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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

AGENCIES: 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 in compliance with Executive Order 12866 “Regulatory Planning and Review.” This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing.

Published proposed rules may be reviewed in their entirety at the Government’s rulemaking Web site at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, Division Director, Regulatory Secretariat Division, 1800 F Street NW., Washington, DC 20405, 202-501-4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their 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 Web site at <http://www.acquisition.gov/far>.

Dated: March 10, 2014.

William Clark,
Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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

Sequence No.	Title	Regulation Identifier No.
265	Federal Acquisition Regulation (FAR); FAR Case 2013-022, Extension of Limitations on Contractor Employee Personal Conflicts of Interest.	9000-AM69

DOD/GSA/NASA (FAR)—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
266	Federal Acquisition Regulation (FAR); FAR Case 2011-001; Organizational Conflicts of Interest	9000-AL82
267	Federal Acquisition Regulation; FAR Case 2009-016; Federal Contracting Programs for Minority-Owned and Other Small Businesses.	9000-AM05
268	Federal Acquisition Regulation (FAR); FAR Case 2011-020; Basic Safeguarding of Contractor Information Systems.	9000-AM19
269	Federal Acquisition Regulation (FAR); FAR Case 2012-028; Contractor Comment Period—Past Performance Evaluations.	9000-AM40
270	Federal Acquisition Regulation (FAR); FAR Case 2012-014; Small Business Protests and Appeals	9000-AM46
271	Federal Acquisition Regulation (FAR); FAR Case 2012-024; Commercial and Government Entity Code	9000-AM49
272	Federal Acquisition Regulation (FAR); FAR Case 2012-016; Defense Base Act	9000-AM50
273	Federal Acquisition Regulation (FAR); FAR Case 2011-023, Irrevocable Letters of Credit	9000-AM53
274	Federal Acquisition Regulation; FAR Case 2012-023, Uniform Procurement Identification	9000-AM60
275	Federal Acquisition Regulation: Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013-017).	9000-AM64
276	Federal Acquisition Regulation; FAR Case 2012-032, Higher-Level Contract Quality Requirements	9000-AM65

DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
277	Federal Acquisition Regulation (FAR); FAR Case 2010-010; Service Contracts Reporting Requirements ..	9000-AM06
278	Federal Acquisition Regulation (FAR); FAR Case 2011-024, Set-Asides for Small Business	9000-AM12
279	Federal Acquisition Regulation (FAR); FAR Case 2012-031; Accelerated Payments to Small Business Subcontractors.	9000-AM37
280	Federal Acquisition Regulation (FAR); FAR Case 2013-005, Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations.	9000-AM45

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

Proposed Rule Stage

265. • Federal Acquisition Regulation (FAR); Far Case 2013–022, Extension of Limitations on Contractor Employee Personal Conflicts of Interest

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

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 to extend the limitations on contractor employee personal conflicts of interest to apply to the performance of all functions that are closely associated with inherently governmental functions and contracts for personal services.

Timetable:

Action	Date	FR Cite
NPRM	07/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia Davis, Program Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219–0202, *Email:* cecelia.davis@gsa.gov, *RIN:* 9000–AM69

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

Final Rule Stage

266. Federal Acquisition Regulation (FAR); FAR Case 2011–001; Organizational Conflicts of Interest

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

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on organizational conflicts of interest (OCIs), and add related provisions and clauses. Coverage on contractor access to protected information has been moved to a new proposed rule, FAR Case 2012–029.

Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) required a review of the FAR coverage on OCIs. This proposed rule was

developed as a result of a review conducted in accordance with section 841 by the Civilian Agency Acquisition Council, the Defense Acquisition Regulations Council, and the Office of Federal Procurement Policy, in consultation with the Office of Government Ethics. This proposed rule was preceded by an Advance Notice of Proposed Rulemaking, under FAR Case 2007–018 (73 FR 15962), to gather comments from the public with regard to whether and how to improve the FAR coverage on OCIs. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2014), available at: <https://www.acquisition.gov/>.

Timetable:

Action	Date	FR Cite
NPRM	04/26/11	76 FR 23236
NPRM Comment Period End.	06/27/11	
NPRM Comment Period Extended.	06/29/11	76 FR 38089
Comment Period End.	07/27/11	
Final Rule	10/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Deborah Erwin, Attorney—Advisor in the Office of Governmentwide Policy, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501–2164, *Email:* deborah.erwin@gsa.gov, *RIN:* 9000–AL82

267. Federal Acquisition Regulation; FAR Case 2009–016; Federal Contracting Programs for Minority-Owned and Other Small Businesses

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 remove certain coverage involving procurements with small disadvantaged business concerns and certain institutions of higher education that is based on authority which has expired and been found to be unconstitutional by the Court of Appeals for the Federal Circuit in *Rothe Development Corporation vs. the DoD and the U.S. Department of the Air Force*. These changes harmonize the FAR with current statutory authorities.

