

# NEW ETHICS RULE FOR GOVERNMENT CONTRACTORS

## “Contractor Code of Business Ethics and Conduct”

On November 23, the Department of Defense (DOD), the General Services Administration (GSA), the National Aeronautics and Space Administration (NASA) and the Office of Federal Procurement Policy (OFPP) amended the Federal Acquisition Regulation (FAR) (Fed.Reg.65,873) to require most federal contractors and subcontractors to:

1. Have a Fraud Hotline Poster
  - Applies only to contracts over \$5 Million
  - Requires display of agency fraud hotline poster (but only if contractor does not have its own posted fraud hotline)
2. Establish a written Code Of Ethics
3. Establish an employee ethics and compliance training program
4. Establish internal control system

### Threshold

The new regulation applies only if:

- contract is over \$5 million,
- contract duration exceeds 120 days, and
- work is performed in the United States.

Affected contractors must establish an effective compliance program that includes provisions for:

- Compliance Training and Internal Controls will both be appropriate “to the size of the company and extent of Federal procurement contracting”
- Facilitating timely discovery and disclosure of improper conduct related to Federal contracts (hotline or other anonymous reporting)
- Flow down of requirement to subcontractors who meet the thresholds.
- All “small” businesses are exempt from training and internal controls requirements

### New Rule Timelines

- 30 days from contract award to implement a written code of conduct
- 90 days from award to implement employee ethics program and internal controls

The new rule applies to contracts performed in the United States and applies to non-commercial items.

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## NEW PROPOSED GOVERNMENT ETHICS RULE

*February 14, 2007 – Closed for comments January 14, 2008*

## “Contractor’s Compliance Program and Integrity Reporting”

The Federal Government, at the request of the Department of Justice, has proposed changes to the Federal Acquisition Regulation (FAR) that, among other things, would mandate that contractors and subcontractors disclose federal crimes relating to the award or performance of a federal procurement contract. The proposed regulation published in the Federal Register on November 14, 2007 (72 Fed. Reg. 64019) includes provisions requiring implementation of business ethics compliance programs, reporting of criminal violations relating to contract award and performance, and consequences associated with noncompliance.

The proposed rule also would mandate that contractors implement effective compliance programs patterned along the requirements spelled out in the U.S. Sentencing Guidelines Manual 8B2.1(2007), [available at [www.uscc.gov/2007guid/CHAP8.pdf](http://www.uscc.gov/2007guid/CHAP8.pdf)].

This proposed rule states that, although the general policies laid out therein will apply to all government contractors, the specific requirements described above will be “mandatory” only when inclusion of the proposed “Contractor Code of Business Ethics and Conduct” clause is required.

The proposed rule comes in response to a request by the Department of Justice to strengthen the regulatory requirements associated with ensuring integrity in government contracting.

As the requirements evolve and expand for government contractors with regard to business ethics compliance and reporting, the Society of Corporate Compliance and Ethics (SCCE) continues to help businesses identify requirements, implement compliance programs, and resolve issues.

For further compliance and ethics information, please go to the Society of Corporate Compliance Web site: [www.corporatecompliance.org](http://www.corporatecompliance.org).

To order a CD of the audio/Web conference “New Rules for Federal Contractors: How to Develop an Ethics & Compliance Program,” please visit [www.corporatecompliance.org/contractors](http://www.corporatecompliance.org/contractors).

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