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## New Rule Mandates Disclosure and Full Cooperation for Government Contractors

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A final rule amending the Federal Acquisition Regulation (FAR) requires contractors to disclose certain violations of criminal law and the civil False Claims Act and to fully cooperate with government investigative agencies. The rule also extends requirements for a contractor Code of Business Ethics and Conduct. The rule is effective December 12, 2008.

The FAR rule results from a request of the Department of Justice and provisions of the recently enacted Close the Contractor Fraud Loophole Act. The new rule requires contractors to establish and maintain an internal control system that detects and prevents improper conduct and that provides for the timely disclosure of violations of criminal law involving fraud, conflict of interest, bribery, and gratuities, or violations of the civil False Claims Act, and for full cooperation with any government agencies responsible for audits, investigations, and corrective actions. The rule also establishes that a knowing failure by a contractor principal to timely disclose such violations or significant contract overpayments is a cause for debarment or suspension.

Disclosure of violations must be made to the Inspector General and the Contracting Officer whenever a contractor has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed the violations, for at least three years after final payment on the contract. Full cooperation requires disclosure sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct.

The rule also eliminates the exceptions for contracts for commercial items and those performed outside of the United States from the requirement for contractors and subcontractors to have a Code of Business Ethics and Conduct, for contracts over \$5 million and 120 days. Although subject to mandatory reporting requirements, small business concerns and contracts for commercial items are exempt from the requirement to establish an ongoing business awareness and compliance program and internal control system.

The proposed rule on which the final FAR rule is based precipitated a number of comments from both government and industry. Many questioned the departure from the longstanding policy of voluntary disclosure and whether mandatory disclosure was justified. Others felt the mandatory disclosure requirements were at odds with the US Sentencing Guidelines that provide favorable

treatment for self reporting. The Federal Register Notice promulgating the FAR rule dismisses these and other concerns, indicating that voluntary disclosure has been largely ignored by contractors in recent years and that, furthermore, the rule does not remove any existing incentives to reporting violations. It remains to be seen whether disclosures made pursuant to this new rule will be considered favorably under the Sentencing Guidelines.

Contractors should ensure that their compliance programs are consistent with the new requirements.

Click [here](#) to view the Federal Register Notice of the FAR rule.