

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3691.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1301 .....	41:403(17).	Pub. L. 93-400, § 4(17), as added Pub. L. 108-375, title VIII, § 807(b), Oct. 28, 2004, 118 Stat. 2011.

**§ 1302. Establishment and membership**

(a) ESTABLISHMENT.—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

(b) MEMBERSHIP.—

(1) MAKEUP OF COUNCIL.—The Council consists of—

- (A) the Administrator;
- (B) the Secretary of Defense;
- (C) the Administrator of National Aeronautics and Space; and
- (D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

(A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition and Sustainment; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(c) of this title.

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3691; Pub. L. 116-92, div. A, title IX, § 902(88), Dec. 20, 2019, 133 Stat. 1554.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1302(a) .....	41:421(a).	Pub. L. 93-400, § 25(a), (b), as added Pub. L. 100-679, § 4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 101-510, title VIII, § 807, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 104-106, title XLIII, § 4322(a)(2), Feb. 10, 1996, 110 Stat. 677.
1302(b) .....	41:421(b).	

In subsection (a), the words “(hereinafter in this section referred to as the ‘Council’)” are omitted as unnecessary.

In subsection (b)(2)(A)(i), the words “Under Secretary of Defense for Acquisition, Technology, and Logistics” are substituted for “Under Secretary of Defense for Acquisition and Technology” because of section 911(a)(1)

of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65, 113 Stat. 717, 10 U.S.C. 133 note).

In subsection (b)(2)(A)(ii), the cross-reference to section 16(3) of the Office of Federal Procurement Policy Act (41:414(3)) is treated as a cross-reference to section 16(c) of the Act to reflect the amendment of section 16 by section 1421(a)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1666).

**Editorial Notes**

AMENDMENTS

2019—Subsec. (b)(2)(A)(i). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

**Statutory Notes and Related Subsidiaries**

STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102-190, div. A, title VIII, § 809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103-160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106-65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: “For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(b)(2)) [now 41 U.S.C. 1302(b)(2)], the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.”

**§ 1303. Functions and authority**

(a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapter 4 of title 10, chapter 137 legacy provisions (as such term is defined in section 3016 of title 10), and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.),<sup>1</sup> shall jointly issue and maintain in accordance with subsection (d) a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation.

(2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to procurement issued by an executive agency shall be limited to—

(A) regulations essential to implement Government-wide policies and procedures within the agency; and

(B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with the Council, shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regula-

<sup>1</sup> See References in Text note below.

tion and in accordance with the policies prescribed pursuant to section 1121(b) of this title.

(4) REQUEST TO REVIEW REGULATION.—

(A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a person may request the Administrator to review a regulation relating to procurement on the basis that the regulation is inconsistent with the Federal Acquisition Regulation.

(B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its face, state a valid basis for the review, the Administrator shall complete the review not later than 60 days after receiving the request. The time for completion of the review may be extended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation otherwise should be revised to remove an inconsistency with the policies prescribed under section 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take other action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary to remove the inconsistency. If the Administrator determines that the regulation, although not inconsistent with the Federal Acquisition Regulation or those policies, should be revised to improve compliance with the Regulation or policies, the Administrator shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 as may be necessary and appropriate.

(6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the Administrator shall be in writing and made publicly available.

(b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

(1) IN GENERAL.—Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to section 1302(b) of this title shall—

(A) approve or disapprove all regulations relating to procurement that are proposed for public comment, prescribed in final form, or otherwise made effective by that agency before the regulation may be prescribed in final form, or otherwise made effective, except that the official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(B) carry out the responsibilities of that agency set forth in chapter 35 of title 44 for each information collection request that relates to procurement rules or regulations; and

(C) eliminate or reduce—

(i) any redundant or unnecessary levels of review and approval in the procurement system of that agency; and

(ii) redundant or unnecessary procurement regulations which are unique to that agency.