Timetable:

Action	Date	FR Cite
NPRM	09/09/11	76 FR 55849

Action	Date	FR Cite
NPRM Comment Period End.	11/08/11	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501–2364, *Email:* karlos.morgan@gsa.gov, *RIN:* 9000–AM05

268. Federal Acquisition Regulation (FAR); FAR Case 2011–020; Basic Safeguarding of Contractor Information Systems

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 add a new subpart and contract clause for the safeguarding of contractor information systems that contain information provided by the Government (other than public information) or generated for the Government that will be resident on or transiting through contractor information systems.

Timetable:

Action	Date	FR Cite
NPRM	07/26/12	77 FR 51496
NPRM Comment Period End.	10/23/12	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Petrussek, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501–0136, *Email:* marissa.petrusek@gsa.gov, *RIN:* 9000–AM19

269. Federal Acquisition Regulation (FAR); FAR Case 2012–028; Contractor Comment Period—Past Performance Evaluations

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 revise the Federal Acquisition Regulation (FAR) to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013) and section 806 of the NDAA for FY 2012 (Pub. L. 112–81, enacted December 31, 2011, 10 U.S.C. 2302 Note). Section 853, entitled “Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions,” and section 806,

entitled “Inclusion of Data on Contractor Performance in Past Performance Databases for Source Selection Decisions,” require revisions to the acquisition regulations on past performance evaluations so that contractors are provided “up to 14 calendar days . . . from the date of delivery” of past performance evaluations “to submit comments, rebuttals, or additional information pertaining to past performance” for inclusion in the database. In addition, paragraph (c) of both sections 853 and 806 requires that agency evaluations of contractor performance, including any information submitted by contractors, be “included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information” (section 853(c)) to the contractor. The Governmentwide application of the statute will ensure that the Government has current performance information about contractors to help source selection officials make better award decisions. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2014), available at: <https://www.acquisition.gov/>.

Timetable:

Action	Date	FR Cite
NPRM	08/07/13	78 FR 48123
NPRM Comment Period End.	10/07/13	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Curtis Glover, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-1448, *Email:* curtis.glover@gsa.gov, *RIN:* 9000-AM40

270. Federal Acquisition Regulation (FAR); FAR Case 2012-014; Small Business Protests and Appeals

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to implement the Small Business Administration’s revision of the small business size and small business status protest and appeal procedures.

Timetable:

Action	Date	FR Cite
NPRM	03/07/13	78 FR 14746
NPRM Comment Period End.	05/06/13	

Action	Date	FR Cite
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-2364, *Email:* karlos.morgan@gsa.gov, *RIN:* 9000-AM46

271. Federal Acquisition Regulation (FAR); FAR Case 2012-024; Commercial and Government Entity Code

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to require the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold. The CAGE code is a five-character identification number used extensively within the Federal Government. The proposed rule will also require offerors, if owned or controlled by another business entity, to identify that entity during System For Award Management registration.

Timetable:

Action	Date	FR Cite
NPRM	04/18/13	78 FR 23194
NPRM Comment Period End.	06/17/13	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Edward Loeb, Program Manager, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-0650, *Email:* edward.loeb@gsa.gov, *RIN:* 9000-AM49

272. Federal Acquisition Regulation (FAR); FAR Case 2012-016; Defense Base Act

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation to clarify contractor and subcontractor responsibilities to obtain workers’ compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers’ Compensation Act as extended by the Defense Base Act.

Action	Date	FR Cite
NPRM	03/20/13	78 FR 17176
NPRM Comment Period End.	05/20/13	
Final Rule	06/00/14	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Edward Chambers, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-3221, *Email:* edward.chambers@gsa.gov, *RIN:* 9000-AM50

273. Federal Acquisition Regulation (FAR); FAR Case 2011-023, Irrevocable Letters of Credit

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation to remove all references to Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit, and also provide updated sources of data required to verify the credit worthiness of a financial entity issuing or confirming an irrevocable letter of credit.

Timetable:

Action	Date	FR Cite
NPRM	05/07/13	78 FR 26573
NPRM Comment Period End.	07/08/13	
Final Action	08/00/14	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Cecelia Davis, Program Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219-0202, *Email:* cecelia.davis@gsa.gov, *RIN:* 9000-AM53

274. Federal Acquisition Regulation; FAR Case 2012-023, Uniform Procurement Identification

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to implement a uniform Procurement Instrument Identification numbering system, which will require the use of Activity Address Codes as the unique identifier for contracting offices and other offices, in order to standardize procurement transactions across the Federal Government. This proposed rule continues and strengthens efforts at standardization accomplished under a previous FAR case.

