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Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

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

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council pursuant to Executive Order 12866 “Regulatory Planning and Review,” 58 FR 51735 (1993), with particular adherence to EO 13771, “Reducing Regulation and Controlling Costs,” 82

FR 9339 (2017), EO 13777, “Enforcing the Regulatory Reform Agenda,” 82 FR 12285, and the Regulatory Flexibility Act, 5 U.S.C. 601 to 612. The purpose of publishing this agenda is to give notice of regulatory activity being undertaken by FAR Council in order to provide the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405-0001, 202-501-2735.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 1303) and the agencies’ several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on

the FAR website at <http://www.acquisition.gov/far>.

The information provided in the Unified Agenda (Agenda) previews the rulemaking activities that we expect to undertake in the immediate future. The Agenda focuses primarily on those actions expected to result in publication of Advanced Notices of Proposed Rulemaking, Notices of Proposed Rulemaking, or Final Rules within the next 12 months.

A fully searchable e-Agenda is available for viewing in its entirety at www.reginfo.gov. Agenda information is also available at www.regulations.gov, the government-wide website for submission of comments on proposed regulations. Our fall 2017 agenda follows.

Dated: November 29, 2017.

William F. Clark,

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

DOD/GSA/NASA (FAR)—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
348	Federal Acquisition Regulation (FAR); FAR Case 2017-014, Use of Acquisition 360 to Encourage Vendor Feedback.	9000-AN43

DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
349	Federal Acquisition Regulation (FAR); FAR Case 2015-021; Determination of Fair and Reasonable Prices on Orders Under Multiple Award Contracts.	9000-AM94
350	Federal Acquisition Regulation (FAR); FAR Case 2015-014; Prohibition on Providing Funds to the Enemy	9000-AN03
351	FAR Acquisition Regulation (FAR); FAR Case 2015-038, Reverse Auction Guidance	9000-AN31
352	Federal Acquisition Regulation (FAR); FAR Case 2017-005, Whistleblower Protection for Contractor Employees.	9000-AN32
353	Federal Acquisition Regulation; FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States.	9000-AN34
354	Federal Acquisition Regulation (FAR); FAR Case 2016-013, Tax on Certain Foreign Procurement	9000-AN38
355	Federal Acquisition Regulation (FAR); FAR Case 2017-003; Individual Sureties	9000-AN39
356	Federal Acquisition Regulations (FAR); FAR Case 2015-002, Requirements for DD Form 254, Contract Security Classification Specification.	9000-AN40
357	Federal Acquisition Regulation (FAR); FAR Case 2017-013, Breaches of Personally Identifiable Information.	9000-AN44
358	Federal Acquisition Regulation (FAR); FAR Case 2017-011, Section 508-Based Standards in Information and Communication Technology.	9000-AN46
359	Federal Acquisition Regulation (FAR); FAR Case 2016-012, Incremental Funding of Fixed-Price Contracting Actions.	9000-AN47
360	Federal Acquisition Regulation (FAR); FAR Case 2015-037, Definition of “Information Technology”	9000-AN48
361	Federal Acquisition Regulation (FAR); FAR Case 2015-028, Performance-Based Payments	9000-AN49
362	Federal Acquisition Regulation (FAR); Far Case 2015-004, Provisions and Clauses for Acquisitions of Commercial Items and Acquisitions That do not Exceed the Simplified Acquisition Threshold.	9000-AN51
363	Federal Acquisition Regulation (FAR); FAR Case 2017-006, Exception From Certified Cost or Pricing Data Requirements-Adequate Price Competition.	9000-AN53
364	Federal Acquisition Regulation (FAR); FAR Case 2017-010, Evaluation Factors for Multiple-Award Contracts.	9000-AN54
365	Federal Acquisition Regulation (FAR); FAR Case 2017-016, Controlled Unclassified Information (CU)	9000-AN56
366	Federal Acquisition Regulation (FAR); FAR Case 2017-018, Violation of Arms Control Treaties or Agreements with the United States.	9000-AN57
367	Federal Acquisition Regulation (FAR); FAR 2017-020, Ombudsman for Indefinite-Delivery Contracts	9000-AN58
368	Federal Regulation Acquisition (FAR); FAR Case 2017-019, Policy on Joint Ventures	9000-AN59

DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
369	Federal Acquisition Regulation (FAR); FAR Case 2018–003, Credit for Lower-Tier Small Business Subcontracting.	9000–AN61
370	Federal Acquisition Regulation (FAR); FAR Case 2018–002, Protecting Life in Global Health Assistance (Reg Plan Seq No. 136) .	9000–AN62

