

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 12, 22, 47, and 52**

[FAC 2025–02; FAR Case 2019–017, Item I; Docket No. FAR–2019–0017; Sequence No. 1]

RIN 9000–AO00

**Federal Acquisition Regulation:
Training To Prevent Human Trafficking
for Certain Air Carriers**

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 implement a section of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, which requires that domestic carriers who contract with the Federal Government to provide air transportation must submit an annual report with certain information related to prevention of human trafficking.

DATES: Effective January 3, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at malissa.jones@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–02, FAR Case 2019–017.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 88 FR 52102 on August 7, 2023, to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425), enacted January 8, 2019. Section 111 amends 49 U.S.C. 40118 to require that domestic carriers who contract with the Federal Government to provide air transportation submit an annual report to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection. Per 41 U.S.C.

40118(g) (as amended through Pub. L. 118–63), the annual report shall include: the number of personnel trained in the detection and reporting of potential severe forms of human trafficking in persons and sex trafficking; the number of notifications of potential human trafficking victims received from staff or other passengers; and, for each notification, whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim, and if so, when the notification was made. Section 111 does not apply to contracts awarded by the Department of Defense. For further details please see the proposed rule. Four respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The following significant changes from the proposed rule are made in the final rule at 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking:

1. Definitions

The definition of “potential human trafficking” in paragraph (a) of the clause at FAR 52.247–69 has been removed, and definitions of “human trafficking,” “severe forms of trafficking in persons,” and “sex trafficking” have been added in its place. The definitions of “severe forms of trafficking in persons” and “sex trafficking” added to FAR 52.247–69 in this final rule are the same as the definitions of these terms as implemented in FAR subpart 22.17, Combating Trafficking in Persons, which come from 22 U.S.C. 7102. “Human trafficking” as used in the clause at FAR 52.247–69, is defined to mean “severe forms of trafficking in persons” or “sex trafficking.” The change in the final rule aligns with 49 U.S.C. 40118(g), which refers to the definitions of “severe forms of trafficking in persons” and “sex trafficking” in 22 U.S.C. 7102 when describing “human trafficking.” Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22) has further amended the definition of

“sex trafficking” at 22 U.S.C. 7102. Amendments to the definitions at 22.1702 and 52.222–50 are not included; those changes are being implemented under FAR Case 2024–004, titled “Combating Trafficking in Persons—Definition and Agency Responsibilities.” The proposed rule was published July 18, 2024, at 89 FR 58323.

2. Clarification Regarding “Staff”

Paragraph (b)(2)(ii) of the clause at FAR 52.247–69 has been revised to use the term “staff or other passengers” to align with the statute. The terms “contractor personnel” and “subcontractors” have been removed from the final rule to avoid unintended confusion.

3. Time Period for Reporting

Paragraph (b)(2) of the clause at FAR 52.247–69 has been revised to include the time period for reporting. The proposed rule included the date by which the annual report must be submitted to the five Government agencies, but did not specify the time period in which the contractors are reporting.

B. Analysis of Public Comments

1. Support for the Rule

Comment: One respondent expressed support for the rule.

Response: The Councils acknowledge the respondent’s support for the rule.

2. Definition of “Potential Human Trafficking”

Comment: One respondent recommended deletion of paragraph (a), Definitions, in the clause at FAR 52.247–69 because the definition of “potential human trafficking” in the proposed rule is overly complicated. The respondent noted that the definition merely refers to a statute and otherwise does not reflect plain language. The respondent further asserted that the definition is “meaningless” because the word “potential” does not appear in the statutory definitions of “severe forms of trafficking in persons” and “sex trafficking” that together comprised the definition of “potential human trafficking” as stated in the proposed rule.

Response: The Councils acknowledge the respondent’s concern and have replaced the definition of “potential human trafficking” in the final rule at FAR 52.247–69(a) with a definition of “human trafficking” that encompasses the definitions of “severe forms of trafficking in persons” and “sex trafficking” at FAR subpart 22.17. See

discussion of change in section II.A.1. of this preamble.

3. Proposed Regulation Differs From 49 U.S.C. 40118(g)

a. Application of the Rule to Contractors and Subcontractors

Comment: One respondent stated that the “proposed regulation differs from 49 U.S.C. 40118(g)(2)”, because it uses the terms “contractor personnel” and “subcontractors,” while the current statute only requires reporting for those notifications “received from staff or other passengers.”

Response: Changes have been made in paragraph (b)(2)(ii) of the clause at FAR 52.247–69 to use the term “staff or other passengers” to align with the statute and remove the terms “contractor personnel” and “subcontractors.”

b. Date and Method of Notification of Potential Human Trafficking Instances

Comment: One respondent suggested that the proposed rule expands the reporting requirements under 49 U.S.C. 40118(g) resulting in additional burden not required by the statute. For example, the respondent stated that the rule improperly expands upon statutory requirements by requiring reporting the date and method of notification of potential human trafficking instances.

