive Order No. 14275, *Restoring Common Sense to Federal Procurement*, 90 Fed. Reg. 16447 (Apr. 18, 2025), which requires dramatic simplification of the acquisition process by (1) simplifying and streamlining the FAR to ensure it contains only provisions required by statute or essential to efficient, secure, and cost-effective procurement; (2) requiring agencies exercising procurement authority to ensure that agency-specific regulations align with the streamlined FAR; (3) mandating the issuance of interim guidance, as needed, to support reform until final rules reforming the FAR are published; and (4) indicating that a regulatory sunset provision will be considered that would result in non-statutory FAR provisions expiring after four years unless renewed. See this REPORT’s previous discussions of the Overhaul in *The FAR Reform Project: Will Past Be Prologue?*, 39 NCRNL ¶ 26; *Dateline June 2025*, 39 NCRNL DATE JUNE; *The Futility of FAR Reform: It’s About People, Not Rules*, 39 NCRNL ¶ 31; *Acquisition Reform: Contracting Without FAR Parts 52 and 53*, 39 NCRNL ¶ 32; and *Ruminations About The Revolutionary FAR Overhaul: Confusion, Indecision, and Chaos?*, 39 NCRNL ¶ 38.

As I noted in my letter at 39 NCRNL ¶ 38, writing and negotiating changes to acquisition regulations is not for the faint of heart. Ancient maps would often indicate uncharted, unknown, or unexplored territory with illustrations of mythical creatures or monsters warning “Here Be Dragons.” The “Revolutionary FAR Overhaul” is steering acquisition professionals into foggy, unexplored, uncharted territory. On the Overhaul map, however, instead of “Here Be Dragons” is, “Here Be Risks.” Think of Clausewitz and the “fog of greater or lesser uncertainty” (which most people refer to as the “fog of war”). This revolution, like all revolutions, will be accompanied by uncertainty, confusion, fear, and indecision.

Uncertainty, confusion, fear, and indecision will create risks. And those risks will be with us for a long time. They will be with us throughout the time needed to develop deviations to the existing version of the FAR. They will be with us throughout the time needed to publish all those changes in the *Federal Register*, receive public comments, review them, disposition them, and publish final rules. They will be with us as long as it takes to train the acquisition workforce to use the *Revolutionary New FAR*. They will be with us as long as those who operated under the “Old FAR” retain, and confuse, what was and what is to be. That may take a generational turnover of the acquisition workforce. They will be with us as long as there is litigation concerning changes to the FAR, particularly to solicitation provisions and contract clauses. And keep in mind that all those solicitations and contracts that were issued under the “Old FAR” will remain so, until contract closeout.

What is The “Overhaul Timeline”?

As of this writing, we have model deviations for 12 FAR parts and associated clauses, with a slew of others “Awaiting Overhaul.” Unfortunately, neither the May 2, 2025 Office of Management and Budget guidance (OMB Memorandum M-25-26) nor the FAR Overhaul site at Acquisition.gov give us any idea how long the process is going to take, and how long we are going to be subject to that particular risk.

What is the schedule for all of that to happen? According to the Executive Order:

Sec. 4. Reforming the Federal Acquisition Regulation. Within 180 days of the date of this order, the Administrator, in coordination with the other members of the Federal Acquisition Regulatory Council (FAR Council), the heads of agencies, and appropriate senior acquisition and procurement officials from agencies, shall take appropriate actions to amend the FAR to ensure that it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests.

Unfortunately, “shall take appropriate actions to amend the FAR” is more likely referring to the beginning the *Federal Register* publication process, not the end. OMB Memo M-25-26 provides no timeline for publication of proposed rules (or interim rules), adjudication of comments, publication of final rules, and implementation.

An Example Of “Overhaul”

Let’s have a look at an example of one FAR part that has made it through the overhaul process, FAR Part 10, *Market Research*. The issuance date for the model deviation was May 22, 2025. Since that time more than 25 agencies have adopted the deviation. Conspicuous by its absence is the biggest buyer in the Federal Government, the Department of Defense.

The current FAR Part 10 is 1,289 words long and is associated with a contract clause that is 148 words long. The overhauled deviation for FAR Part 10 is 318 words and is associated with a contract clause that is 136 words long. Doing the math you get a greater than 75% reduction in word count. That sounds good. However, as Ron Popeil, marketer for the Veg-O-Matic and other products, used to say, “But wait, there’s more!”