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

DOD/GSA/NASA (FAR)—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
371	Federal Acquisition Regulation (FAR); FAR Case 2013–002; Reporting of Nonconforming Items to the Government-Industry Data Exchange Program.	9000–AM58
372	Federal Acquisition Regulation (FAR); FAR Case 2015–015; Strategic Sourcing Documentation	9000–AM89
373	Federal Acquisition Regulation (FAR); FAR Case 2013–018; Clarification of Requirement for Justifications for 8(a) Sole Source Contracts.	9000–AM90
374	Federal Acquisition Regulation (FAR); FAR Case 2014–002; Set-Asides Under Multiple Award Contracts	9000–AM93
375	Federal Acquisition Regulation (FAR); FAR Case 2015–017; Combating Trafficking in Persons—Definition of “Recruitment Fees”.	9000–AN02
376	Federal Acquisition Regulation (FAR); FAR Case 2016–007, Non-Retaliation for Disclosure of Compensation Information.	9000–AN10
377	Federal Acquisition Regulation (FAR); FAR Case 2015–005, System for Award Management Registration	9000–AN19
378	Federal Acquisition Regulation (FAR); FAR Case 2015–039, Audit of Settlement Proposals	9000–AN26
379	Federal Acquisition Regulation (FAR); FAR Case 2017–001, Paid Sick Leave for Federal Contractors	9000–AN27
380	Federal Acquisition Regulation (FAR); FAR Case 2015–033, Sustainable Acquisition	9000–AN28
381	Federal Acquisition Regulation: FAR Case 2016–005; Effective Communication Between Government and Industry.	9000–AN29
382	Federal Acquisition Regulation (FAR); FAR Case 2016–011, (S) Revision of Limitations on Subcontracting	9000–AN35
383	Federal Acquisition Regulation (FAR); FAR Case 2017–004, Rate Adjustment of Liquidated Damages	9000–AN37
384	Federal Acquisition Regulation (FAR); FAR Case 2017–007, Task- and Delivery-Order Protests	9000–AN41
385	Federal Acquisition Regulation (FAR); FAR Case 2017–009, Special Emergency Procurement Authority ...	9000–AN45
386	Federal Acquisition Regulation (FAR); FAR Case 2017–012, Increased Micro-Purchase Threshold for Certain Procurement Activities.	9000–AN50

DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
387	Federal Acquisition Regulation (FAR); FAR Case 2015–031, Policy on 8(a) Joint Ventures	9000–AN33
388	Federal Acquisition Regulation (FAR); FAR Case 2017–015, Removal of Fair Pay and Safe Workplaces Rule.	9000–AN52

**DEPARTMENT OF DEFENSE/
GENERAL SERVICES
ADMINISTRATION/NATIONAL
AERONAUTICS AND SPACE
ADMINISTRATION (FAR)**

Prerule Stage

348. Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 To Encourage Vendor Feedback

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to address the solicitation of contractor feedback on both contract formation and contract administration activities. Agencies would consider this feedback, as appropriate, to improve the efficiency

and effectiveness of their acquisition activities. The rule would create FAR policy to encourage regular feedback in accordance with agency practice (both on contract formation and administration activities) and a standard FAR solicitation provision to support a sustainable model for broadened use of Acquisition 360 survey to elicit feedback on the pre-award and debriefing processes in a consistent and standardized manner. Agencies would be able to use the solicitation provision to notify interested sources that a procurement is part of the Acquisition 360 survey and encourage stakeholders to voluntarily provide feedback on their experiences on the pre-award process.

Timetable:

Action	Date	FR Cite
ANPRM	04/00/18	
ANPRM Comment Period End.	06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email:* curtis.glover@gsa.gov.

RIN: 9000–AN43

**DEPARTMENT OF DEFENSE/
GENERAL SERVICES
ADMINISTRATION/NATIONAL
AERONAUTICS AND SPACE
ADMINISTRATION (FAR)**

Proposed Rule Stage

349. Federal Acquisition Regulation (FAR); FAR Case 2015–021; Determination of Fair and Reasonable Prices on Orders Under Multiple Award Contracts

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to direct ordering activity contracting officers to make a determination of fair and reasonable pricing when placing an order against using GSA’s Federal Supply Schedules (FSS). The Federal Acquisition Streamlining Act (FASA) of 1994 established a preference for the types of information used to assess price reasonableness.

This rule establishes a practice that will ensure that prices are fair and reasonable at the time the order is placed under the GSA’s Federal Supply Schedules. This government-wide FAR rule will ensure uniform implementation of this FAR change across FAR-based contracts and avoid the proliferation of agency-wide rules and actions (e.g. revisions to FAR supplements or issuance of policy guidance) implementing this requirement.

Timetable:

Action	Date	FR Cite
NPRM	05/00/18	
NPRM Comment Period End.	07/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email:* curtis.glover@gsa.gov.
RIN: 9000–AM94

350. Federal Acquisition Regulation (FAR); FAR Case 2015–014; Prohibition on Providing Funds to the Enemy

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement subtitle E of title VIII of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization

Act (NDAA) for Fiscal Year (FY) 2015, which prohibits the Government from providing funds to the enemy. The Act requires the Secretary of Defense to notify executive agencies of persons or entities providing funds under certain contracts to persons or entities that are actively opposing the United States or coalition forces where the Armed Forces are actively engaged in a contingency operation; or has failed to exercise due diligence to ensure that none of the funds under certain contracts are provided to those persons or entities. After receiving such notification, the executive agency’s Head of the Contracting Activity (HCA) may rescind, void the contract or terminate for default. The HCA’s decision is entered into the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records. Since, review of FAPIIS is required before making certain award decision, this rule helps to prevent the flow of funds to such persons or entities. The statute does not apply to contracts that are equal to or less than \$50,000, and contracts performed inside the United States or its outlying areas, or contracts subject to a national security exception.

