

22.1305). The contractor and subcontractor must file VETS-4212, Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 8. Amend section 52.212-5 by revising the date of the clause and paragraphs (b)(31) and (e)(1)(viii) to read as follows:

**52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (FEB 2016)**

\* \* \* \* \*

(b) \* \* \*

(31) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

\* \* \* \* \*

(e)(1) \* \* \*

(viii) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

\* \* \* \* \*

■ 9. Amend section 52.213-4 by revising the date of clause and paragraphs (a)(2)(viii) and (b)(1)(vi) to read as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

\* \* \* \* \*

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (FEB 2016)**

(a) \* \* \*

(2) \* \* \*

(viii) 52.244-6, Subcontracts for Commercial Items (FEB 2016).

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212) (Applies to contracts of \$150,000 or more).

\* \* \* \* \*

■ 10. Amend section 52.222-37 by—  
 ■ a. Revising the date of the clause;  
 ■ b. Revising paragraphs (a), (b)(1), (b)(2), and (c);  
 ■ c. Removing from paragraph (d) "submit VETS-100A" and adding "file VETS-4212" in its place; and  
 ■ d. Removing from paragraph (f) "VETS-100A" and adding "VETS-4212" in its place.  
 The revisions read as follows.

**52.222-37 Employment Reports on Veterans.**

\* \* \* \* \*

**Employment Reports on Veterans (FEB 2016)**

(a) *Definitions.* As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) \* \* \*

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

\* \* \* \* \*

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

\* \* \* \* \*

■ 11. Amend section 52.222-38 by revising the date of the provision and removing from the last sentence "submitted the most recent VETS-100A" and adding "filed the most recent VETS-4212" in its place.

The revision reads as follows.

**52.222-38 Compliance With Veterans' Employment Reporting Requirements.**

\* \* \* \* \*

**Compliance With Veterans' Employment Reporting Requirements (FEB 2016)**

\* \* \* \* \*

■ 12. Amend section 52.244-6 by revising the date of the clause and paragraph (c)(1)(viii) to read as follows.

**52.244-6 Subcontracts for Commercial Items.**

\* \* \* \* \*

**Subcontracts for Commercial Items (FEB 2016)**

\* \* \* \* \*

(c)(1) \* \* \*

(viii) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

\* \* \* \* \*

[FR Doc. 2015-30458 Filed 12-3-15; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 3 and 52**

[FAC 2005-85; FAR Case 2013-015; Item IV; Docket 2013-0015, Sequence 1]

RIN 9000-AM56

**Federal Acquisition Regulation; Pilot Program for Enhancement of Contractor Employee Whistleblower Protections**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a statutory pilot program enhancing whistleblower protections for contractor employees.

**DATES:** *Effective:* December 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-85, FAR Case 2013-015.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 78 FR 60169 on September 30, 2013, to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections," of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013).

Paragraph (a) of section 828 adds to title 41 a new section 4712 that contains the elements of the pilot program, which took effect by operation of law on July 1, 2013, and is effective through January 1, 2017. Paragraph (c) of section 828 suspends the pre-existing whistleblower protections in 41 U.S.C. 4705 "(w)hile section 4712 of this title is in effect . . ." (*i.e.*, from July 1, 2013 through January 1, 2017). Accordingly,

the interim rule created a new FAR section 3.908 to implement section 4712. The rule leaves intact FAR sections 3.901 through 3.906, which implement the pre-existing whistleblower protections in 41 U.S.C. 4705, but suspends their applicability during the period when the pilot is in effect. Absent Congressional action, these authorities will automatically be reinstated when the pilot authority sunsets.

The interim rule also clarified that the pilot authority applies to title 41 agencies and is inapplicable to DoD, NASA, and the Coast Guard. The latter three agencies are covered by 10 U.S.C. 2409, which was amended by section 827 of the NDAA to impose permanent requirements very similar to the temporary requirements of the pilot program established in title 41.

Section 4712 and its implementing regulations (1) protect contractor or subcontractor employees against reprisal for activities protected by FAR 3.908–3(a) and (2) do not change any right or remedy otherwise available to the employee.

FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, was unaffected by this rule.

One respondent submitted comments on the interim rule.

## II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the response received in development of the final rule.

Only one response was received. A discussion of the response is provided as follows:

*Comment:* The respondent stated that FAR 3.908 “violates a core tenet of any legitimate law by failing to include any due process rights for the accused,” but notes also that the statute contains no due process rights for the accused. The respondent urges revision of the interim rule to reactivate current FAR 3.905 during the pilot program.

*Response:* The interim rule provides at FAR 3.908–5 that investigation of complaints by the Inspector General will be in accordance with 41 U.S.C. 4712(b).

In general, FAR 3.905 is based on 41 U.S.C. 4705. Paragraph (c) of section 828 of the National Defense Authorization Act for Fiscal Year 2013, upon which this rule is based, suspends the pre-existing whistleblower protections in 41 U.S.C. 4705 “(w)hile section 4712 of this title is in effect . . .” However, the additional due process rights in current FAR 3.905(c), (d) and (e) were not based

on 41 U.S.C. 4705, and have been incorporated in the final rule at 3.908–5(b), (c), and (d).