Response: The specific reporting requirements in the rule align with the requirements in 49 U.S.C. 40118(g). In particular, 49 U.S.C. 40118(g)(2) requires reporting of “the number of notifications of potential human trafficking victims received from staff or other passengers.” Further, 49 U.S.C. 40118(g)(3) requires the annual report include “whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking, and if so, when the notification was made.” In implementing these reporting requirements, FAR 52.247–69(b)(2)(iii) seeks the number of notifications received by the contractor; the date of any such notification; and the method by which the notification was made. The Government interprets the statutory language “when the notification was made” in 49 U.S.C. 41108(g)(3) as requiring the “date” the notification was made. The Government interprets the statutory language “whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport” in 49 U.S.C. 41108(g)(3) as requiring the “method” by which the contractor made the

notification, e.g., whether the Contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport. These are reasonable interpretations of the statute and are not viewed as creating burden beyond what is required by 49 U.S.C. 40118(g).

c. Vicarious Liability

Comment: One respondent recommended that the Government “adopt what is required by statute (49 U.S.C. 40118(g)(2–3)) without any amendment as imparting vicarious liability on air carriers in a regulatory framework lacks foundational predicate.”

Response: As explained in the responses to the public comments summarized in paragraphs a. and b. of this section, changes have been made at FAR 52.247–69(b)(2)(ii) to align the final rule with the statute by removing the terms “contractor personnel” and “subcontractors” and using the term “staff or other passengers” instead. Therefore, this rule does not amend the statute in a manner that imparts additional vicarious liability.

4. Retroactive Applicability

Comment: One respondent recommended clarifying the applicability of the reporting requirements to existing contracts. Additionally, the respondent requested that the final rule, if adopted, apply only to new contracts.

Response: In accordance with FAR 1.108(d), FAR changes made by this rule apply to solicitations issued on or after the effective date of the rule unless otherwise specified. The effective date of this final rule is November 1, 2024; therefore the first report will be due October 30, 2025 (see FAR 52.247–69(b)).

5. Reporting Requirements

a. Reporting Requirements for Nonscheduled Freight Air Transportation

Comment: One respondent stated that requiring contractors who provide nonscheduled air transportation for wildfire suppression to comply with section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 would be “unnecessary and inefficient.” The respondent asserted that contracts for these aircraft involve freight (retardant or water) or passenger (firefighters) services used to support wildfire suppression. The respondent suggested the rule should include the possibility of waiver for nonscheduled freight air transportation.

Response: 49 U.S.C. 41108 does not include an exception, or allow for waiver, for passengers, regardless of the reason they are travelling (i.e., firefighter passengers) on nonscheduled air transportation for wildfire suppression, and the suggestion to allow for the possibility of waiver is therefore declined.

b. Practicality of Requirement to Report Notifications

Comment: One respondent stated that the requirement to report notifications of potential human trafficking instances is “not operationally reasonable” without substantiating or investigating the notification.

Response: This rule requires the air carrier or contractor to report the number of employees trained and the number of notifications they receive from their staff and other passengers. This rule does not create a training requirement nor does the contract clause at FAR 52.247–69 create a mandatory reporting requirement to hotlines and law enforcement; training requirements already existed prior to section 111 (e.g., 49 U.S.C. 44734(a)(4)) and apply to all U.S.-flag air carriers, regardless of whether they are contractors of the Federal Government. The statute and implementing FAR rule do not require contractors to substantiate or investigate notifications of potential human trafficking victims. This rule simply requires data related to the training that has occurred and notifications that have been made.

c. Duplicate Reporting Requirements

Comment: One respondent appeared to interpret that the proposed rule sought to amend 41 U.S.C. 1906 to expand the reporting requirement to commercial services. The respondent believed this would result in duplicate reporting from Federal Government contractors and non-Federal Government contractors. For this reason, the respondent recommended not implementing section 111 in the FAR.