Timetable:

Action	Date	FR Cite
NPRM	02/00/18	
NPRM Comment Period End.	04/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 219–0202, *Email:* cecilia.davis@gsa.gov.
RIN: 9000–AN03

351. FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement policies addressing the effective use of reverse auctions. Reverse auctions involve offerors lowering their pricing over rounds of bidding in order to win federal contracts. This change incorporates guidance from the Office of Federal Procurement Policy (OFPP) memorandum, “Effective Use of Reverse Auctions,” which was issued in response to recommendations from the

GAO report, *Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings* (GAO–14–108). Reverse auctions are one tool used by federal agencies to increase competition and reduce the cost of certain items. Reverse auctions differ from traditional auctions in that sellers compete against one another to provide the lowest price or highest-value offer to a buyer. This change to the FAR will include guidance that will standardize agencies’ use of reverse auctions help agencies maximize competition and savings when using reverse auctions.

Timetable:

Action	Date	FR Cite
NPRM	02/00/18	
NPRM Comment Period End.	04/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email:* curtis.glover@gsa.gov.
RIN: 9000–AN31

352. Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information and makes the pilot program permanent. The pilot was enacted on January 2, 2013, by section 828 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. The rule makes clear that contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities such as agency Inspector Generals and Congress, information the employee reasonably believes is evidence of gross mismanagement of a Federal contract; a gross waste of Federal funds; an abuse of authority relating to a Federal contract; a substantial and specific danger to public health or safety; or violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract. This rule enhances

whistleblower protections for contractor employees, by making permanent the protection for disclosure of the aforementioned information, and ensuring that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to subcontractors, as well as contractors.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	03/00/18 05/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 219-0202, *Email:* cecelia.davis@gsa.gov.
RIN: 9000-AN32

353. Federal Acquisition Regulation; FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) consistent with SBA's regulation at 13 CFR 125.2 as finalized in their rule Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation" issued on October 2, 2013, to clarify that overseas contracting is not excluded from agency responsibilities to foster small business participation (78 FR 61113).

In its final rule, SBA has clarified that, as a general matter, its small business contracting regulations apply regardless of the place of performance. In light of these changes, there is a need to amend the FAR both to bring its coverage into alignment with SBA's regulation and to give agencies the tools they need especially the ability to use set-asides to maximize opportunities for small businesses overseas.

SBA intends to include contracts performed outside of the United States in agencies' prime contracting goals beginning in FY 2016. Although inclusion for goaling purposes is not dependent on FAR changes, amending FAR part 19 will allow agencies to take advantage of the tools authorized for providing small business opportunities for contracts awarded outside of the United States.

This rule will allow agencies to take advantage of the tools authorized for providing small business opportunities

for contracts awarded outside of the United States. This will make it easier for small businesses to receive additional opportunities for contracts performed outside of the United States.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	02/00/18 04/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov.
RIN: 9000-AN34

354. Federal Acquisition Regulation (FAR); FAR Case 2016-013, Tax on Certain Foreign Procurement

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 37; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a final rule issued by the Department of the Treasury (published at 81 FR 55133) that implements section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111347. This section imposes on any foreign person that receives a specified Federal procurement payment a tax equal to two percent of the amount such payment. This rule applies to Federal Government contracts for goods or services that are awarded to foreign persons.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.
RIN: 9000-AN38

355. Federal Acquisition Regulation (FAR); FAR Case 2017-003; Individual Sureties

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to change

the kinds of assets that individual sureties must use as security for their individual surety bonds. This change will implement section 874 of the NDAA for FY 2016 (Pub. L. 114-92), codified at 31 U.S.C. 9310, Individual Sureties. Individual sureties will no longer be able to pledge real property, corporate stocks, corporate bonds, or irrevocable letters of credit. The requirements of 31 U.S.C. 9310 are intended to strengthen the assets pledged by individual sureties, thereby mitigating risk to the Government.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.
RIN: 9000-AN39

356. Federal Acquisition Regulations (FAR); FAR Case 2015-002, Requirements for DD FORM 254, Contract Security Classification Specification

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require the use of Department of Defense (DoD) Wide Area Workflow (WAWF) for the electronic submission of the DD Form 254, Contract Security Classification Specification. This form is used to convey security requirements regarding classified information to contractors and subcontractors and must be submitted to the Defense Security Services (DSS) when contractors or subcontractors require access to classified information under contracts awarded by agencies covered by the National Industrial Security Program (NISP). By changing the submittal process of the form from a manual process to an automated one, the government will reduce the cost of maintaining the forms, while also providing a centralized repository for classified contract security requirements and supporting data.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	03/00/18 05/00/18	

Regulatory Flexibility Analysis
 Required: Yes.

Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501-1448, *Email:* curtis.glover@gsa.gov.
RIN: 9000-AN40

357. Federal Acquisition Regulation (FAR); FAR Case 2017-013, Breaches of Personally Identifiable Information

E.O. 13771 Designation: Regulatory.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to create and implement appropriate contract clauses and regulatory coverage to address contractor requirements for breach response consistent with the requirements. This FAR change will implement the requirements outlined in Office of Management and Budget (OMB) Memorandum, M-17-12 “Preparing for and Responding to a Breach of Personally Identifiable Information” section V part B.
Timetable:

Action	Date	FR Cite
NPRM	03/00/18	
NPRM Comment Period End.	05/00/18	

Regulatory Flexibility Analysis
 Required: Yes.

Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov.
RIN: 9000-AN44

358. Federal Acquisition Regulation (FAR); FAR Case 2017-011, Section 508-Based Standards in Information and Communication Technology

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate revisions and updates to standards in section 508 of the Rehabilitation Act of 1973, developed by the Architectural and Transportation Barriers Compliance Board (also referred to as the “Access Board”). This FAR change incorporates the U.S. Access Board’s final rule, Information and Communication Technology (ICT) Standards and Guidelines, published on January 18, 2017, which implemented revisions and updates to the section 508-based standards and section 255-

based guidelines. This rule is expected to impose additional costs on federal agencies. The purpose is to increase productivity for federal employees with disabilities, time savings due to improved accessibility of federal websites for members of the public with disabilities, and reduced call volumes to federal agencies. Additionally, this rule harmonizes standards with national and international consensus standards which would assist American ICT companies by helping to achieve economies of scale created by wider use of these technical standards.

Timetable:

Action	Date	FR Cite
NPRM	02/00/18	
NPRM Comment Period End.	04/00/18	

Regulatory Flexibility Analysis
 Required: Yes.

Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov.
RIN: 9000-AN46

359. Federal Acquisition Regulation (FAR); FAR Case 2016-012, Incremental Funding of Fixed-Price Contracting Actions

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to allow for incrementally funding of certain fixed-price contracting action to help minimize disruptions to agency operations, and provide Federal acquisition professionals with new funding flexibility for fixed-price contracting actions. The FAR addresses incremental funding on cost reimbursement contracts, however, does not provide coverage on fixed price contracts. Because the FAR is silent on the incremental funding of fixed-price contracts, contracting professionals endorse the full funding of fixed-price contracts as a best practice, however, in many cases full funding is not possible. Implementing this policy will provide the flexibility sought by several agencies. Although individual agencies have implemented policy changes for themselves, making this change to the FAR will provide consistency across Government agencies, from both policy and procedural perspectives.

Timetable:

Action	Date	FR Cite
NPRM	02/00/18	
NPRM Comment Period End.	04/00/18	

Regulatory Flexibility Analysis
 Required: Yes.

Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov.
RIN: 9000-AN47

360. Federal Acquisition Regulation (FAR); FAR Case 2015-037, Definition of “Information Technology”

E.O. 13771 Designation: Regulatory.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to update the definition of “information technology,” as directed in the Office of Management and Budget Memo, M-15-14, entitled Management Oversight of Federal Information Technology.” Specifically, the rule broadens the definition of information technology to include services such as cloud computing and to remove an exemption for information technology embedded in other systems.

Timetable:

Action	Date	FR Cite
NPRM	06/00/18	
NPRM Comment Period End.	08/00/18	

Regulatory Flexibility Analysis
 Required: Yes.

Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov.
RIN: 9000-AN48

361. Federal Acquisition Regulation (FAR); FAR Case 2015-028, Performance-Based Payments

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA and NASA are proposing to amend the FAR Clause 52.232-32, Performance-Based Payments, to include the text for subcontract flowdown addressed at FAR 32.504(f), but not currently specified in the clause itself. No new requirements are added. This rule takes guidance to prime contractors on the terms and conditions for flowdown of performance-based payments currently in the FAR text and places it in the

applicable contract clause so that the contractor can readily see what language is to be used in subcontracts authoring performance-based payments.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.
RIN: 9000-AN49

362. Federal Acquisition Regulation (FAR); FAR Case 2015-004, Provisions and Clauses for Acquisitions of Commercial Items and Acquisitions That Do Not Exceed the Simplified Acquisition Threshold

E.O. 13771 Designation: Other.
Legal Authority: Not Yet Determined
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) with an internal administrative change to support the use of automated contract writing systems and reduce FAR maintenance when clauses are updated. Currently, the FAR provides a single, consolidated list of all provisions and clauses applicable to the acquisition of commercial items. When new clauses applicable to commercial items are added the FAR, a manual process of cross checking and renumbering of the list is employed to conform the FAR. The process is cumbersome and inefficient, and challenging to maintain, especially for contract writing systems. The proposed rule would propose a change to each clause prescription and each clause flowdown for commercial items to specify required information within the prescription/clause itself, without having to cross-check another clause, list or other parts of the FAR.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.
RIN: 9000-AN51

363. Federal Acquisition Regulation (FAR); FAR Case 2017-006, Exception From Certified Cost or Pricing Data Requirements—Adequate Price Competition

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: The proposed rule implements section 822 of the NDAA for FY 2017 (Pub. L. 114-328) to modify the Federal Acquisition Regulation (FAR) for DoD, NASA, and the Coast Guard to amend the FAR to implement exceptions from certified cost or pricing data requirements when price is based on adequate price competition at FAR 15.403(c)(1). This rule also limits the exception for price based on adequate price competition to circumstances in which there is adequate competition that results in at least two or more responsive and viable competing bids.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.
RIN: 9000-AN53