Action	Date	FR Cite
NPRM	06/06/13	78 FR 34020
NPRM Comment Period End.	08/05/13	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Loeb, Program Manager, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-0650, *Email:* edward.loeb@gsa.gov, *RIN:* 9000-AM60

275. Federal Acquisition Regulation: Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013-017)

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 an interim rule amending the Federal Acquisition Regulation to implement a section of the National Defense Authorization Act for Fiscal Year 2013 that addresses the allowability of legal costs incurred by a contractor or subcontractor related to a whistleblower proceeding commenced by the submission of a complaint of reprisal by the contractor or subcontractor employee.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/13	78 FR 60173
Interim Final Rule Comment Period End.	11/29/13	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Chambers, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-3221, *Email:* edward.chambers@gsa.gov, *RIN:* 9000-AM64

276. • Federal Acquisition Regulation; FAR Case 2012-032, Higher-Level Contract Quality Requirements

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

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to clarify when to use higher level quality standards in solicitations and contracts, and to update the examples of higher-level quality standards by revising obsolete standards and adding two new industry standards that pertain to quality assurance for avoidance of counterfeit items. These standards will be used to help minimize and mitigate counterfeit

items or suspect counterfeit items in Government contracting.

Timetable:

Action	Date	FR Cite
NPRM	12/03/13	78 FR 72620
NPRM Comment Period End.	02/03/14	
Final Rule	09/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Petrusek, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501-0136, *Email:* marissa.petrusek@gsa.gov, *RIN:* 9000-AM65

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

Completed Actions

277. Federal Acquisition Regulation (FAR); FAR Case 2010-010; Service Contracts Reporting Requirements

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 issued a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2010. This final rule amends the FAR to require service contractors for executive agencies, except where DoD has fully funded the contract or order, to submit information annually in support of agency-level inventories for service contracts.

Completed:

Reason	Date	FR Cite
Final Rule	12/31/13	78 FR 80369
Correction	01/29/14	79 FR 4630

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Loeb, *Phone:* 202 501-0650, *Email:* edward.loeb@gsa.gov, *RIN:* 9000-AM06

278. Federal Acquisition Regulation (FAR); FAR Case 2011-024, Set-Asides for Small Business

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

Abstract: DoD, GSA, and NASA issued an interim rule amending the Federal Acquisition Regulation to implement section 1331 of the Small Business Jobs Act of 2010 (Jobs Act). Section 1331 addresses set-asides of task

and delivery orders under multiple-award contracts, partial set-asides under multiple-award contracts, and the reserving of one or more multiple-award contracts that are awarded using full and open competition. Within this same context, section 1331 also addresses the Federal Supply Schedules Program managed by the General Services Administration. DoD, GSA, and NASA are coordinating with the Small Business Administration (SBA) on the development of an SBA rule that will provide greater detail regarding implementation of section 1331 authorities. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2013), available at: <https://www.acquisition.gov/>.

Completed:

Reason	Date	FR Cite
Withdrawn	03/10/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Karlos Morgan, *Phone:* 202 501-2364, *Email:* karlos.morgan@gsa.gov, *RIN:* 9000-AM12

279. Federal Acquisition Regulation (FAR); FAR Case 2012-031; Accelerated Payments to Small Business Subcontractors

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 temporary policy provided by Office of Management and Budget (OMB) Policy Memorandum M-12-16, dated July 11, 2012, by adding a new clause to provide for the accelerated payments to small business subcontractors. This temporary policy was extended another year by OMB Policy Memorandum M-13-15, dated July 11, 2013. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2013), available at: <https://www.acquisition.gov/>.

Completed:

Reason	Date	FR Cite
Final Rule	11/25/13	78 FR 70477

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Chambers,
Phone: 202 501-3221, *Email:*
edward.chambers@gsa.gov.
RIN: 9000-AM37

280. Federal Acquisition Regulation (FAR); FAR Case 2013-005, Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113
Abstract: DoD, GSA, and NASA issued an interim rule amending the

Federal Acquisition Regulation to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel involving the use of unrestricted, open-ended indemnification clauses in acquisitions for social media applications. See March 27, 2012, Memorandum for Barbara S. Fredericks, Assistant General Counsel for Administration, United States Department of Commerce, available at <http://www.justice.gov/olc/2012/aag-ada-impls-of-consent-by-govt-empls.pdf>.
Completed:

Reason	Date	FR Cite
Final Rule	12/31/13	78 FR 80382

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marissa Petrusek,
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RIN: 9000-AM45
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