Response: 49 U.S.C. 41108 requires that domestic carriers who contract with the Federal Government to provide air transportation must submit an annual report with certain information related to prevention of human trafficking. The changes to the FAR under this rule are necessary to implement this statute. 41 U.S.C. 1906 requires DoD, GSA, NASA, and the Office of Federal Procurement Policy to make a determination if it is in the best interest of the Federal Government to exempt commercial contracts. Section III of the proposed rule notified the public that DoD, GSA,

NASA, and the Office of Federal Procurement Policy intend to make a determination that it would not be in the best interest of the Federal Government to exempt contracts for the acquisitions of commercial services from the requirements of 49 U.S.C. 40118(g). DoD, GSA, NASA, and the Office of Federal Procurement Policy have made that determination with this final rule (see section III of this preamble). No similar determination is made for commercial products.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule adds a new clause at FAR 52.247–69, Reporting Requirement for U.S-Flag Air Carriers Regarding Training to Prevent Human Trafficking, to implement 49 U.S.C. 40118(g). The clause is prescribed at FAR 47.405(b) for use in solicitations and contracts with a U.S.-flag air carrier for the transportation by air of passengers. This clause is not applicable to solicitations issued or contracts awarded by the Department of Defense.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products, Including Commercially Available Off-The-Shelf (COTS) Items, and Commercial Services

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if

the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services. 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items. The FAR Council has made a determination to apply this statute to acquisitions for commercial services only. The Administrator for Federal Procurement Policy did not make a determination to apply this statute to acquisitions for COTS items.

C. Determinations

Section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 added 49 U.S.C. 40118(g) to require that domestic carriers who contract with the Federal Government to provide air transportation submit an annual report to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection, with the following information:

- The number of personnel trained in the detection and reporting of potential severe forms of human trafficking and sex trafficking (as described in 22 U.S.C. 7102 in the paragraphs titled “Severe forms of trafficking in persons” and “Sex trafficking”), including the training required under 49 U.S.C. 44734(a)(4);
- The number of notifications of potential human trafficking victims received from staff or other passengers; and
- Whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking, and if so, when the notification was made.

The purpose of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 is to combat human trafficking. Section 111 of the Act is meant to further that objective. The purpose of this rule is to implement 49 U.S.C. 40118(g) as added by section 111.

The law is silent on the applicability of these requirements to acquisitions at

or below the SAT. The law does not include terms making express reference to 41 U.S.C. 1905 and its applicability to acquisitions at or below the SAT, nor does the law independently provide for criminal or civil penalties. Therefore, the law does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as required by 41 U.S.C. 1905.

Application of the law to contracts at or below the SAT, currently \$250,000, will further the important public policy objective of combating trafficking of persons. According to the Federal Procurement Data System, approximately seventy percent (70%) of the contracts for air transportation (as identified either by the Product Service Codes of V121 (Air Charter), V211 (Air Passenger), and V221 (Passenger air charter) or by North American Industry Classification System codes in the 4811XX and 4822XX fields (Scheduled Air Transportation and Nonscheduled Air Transportation industries) were at or below the SAT during fiscal years 2021 and 2022. Failure to apply 49 U.S.C. 40118(g) to contracts at or below the SAT would exclude a significant number of U.S. flag air-carriers who are awarded contracts at or below the SAT, which would undermine the important public policy objective of combating human trafficking. For this reason, it is in the best interest of the Federal Government to apply the requirements of the rule to contracts at or below the SAT. With regard to subcontracts at or below the SAT, it is determined to not be in the best interest of the Federal Government to apply section 111 to such acquisitions. Based on FPDS data for fiscal years 2021 and 2022, agencies reviewed seventy-five (75) of the likely acquisitions for air transportation. The results of that review reflected that only 0.3% of the awards were further subcontracted out to another air carrier. Based on the above evidence, section 111 will not apply to subcontracts at or below the SAT.

The law is silent on the applicability of these requirements to acquisitions of commercial products and commercial services. The law does not include terms making express reference to 41 U.S.C. 1906 and its application to acquisitions of commercial products or commercial services, nor does the law independently provide for criminal or civil penalties. Therefore, this law does not apply to acquisitions of commercial products and commercial services unless the FAR Council makes a written determination as required by 41 U.S.C. 1906. Considering that air transportation, such as passenger air

travel, is a commercial service, failing to apply 49 U.S.C. 40118(g) to the acquisition of commercial services would be failing to implement section 111 in its entirety. For this reason, the FAR Council has determined that it is in the best interest of the Federal Government not to exempt acquisitions of commercial services from the requirements of 49 U.S.C. 40118(g). No similar determination is made for contracts for commercial products. As such, this rule will apply to acquisitions of commercial services, but not acquisitions of commercial products.

The law is silent on the applicability of this requirement to acquisitions of COTS items. The law does not include terms making express reference to 41 U.S.C. 1907 and its application to acquisitions of COTS items, nor does the law independently provide for criminal or civil penalties. Therefore, it does not apply to acquisitions of COTS items unless the Administrator for Federal Procurement Policy makes a written determination as provided at 41 U.S.C. 1907. Considering that air transportation does not meet the definition of a COTS item (*i.e.*, it is a service, not a product), 49 U.S.C. 40118(g) cannot apply to acquisitions of such items regardless of the requirements at 41 U.S.C. 1907. Therefore, a determination is unnecessary. This rule is not applicable to acquisitions of COTS items.