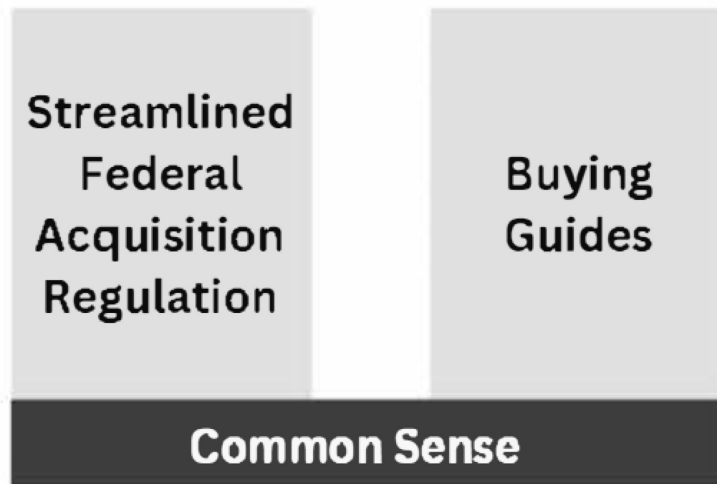
The deviation also comes with a Practitioner Album. That album is 3,845 words, not counting the number of words in the embedded videos. The Practitioner Album is sort of a cross between guidance and training. The Practitioner Album should not, however, be confused with the “FAR Companion Guide,” which is “Coming Soon.” (We just don’t know how soon.)

The Practitioner Album includes a “Change Summary” as well as a “FAR Part 10 Line Out,” a version of the current FAR coverage showing what has been deleted. The Line Out advises:

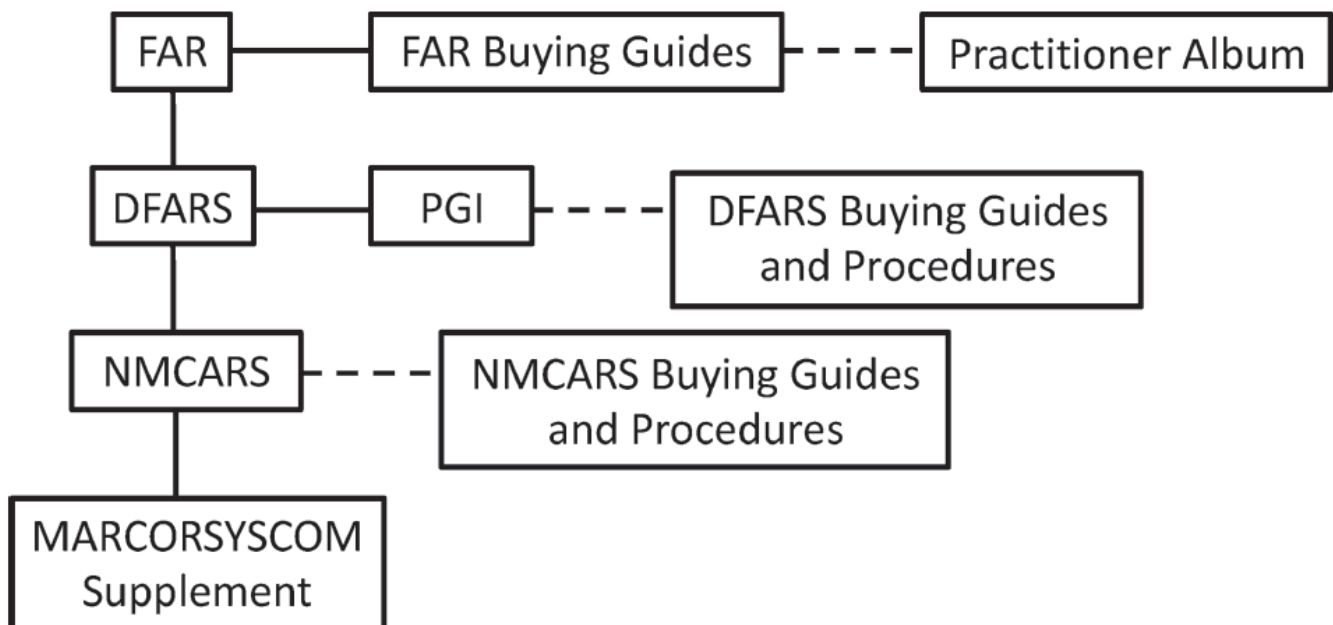
This line-out document is the current text for FAR Part 10 with markings to identify high level changes. The portions of the regulation that are proposed for removal are struck through. This document is not a crosswalk to the new proposed FAR Part 10. To see the new proposed regulation for Part 10, view the completed part at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide> (opens in a new tab).

Here are two data points, and not necessarily ones that will be representative of the guides yet to be published. One executive agency has a 79-page guide to implementation of FAR Subpart 15.3 Source Selection. Another organization issued a 39-page guide to implement a single subparagraph of the FAR (i.e., FAR 16.505(b)(1)). It might have been written in one sentence, “Don’t follow the rules at FAR 15.3 Source Selection.”