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The interim rule, upon which the final rule is issued with change, was initiated to amend the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). The law establishes a pilot program for the period ending on January 1, 2017. Based on a reading of 41 U.S.C. 3101(c) and sections 827 and 828 of the NDAA for FY 2013, the pilot program will apply to all Federal agencies except DoD, NASA, and the Coast Guard. Except for contracts funded under the American Recovery and Reinvestment Act of 2009 (see 3.907), the current protections for contractor whistleblowers are established in law at 41 U.S.C. 4705; paragraph (c) of section 828 suspends 41 U.S.C. 4705 “(w)hile section 4712 of this title is in effect . . .” Paragraph (a) of section 828 adds the new section 4712 to title 41 that contains the elements of the pilot program and is effective until January 1, 2017.

With the exception of DoD, NASA, and the Coast Guard, as well as any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)), the pilot program applies to the employees of Government contractors and their subcontractors. DoD, GSA, and NASA do not expect the pilot program, which applies to the majority of entities doing business with the Government

regardless of business size, to have a significant economic impact specific to small entities. The following information is provided as a means of estimating the overall numbers of entities to which the rule will apply. Based on Federal Procurement Data System reporting data, in Fiscal Year 2012, a Government-wide total of 273,970 new awards that exceeded the simplified acquisition threshold were made to small businesses and other than small businesses by agencies other than DoD, NASA, and the Coast Guard. Of that total, 95,436 new award actions were made to small business entities. The remaining 178,534 award actions were made to other than small businesses.

A new contract clause is provided for the pilot program, in accordance with paragraph (d) of section 4712. The clause informs offerors that employees working on any contract awarded are subject to the whistleblower rights and remedies of the pilot program and requires the contractor (and its subcontractors), regardless of business size, to inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712.

There is no requirement for small entities to submit any information under this clause. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

## List of Subject in 48 CFR Parts 3 and 52

Government procurement.

Dated: November 20, 2015.

**William Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

## Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 3 and 52, which was published in the **Federal Register** at 78 FR 60169 on September 30, 2013, is adopted as final with the following changes:

### PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 1. The authority citation for 48 CFR part 3 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Revise section 3.908–5 to read as follows.

**3.908–5 Procedures for investigating complaints.**

(a) Investigation of complaints will be in accordance with 41 U.S.C. 4712(b).

(b) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

(c) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(d) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

■ 3. Revise the section heading for section to read as follows:

**3.908–6 Remedies.**

\* \* \* \* \*

[FR Doc. 2015–30459 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 4**

[FAC 2005–85; FAR Case 2015–009; Item V; Docket No. 2015–0009, Sequence No. 1]

RIN 9000–AN12

**Federal Acquisition Regulation;  
Retention Periods**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update the Government contract file retention periods to conform with the retention periods in the National

Archives and Records Administration (NARA) General Records Schedule.

**DATES:** *Effective:* January 4, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–009.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are issuing a final rule to update the Government file retention periods identified at FAR 4.805, Government contract files, to conform with the retention periods in the revised NARA General Records Schedule (GRS) 1.1, Financial Management and Reporting Records notice, which was published in the **Federal Register** at 79 FR 54747 on September 12, 2014. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>.

NARA has undertaken a 5-year project to redraft the entire GRS to reflect the realities of current Government business practices and make it more useful in a world where almost all record keeping is electronic. NARA is charged with oversight of how all records of the Federal Government are managed and retained for business use and historical research. Its research on writing a new schedule for Financial Management and Reporting Records (GRS 1.1) was carried out under that authority.

NARA's research has shown that many agencies believe the break between procurements over and under the simplified acquisition threshold (6 years, 3 months versus 3 years retention) is no longer useful to them. NARA polled records management personnel at numerous agencies regarding records created in largely electronic acquisition systems. It also examined and tallied statistics regarding some 675,000 boxes of hard-copy records stored in the Federal Records Center system. As such, NARA eliminated the distinction between over and under the simplified acquisition threshold for purposes of record keeping and unified all retention under a single figure of 6 years under GRS 1.1, item 010.

The retention periods for Government contract records at FAR section 4.805 is changed to conform to the revised NARA GRS 1.1, as follows:

- Language at paragraph (a) regarding agency procedures for contract file disposal is removed.

- Language at paragraph (b) regarding retention periods for acquisitions conducted prior to July 3, 1995 is removed.

- Language is added at a new paragraph (c) to require agencies to request approval from NARA through the agency's records officer if a shorter retention is needed.

- In the Table at 4–1:

- The retention period identified for records related to Contract Disputes statute actions is removed; the requirement is covered by paragraphs numbered (1) and (8).

- The retention period for all contracts and related records is changed to 6 years after final payment.

- The retention period for unsolicited proposals not accepted by the agency is changed to be in accordance with agency procedures.

**II. Publication of This Final Rule for Public Comment is Not Required By Statute**

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only changes the retention periods for Government contract files. These requirements affect only the internal operating procedures of the Government.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This