364. Federal Acquisition Regulation (FAR); FAR Case 2017-010, Evaluation Factors for Multiple-Award Contracts

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 825 of the NDAA for FY 17 (Pub. L. 114-328). Section 825 amends 10 U.S.C. 2305(a)(3) to change the requirement regarding the consideration of cost or price to the Government as a factor in the evaluation of proposals for certain multiple-award task order contracts awarded by DoD, NASA, or the Coast Guard. At the Government's discretion, solicitations for multiple-award contracts, which intend to award the same or similar services to each qualifying offeror, do not require price or cost as an evaluation factor for the base contract award. This will streamline the award of contracts for DoD, NASA, and Coast Guard because they won't have to consider cost or price in the evaluation

of the award decision. Relieving the requirement to account for cost or price when evaluating proposals for these types of contracts, which feature competitive orders, will enable procurement officials to focus their energy on establishing and evaluating the non-price factors that will result in more meaningful distinctions among offerors.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.
RIN: 9000-AN54

365. Federal Acquisition Regulation (FAR); FAR Case 2017-016, Controlled Unclassified Information (CUI)

E.O. 13771 Designation: Regulatory.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the National Archives and Records Administration (NARA) Controlled Unclassified Information (CUI) program of Executive Order 13556 of Nov 4, 2010. As the executive agent designated to oversee the Governmentwide CUI program, NARA issued implementing regulations in late 2016 designed to address agency policies for designating, safeguarding, disseminating, marking, decontrolling and disposing of CUI. The NARA rule affects contractors that handle, possess, use, share or receive CUI. The NARA regulation is codified at 32 CFR 2002. This FAR rule is necessary to ensure uniform implementation of the requirements of the CUI program in contracts across the government, thereby avoiding potentially inconsistent agency-level action.

Timetable:

Action	Date	FR Cite
NPRM NPRM Comment Period End.	04/00/18 06/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington,

DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov.
RIN: 9000-AN56

366. • Federal Acquisition Regulation (FAR); FAR Case 2017-018, Violation of Arms Control Treaties or Agreements With the United States

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 1290(c)(3) of the NDAA for FY 2017, which requires the offeror to certify or any of its subsidiaries to certify that it does not engage in any activity that contributed to or is a significant factor in the determination that a country is not in full compliance with its obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments to which the United States is a participating state.
Timetable:

Action	Date	FR Cite
NPRM	03/00/18	
NPRM Comment Period End.	05/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 219-0202, *Email:* cecelia.davis@gsa.gov.
RIN: 9000-AN57

367. • Federal Acquisition Regulation (FAR); FAR 2017-020, Ombudsman for Indefinite-Delivery Contracts

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) by providing a new clause with contact information for the agency task and delivery order ombudsman as required by FAR.). Specifically, FAR 16.504(a)(4)(v) requires that the name, address, telephone number, facsimile number, and email address of the agency task and delivery order ombudsman be included in solicitations and contracts for an indefinite quantity requirement, if multiple awards may be made for uniformity and consistency.
Timetable:

Action	Date	FR Cite
NPRM	02/00/18	

Action	Date	FR Cite
NPRM Comment Period End.	04/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.
RIN: 9000-AN58

368. • Federal Regulation Acquisition (FAR); FAR Case 2017-019, Policy on Joint Ventures

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA), Small Business Mentor Protégé Programs, published on July 25, 2016 (81 FR 48557), regarding joint ventures and to clarify policy on 8(a) joint ventures. The regulatory changes provide industry with a new way to compete for small business or socioeconomic set-asides using a joint venture made up of a mentor and a protégé. The 8(a) joint venture clarification prevents confusion on an 8(a) joint venture's eligibility to compete for an 8(a) competitive procurement.
Timetable:

Action	Date	FR Cite
NPRM	06/00/18	
NPRM Comment Period End.	08/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Janet Fry, Program Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-3167, *Email:* janet.fry@gsa.gov.
RIN: 9000-AN59

369. • Federal Acquisition Regulation (FAR); FAR Case 2018-003, Credit for Lower-Tier Small Business Subcontracting

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to implement section 1614 of the National Defense Authorization Act of Fiscal Year 2014, as implemented in the Small Business Administration's final rule issued on December 23, 2016. Section 1614 allows

other than small prime contractors to receive small business subcontracting credit for subcontracts their subcontractors award to small businesses.

Timetable:

Action	Date	FR Cite
NPRM	04/00/18	
NPRM Comment Period End.	06/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Janet Fry, Program Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-3167, *Email:* janet.fry@gsa.gov.
RIN: 9000-AN61

370. • Federal Acquisition Regulation (FAR); FAR Case 2018-002, Protecting Life in Global Health Assistance

Regulatory Plan: This entry is Seq. No. 136 in part II of this issue of the **Federal Register**.
RIN: 9000-AN62

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

371. Federal Acquisition Regulation (FAR); FAR Case 2013-002; Reporting of Nonconforming Items to the Government-Industry Data Exchange Program

E.O. 13771 Designation: Regulatory.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to expand Government and contractor requirements for reporting of nonconforming items. This rule partially implements section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 and implement requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 91-3, entitled Reporting Nonconforming Products," dated April 9, 1991. This change will help mitigate the growing threat that counterfeit items pose when used in systems vital to an agency's mission. The primary benefit of this rule is to reduce the risk of counterfeit items entering the supply chain by ensuring that contractors report suspect items to a widely available database. This will allow the

contracting officer to provide disposition instructions for counterfeit or suspect counterfeit items in accordance with agency policy. In some cases, agency policy may require the contracting officer to direct the contractor to retain such items for investigative or evidentiary purposes.