Given the simplistic OMB Model (below) for the Overhaul, we are currently waiting for the Buying Guides, and we don’t know when they will arrive. The main Overhaul page contains the following notice: “Buying Guides: As the FAR is streamlined, helpful non-regulatory content will be moved to new Buying Guides, designed to support smarter and faster acquisitions.” In the meantime, we are at risk. And what happens if individual executive agencies are dissatisfied with the federal-level Buying Guides? Will they issue their own?



What will the regulatory-instructional structure look like. What might it look like to, say, a Marine Corps Contracting Officer?



The Greatest Risk—Litigation?

As the reader can see, the sources of uncertainty, confusion, fear, indecision, and risk arising from the Overhaul are manifold. This may be especially problematic for contractors, many of which are dealing with multiple executive agencies, some of which are early adopters, and some which are not. Added to that is whether the agencies have adopted the model deviations as is or have chosen to write their own.

The author believes that the single greatest risk is the risk of litigation. There is the occasional case brought against the Government on the basis of whether the Contracting Officer followed the FAR (*e.g.*, *Palantir USG, Inc. v. U.S.*, 904 F.3d 980 (Fed. Cir. 2018), 60 GC ¶ 287), but the great bulk of litigation concerns interpretation of solicitation provisions and contract clauses.

Many of our current solicitation provisions and contract clauses have gone through extensive litigation, sometimes over decades. Some of the solicitation provisions and contract clauses have their roots in the old Armed Services Procurement Regulation. For the most part the law for them is settled. But what of rewritten clauses under the Overhaul? What of new clauses? What of the sunset provision?

A comparison of the current “Market Research” clause at FAR 52.210-1 and the Overhaul model deviation by Adobe Acrobat reveals 21 total changes—3 replacements, 3 insertions, and 1 deletion in the content, along with 11 styling changes and 3 annotations. Is there a documented basis for those 21 changes, particularly in the replacements, insertions, and deletions?

Mistakes can happen in rewriting regulations. When the Defense FAR Supplement was being rewritten in plain English years ago (see 56 Fed. Reg. 36280 (July 31, 1991)), the author was provided a copy of the rewrite of a portion of FAR Part 34 dealing with Cost/Schedule Control System Criteria, what is now referred to as Earned Value Management. The colonel who provided it was proud of the rewrite and seeking feedback. The feedback was this: “The good news is that the rewritten portion is much easier to understand than the original. The bad news is that it now means the opposite of what was originally intended.”

Stand by as we navigate any resulting litigation from changes to solicitation provisions and contract clauses. At the Government Accountability Office. At the boards of contract appeals. At the U.S. Court of Federal Claims. Oh, and be prepared to stand by for decades, because that’s how long it took for some provisions and clauses to be litigated to begin with.

Planning To Manage Risk

What to do in the face of all that risk? Develop a plan or strategy for risk-handling. Consider the following definition in the DEFENSE ACQUISITION UNIVERSITY GLOSSARY OF ACQUISITION ACRONYMS AND TERMS:

Risk Mitigation Strategy

Includes the risk mitigation options or combination of options and the specific implementation approach for each option. It answers the questions “What is the plan to address the risk? Or “Should the risk be accepted, avoided, transferred, or controlled?” After analyzing risks, program personnel should develop a strategy to manage each risk by evaluating the risk mitigation options (Risk Acceptance, Risk Avoidance, Risk Transfer, and Risk Control) and choosing the best option or hybrid of options based on risk analysis, prioritization, and potential for risk reduction.

One part of that strategy should be continuous monitoring of the FAR Overhaul environment. Stay attuned to the official Revolutionary FAR Overhaul website at Acquisition.gov: <https://www.acquisition.gov/far-overhaul>. Agencies, companies, and individual acquisition professionals should all be monitoring the site routinely.

As can be seen in the discussion above, the Overhaul process is morphing as new insights are gained about the process. As Field Marshal Helmuth von Moltke the Elder said, “No plan survives contact with the enemy.” What was true for Prussia in the 19th Century is equally true for the Overhaul today.

Words Of Advice

My advice to Contracting Officers and other acquisition professionals, inside and outside of the Federal Government, is to

be patient and to not get ahead of their executive agencies and customers. There is a long haul ahead of us, and you can expect, hope, that your organization will provide you with the training you need. You can be sure that the Federal Acquisition Institute and the DAU will provide training. The DAU has already created a Revolutionary FAR Overhaul webpage (<https://www.dau.edu/revolutionary-far-overhaul>).

But acquisition professionals need to be proactive by following the deviations as they are produced, especially those that have been adopted by your organizations, if you're with an executive agency, or by the executive agencies your company deals with, if you work for a contractor. The more you educate yourself, the better off you will be. Consider it a part of your lifelong learning. You owe it to yourself. *John Krieger*