(2) LIMITATION ON DELEGATION.—The authority to review and approve or disapprove regulations under paragraph (1)(A) may not be delegated to an individual outside the office of the official who represents the agency on the Council pursuant to section 1302(b) of this title.

(c) GOVERNING POLICIES.—All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies prescribed under section 1121(b) of this title.

(d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION REGULATION.—Subject to section 1121(d) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3691; Pub. L. 117-81, div. A, title XVII, §1702(h)(2), Dec. 27, 2021, 135 Stat. 2158

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1303(a) .....	41:421(c).	Pub. L. 93-400, §25(c)-(f), as added Pub. L. 100-679, §4, Nov. 17, 1988, 102 Stat. 4056; Pub. L. 104-201, title VIII, §822, title X, §1074(f)(3), Sept. 23, 1996, 110 Stat. 2609, 2661; Pub. L. 105-85, title VIII, §841(d), Nov. 18, 1997, 111 Stat. 1843.
1303(b) .....	41:421(d).	
1303(c) .....	41:421(e).	
1303(d) .....	41:421(f).	

In subsection (a)(6), the text of 41:421(c)(6) (last sentence) is omitted because 41:407 was repealed by section 4305(b) of the National Defense Authorization Act of Fiscal Year 1996 (Public Law 104-106, 110 Stat. 665).

In subsection (b)(1)(A), the words “after 60 days after November 17, 1988” are omitted as obsolete.

In subsection (b)(1)(B), the words “(as that term is defined in section 3502(11) of title 44)” are omitted because chapter 35 of title 44 was amended generally by the Paperwork Reduction Act of 1995 (Public Law 104-13, 109 Stat. 163) and 44:3502 no longer defines “information collection request”. The term “information collection request” is retained in this section of the revised title, however, because 44:ch. 35 still contains provisions about requests for collection of information.

Editorial Notes

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (a)(1), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, which was classified principally to chapter 26 (§2451 et seq.) of Title 42, The Public Health and Welfare, and was substantially repealed and restated as chapter 201 (§20101 et seq.) of Title 51, National and Commercial Space Programs, by Pub. L. 111-314, §§3, 6, Dec. 18, 2010, 124 Stat. 3328, 3444. For complete classification of this Act to the Code, see Short Title of 1958 Act note set out under section 10101 of Title 51 and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117-81 substituted “chapter 4 of title 10, chapter 137 legacy provisions (as such

term is defined in section 3016 of title 10)" for "chapters 4 and 137 of title 10".

**§ 1304. Contract clauses and certifications**

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

- (1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and
- (2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

- (A) the certification requirement is specifically imposed by statute; or
- (B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term "head of the executive agency" with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

- (i) the certification requirement is specifically imposed by statute; or
- (ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3693.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1304(a) .....	41:425(a).	Pub. L. 93-400, §29, as added Pub. L. 103-355, title I, §1093, Oct. 13, 1994, 108 Stat. 3273; Pub. L. 104-106, title XLIII, §4301(b)(2)(A), (c), Feb. 10, 1996, 110 Stat. 657, 658.
1304(b)(1) .... 1304(b)(2), (3).	41:425(b). 41:425(c).	

**Statutory Notes and Related Subsidiaries**

CURRENT CERTIFICATION REQUIREMENTS

Pub. L. 104-106, div. D, title XLIII, §4301(b)(1), Feb. 10, 1996, 110 Stat. 656, provided that:

"(A) Not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996], the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

"(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

"(ii) the Administrator approves in writing the retention of the certification requirement.

"(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

"(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

"(II) the head of the executive agency approves in writing the retention of such certification requirement.

"(ii) For purposes of clause (i), the term 'head of the executive agency' with respect to a military department means the Secretary of Defense."

**Executive Documents**

ADDRESSING TAX DELINQUENCY BY GOVERNMENT CONTRACTORS

Memorandum of President of the United States, Jan. 20, 2010, 75 F.R. 3979, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than \$5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to direct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Acquisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors' certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treas-