Timetable:

Action	Date	FR Cite
NPRM	06/10/14	79 FR 33164
NPRM Comment Period End.	08/11/14	
Final Rule	06/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov.

RIN: 9000-AM58

372. Federal Acquisition Regulation (FAR); FAR Case 2015-015; Strategic Sourcing Documentation

E.O. 13771 Designation: Other.

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015. This section requires the contract file shall contain certain documentation if the Federal Government makes a purchase of supplies and services offered under the Federal Strategic Sourcing Initiative (FSSI), but the FSSI is not used. The contract file for the purchase shall include a brief analysis of the comparative value, including price and non-price factors, between the supplies and services offered under the FSSI and those offered under the source(s) to be used for the purchase.

The rule will raise the visibility of these strategic sourcing solutions, the analysis used when not using an FSSI contract vehicle, promote their use, and help to better leverage the Government's buying power when using FSSI vehicles. Strategic Sourcing drives both dollar savings and process improvements. The Federal Government, suppliers and ultimately the U.S. taxpayers benefit when government can better articulate its requirements and provide committed purchase volumes, and in return, industry suppliers can provide better pricing and more valuable solutions.

Timetable:

Action	Date	FR Cite
NPRM	06/20/16	81 FR 39883
NPRM Comment Period End.	08/19/16	
Final Rule	04/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.

RIN: 9000-AM89

373. Federal Acquisition Regulation (FAR); FAR Case 2013-018; Clarification of Requirement for Justifications for 8(a) Sole Source Contracts

E.O. 13771 Designation: Other.

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to clarify the guidance for sole source 8(a) contract awards exceeding \$22 million. This rule implements guidance from a Government Accountability Office (GAO) report entitled Federal Contracting: Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts" (GAO-13-118, December 2012). Sole-source contracting regulations are statutory and are found in section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 11184) (see 77 FR 23369). These clarifications improve the contracting officer's ability to comply with the sole source contracts statutory requirements by providing guidance, including when justification is necessary, how contracting officers should comply, and when a separate sole-source justification is necessary for out-of-scope modifications to 8(a) sole-source contracts. The GAO report indicates that the FAR needed additional clarification of the justification requirement to help ensure that agencies are applying the requirement consistently.

Timetable:

Action	Date	FR Cite
NPRM	11/15/16	81 FR 80012
NPRM Comment Period End.	01/17/17	
Final Rule	03/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington,

DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov.

RIN: 9000-AM90

374. Federal Acquisition Regulation (FAR); FAR Case 2014-002; Set-Asides Under Multiple Award Contracts

E.O. 13771 Designation: Other.

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes regarding procedures for the use of small business partial set-asides, reserves, and orders placed under multiple-award contracts. This rule incorporates statutory requirements discussed at section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)) and the Small Business Administration's final rule at 78 FR 61114, dated October 2, 2013.

Multiple-award contracts, due to their inherent flexibility, competitive nature, and administrative efficiency, are commonly used in Federal procurement. They have proven to be an effective means of contracting for large quantities of supplies and services for which the quantity and delivery requirements cannot be definitively determined at contract award. However, prior to 2011, the FAR was largely silent on the use of acquisition strategies to promote small business participation in conjunction with multiple-award contracts. This rule increases small business participation in Federal prime contracts by ensuring that small businesses have greater access to multiple award contracts and clarifying the procedures for partially setting aside and reserving multiple-award contracts for small business, and setting aside orders placed under multiple-award contracts for small business, thereby ensuring that small businesses have greater access to these commonly used vehicles.

Timetable:

Action	Date	FR Cite
NPRM	12/06/16	81 FR 88072
NPRM Comment Period End.	02/06/17	
Final Rule	03/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov.

RIN: 9000-AM93

375. Federal Acquisition Regulation (FAR); FAR Case 2015–017; Combating Trafficking in Persons—Definition of “Recruitment Fees”

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, and title XVII of the National Defense Authorization Act for Fiscal Year 2013. The rule adds a definition of “recruitment fees” to FAR subpart 22.17, Combating Trafficking in Persons, and the associated clauses in order to clarify how the Government uses recruitment fees in the treatment of this prohibited practice that has been associated with labor trafficking under contracts and subcontracts. The purpose of the rule is to provide a standardized definition that clarifies prohibited recruitment to help fight against human trafficking.

Timetable:

Action	Date	FR Cite
NPRM	05/11/16	81 FR 29244
NPRM Comment Period End.	07/11/16	
Final Rule	02/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 219–0202, *Email:* cecelia.davis@gsa.gov.
RIN: 9000–AN02

376. Federal Acquisition Regulation (FAR); FAR Case 2016–007, Non-Retaliation for Disclosure of Compensation Information

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13665, entitled “Non-Retaliation for Disclosure of Compensation Information,” (79 FR 20749) and the final rule issued by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL) at 80 FR 54934, entitled “Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions.”

This rule provides for a uniform policy for the Federal Government to prohibit Federal contractors from

discriminating against employees and job applicants who inquire about, discuss, or disclose their own compensation or the compensation of other employees or applicants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/16	81 FR 67732
Interim Final Rule Comment Period End.	11/29/16	
Final Rule	02/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7207, *Email:* zenaida.delgado@gsa.gov.
RIN: 9000–AN10

377. Federal Acquisition Regulation (FAR); FAR Case 2015–005, System for Award Management Registration

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update the instructions for System for Award Management (SAM) registration requirements and to correct an inconsistency with offeror representation and certification requirements. The language in the FAR was not consistent in terms of whether offerors need to register in SAM prior to submitting an offer or prior to award of a contract. This rule clarifies and makes the language consistent by requiring offerors’ registration in SAM prior to submitting an offer. The rule does not place any new requirements on businesses and is considered administrative because the only change is when the requirement for registering in SAM must occur. Registering in SAM eliminates the need for potential offerors to complete representations and certifications multiple times a year when responding to solicitations, which reduces the burden on both the contractor and the government.

Timetable:

Action	Date	FR Cite
NPRM	05/20/16	81 FR 31895
NPRM Comment Period End.	07/19/16	
Final Rule	02/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA

(FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email:* curtis.glover@gsa.gov.
RIN: 9000–AN19

378. Federal Acquisition Regulation (FAR); FAR Case 2015–039, Audit of Settlement Proposals

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to the Truth In Negotiation Act (TINA) threshold of \$750,000 to help alleviate the backlog of contract close-outs and to enable contracting officers to more quickly deobligate excess funds from terminated contracts.

Timetable:

Action	Date	FR Cite
NPRM	09/14/16	81 FR 63158
NPRM Comment Period End.	11/14/16	
Final Rule	02/00/18	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550–0935, *Email:* camara.francis@gsa.gov.
RIN: 9000–AN26

379. Federal Acquisition Regulation (FAR); FAR Case 2017–001, Paid Sick Leave for Federal Contractors

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) requiring Federal Government contractors to ensure that employees on those contracts can earn up to seven days or more of paid sick leave annually, including paid sick leave for family care. This rule implements the objective of Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors and Department of Labor’s final rule (81 FR 91627).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/16	81 FR 91627
Interim Final Rule Effective.	01/01/17	
Interim Final Rule Comment Period End.	02/14/17	

Action	Date	FR Cite
Final Rule	02/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 969-7207, Email: zenaida.delgado@gsa.gov.

RIN: 9000-AN27

380. Federal Acquisition Regulation (FAR); FAR Case 2015-033, Sustainable Acquisition

E.O. 13771 Designation: Other. Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add a new definition for sustainable products and services and update several existing definitions germane to sustainable acquisition. This rule will also provide two new websites to help contractors understand the sustainable acquisition requirements and gain access to a listing of sustainable products and services as determined by the Federal Government. The rule implements Executive Order 13693, Planning for Federal Sustainability in the Next Decade (supersedes Executive Orders 13423 and 13514), and the biobased product acquisition provisions of the Agricultural Act of 2014 (also known as the 2014 Farm Bill).

Timetable:

Action	Date	FR Cite
NPRM	01/18/17	82 FR 5490
NPRM Comment Period End.	03/20/17	
Final Rule	04/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Charles Gray, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 703 795-6328, Email: chuck.gray@gsa.gov.

RIN: 9000-AN28

381. Federal Acquisition Regulation: FAR Case 2016-005; Effective Communication Between Government and Industry

E.O. 13771 Designation: Other. Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 887 of the NDAA for FY 2016 (Pub. L. 114-92). This law provides that agency acquisition

personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. This change will permit and encourage government acquisition personnel to engage in responsible and constructive exchanges with industry as part of market research as long as those exchanges are consistent with existing laws, regulations, and promote a fair competitive environment.

Timetable:

Action	Date	FR Cite
NPRM	11/29/16	81 FR 85914
NPRM Comment Period End.	03/02/17	
Final Rule	04/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 208-4949, Email: michaelo.jackson@gsa.gov.

RIN: 9000-AN29

382. Federal Acquisition Regulation (FAR); FAR Case 2016-011, (S) Revision of Limitations on Subcontracting

E.O. 13771 Designation: Other. Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise and standardize the limitations on subcontracting (LOS), including the nonmanufacturer rule (NMR), which apply to small business concerns under FAR part 19 procurements. This FAR change incorporates SBA's final rule at 81 FR 34243, which implemented the statutory requirements of section 1651 of the National Defense Authorization Act for Fiscal Year 2013. This action is necessary to meet the Congressional intent of clarifying the limitations on subcontracting with which small businesses must comply, as well as the ways in which they can comply. The rule will benefit small businesses and agencies. Prompt implementation of this rule will allow small businesses to take advantage of subcontracts with similarly situated entities. As a result, these small businesses will be able to compete for larger contracts, which would positively affect their potential for growth as well as that of their potential subcontractors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/18	

Action	Date	FR Cite
Interim Final Rule Comment Period End.	03/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 703 605-2868, Email: mahruba.uddowla@gsa.gov.

RIN: 9000-AN35

383. Federal Acquisition Regulation (FAR); FAR Case 2017-004, Rate Adjustment of Liquidated Damages

E.O. 13771 Designation: Fully or Partially Exempt. Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to adjust the civil monetary penalties for inflation pursuant to the Inflation Adjustment Act Improvements Act. This Act requires agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment, followed by the annual adjustment for inflation.

This rule implements the Department of Labor (DOL) interim final rule published in the **Federal Register** at 81 FR 43430 on July 1, 2016, finalized at 82 FR 5373 on January 18, 2017. The DOL rule adjusted the civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74).

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/18	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 969-7207, Email: zenaida.delgado@gsa.gov.

RIN: 9000-AN37

384. Federal Acquisition Regulation (FAR); FAR Case 2017-007, Task- and Delivery-Order Protests

E.O. 13771 Designation: Other. Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to raise the threshold for task- and delivery-order protests from \$10 million

to \$25 million for DoD and make permanent the General Accountability Office's authority to hear protests on civilian task or delivery contracts valued in excess of \$10 million. The rule implements sections 835 of the National Defense Authorization Act for FY 2017 (Pub. L. 114–328) and Public Law 114–260 835(a).

Timetable:

Action	Date	FR Cite
Final Rule	02/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles Gray, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 795–6328, *Email:* chuck.gray@gsa.gov.
RIN: 9000–AN41

385. Federal Acquisition Regulation (FAR); FAR Case 2017–009, Special Emergency Procurement Authority

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 816 and 1641 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). Section 816 adds international disaster assistance under the Foreign Assistance Act of 1961 and emergency or disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Section 1641 adds special emergency procurement authority to facilitate defense against or recovery from a cyber-attack. Adding these authorities enables a more effective and immediate response to emergency or major disasters, cyber attacks, and international disasters. For example, certain authorities would be available to the contracting officer based on agency procedures, the micropurchase threshold may be increased to \$20,000 for any contract to be awarded and performed, or purchase to be made in support of the designated areas; and the simplified acquisition threshold (SAT) may be increased to \$750,000, or \$13,000,000 for commercial items, for any contract to be awarded and performed, or purchased in support of the designated areas.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/18	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 9000–AN45

386. Federal Acquisition Regulation (FAR); FAR Case 2017–012, Increased Micro-Purchase Threshold for Certain Procurement Activities

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to update the definition of micro-purchase threshold” in FAR 2.101 to implement the higher micro-purchase threshold provided by section 217(b) of the NDAA for FY 2017 (Pub. L. 114–328). Specifically, section 217(b) amends 41 U.S.C. 1902 to increase the micro-purchase threshold for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, to \$10,000, or a higher amount as determined appropriate by the head of the relevant executive agency and consistent with clean audit findings under 31 U.S.C. chapter 75, an internal institutional risk assessment, or state law. As a result of this rule, affected contractors will no longer receive a written request for quote (RFQ) and/or a Government purchase order for requirements valued between \$3,501 and \$10,000. Instead, the order can be placed online, by phone, in person, or by fax via the Government purchase card (GPC). Therefore, the contractor will no longer be required to read the RFQ and/or purchase order for various Government-provided information.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/18	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 9000–AN50

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

387. Federal Acquisition Regulation (FAR); FAR Case 2015–031, Policy on 8(A) Joint Ventures

E.O. 13771 Designation:
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: This case has been merged into FAR Case 2017–019.
DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to be consistent with the guidance in SBA regulations at 13 CFR 124 8(A) Business Development/ Small Disadvantaged Business Status Determinations (77 FR 28237). These clarifications are expected to relieve burden on both industry and government by reducing the number of protests related to inappropriate elimination from competition of offers from 8(a) joint ventures and inappropriate awards to ineligible 8(a) joint ventures. This will reduce the risk for fraud by clarifying the role of SBA as the authority for making eligibility determination. The rule is also expected to facilitate competition by clarifying the circumstances under which a joint venture is eligible for award under the 8(a) program.

Completed:

Reason	Date	FR Cite
Merged With Policy on Joint Ventures (2017–019).	09/12/17	

Regulatory Flexibility Analysis Required: Yes.

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RIN: 9000–AN33

388. Federal Acquisition Regulation (FAR); FAR Case 2017–015, Removal of Fair Pay and Safe Workplaces Rule

E.O. 13771 Designation: Deregulatory.
Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113
Abstract: DoD, GSA and NASA plan to issue a final rule to repeal the implementation of Executive Order 13673 on Fair Pay and Safe Workplaces since Executive Order 13673 was officially nullified on March 27, 2017 (see Pub. L. 115–11). Additionally, Executive Order 13782 of March 30, 2017, revoked Executive Order 13673, section 3 of Executive Order 13683 of

December 11, 2014, and Executive Order 13738 of August 23, 2016. This action was made to have no force or effect by an enacted joint resolution of disapproval under the Congressional Review Act, H.J. Res.37 (Pub. L. 115–11).

Completed:

Reason	Date	FR Cite
Final Rule, CRA Revocation.	11/06/17	82 FR 51773

Regulatory Flexibility Analysis Required: Yes.

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RIN: 9000–AN52

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