IV. Expected Impact of the Rule

A. Requirement

This final rule creates a new contract clause at FAR 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, that requires domestic carriers who contract with the Federal Government (excluding DoD) for air transportation to provide to five Federal Government agencies the annual report required by 49 U.S.C. 40118(g). The report must contain the number of personnel trained in the detection of human trafficking, the number of notifications of human trafficking the contractor received from staff and other passengers, and the actions the contractor took with regards to those notifications.

This rule does not create any new training requirements for domestic air carrier personnel, nor does it mandate that domestic air carriers report potential human trafficking to hotlines or law enforcement. U.S.-flag air carriers are already required by statute to train certain personnel on recognizing and responding to potential human trafficking victims. 49 U.S.C. 44734(a)(4)

requires air carriers to provide such training on an annual basis to flight attendants that are employed or contracted by the air carrier, regardless of whether the air carrier has contracted with the Federal Government to provide air transportation. 49 U.S.C. 44738 further requires air carriers to provide this training to ticket counter agents, gate agents, and other air carrier workers whose jobs require regular interaction with passengers. This final rule simply requires domestic air carriers to report by October 30th each year the total number of personnel who received the training in the previous Government fiscal year (October 1–September 30).

The annual report required by the new clause at FAR 52.247–69 must also include the number of notifications that the air carrier received from staff and other passengers and whether the air carrier notified the Global Human Trafficking Hotline (or comparable hotline) or law enforcement at the relevant airport. If the air carrier notified a hotline or law enforcement, then the air carrier must also report when and how the notification was made. Again, this final rule does not mandate that the air carrier report the notifications it receives from staff or other passengers to the hotline or law enforcement, nor does this rule direct air carriers to seek out whether their staff or other passengers notified a hotline or law enforcement. However, this final rule does require air carriers to report basic information about any notifications made in the previous Government fiscal year (October 1–September 30).

B. Impact

According to the Department of Transportation (DOT), as of March 2022, there are approximately 183 U.S. Certificated Air Carriers or U.S.-Flag Air Carriers (see DOT list available at <https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list>). According to data available in the Federal Procurement Data System (FPDS) for fiscal years 2021 and 2022, civilian agencies contracted with 121 and 177 unique entities, respectively, in the Scheduled Air Transportation and Nonscheduled Air Transportation Industries (North American Industry Classification System (NAICS) codes 4811XX and 4822XX). Considering this information, the Government assumes that approximately 180 U.S.-flag air carriers may be required to submit the annual report required by the clause at FAR 52.247–69. These air carriers will need to ensure that they are able to report annually on the number of personnel trained in detecting and

responding to potential human trafficking, the number of notifications of potential human trafficking received from staff and other passengers, and whether and how the air carrier notified a hotline or law enforcement at the relevant airport for each notification received.

1. Public Cost

In the proposed rule, the Government estimated that, on average, the public reporting burden for this collection of information is five hours per response, which includes two hours to compile and report information related to the number of personnel trained in the previous year and three hours to compile and report information on notifications made to hotlines or law enforcement in the previous year (see section VII of the proposed rule preamble). The following is a summary of the estimated burden and cost associated with these reporting requirements for the 180 air carriers.

a. Reports on Training

Given the existing statutory requirements for domestic air carriers to provide training to its personnel, it is anticipated that domestic air carriers already have procedures in place that enable them to capture the total number of employees receiving training. The Government anticipates that the contractor employee compiling and reporting the data is in a position equivalent to a General Schedule (GS) Grade 12/Step 5 position in the Federal Government. In the final rule, the fully burdened hourly rate is calculated using the Office of Personnel Management (OPM) GS–12/step 5 employee hourly rate for the rest of the United States for calendar year 2024, plus a 36.25 percent fringe factor and a 12 percent overhead rate. The revised loaded hourly rate is \$72 (\$47.22/hour * 1.3625 * 1.12, rounded to the nearest whole dollar). Therefore, the total estimated public cost of this annual reporting requirement on training is \$25,920 per year (180 air carriers * 1 report/air carrier * 2 hours per report on training * \$72/hour).

b. Reports on Notifications

It is also anticipated that most domestic air carriers have procedures in place to track when staff and passengers notify the air carrier of potential human trafficking. According to information available on domestic air carrier websites, many already have procedures in place to encourage staff to report potential human trafficking to a hotline, leadership, or by other means. For example, some air carriers participate in

the Blue Lightning Initiative (BLI) promoted by the Department of Transportation (DOT) and the Department of Homeland Security (DHS). As part of the BLI, air carrier personnel receive training on detecting and reporting human trafficking; these employees are encouraged to follow their organization's internal reporting protocol and to contact the Homeland Security Investigations (HSI) Tip Line (see <https://www.dhs.gov/blue-campaign/blue-lightning-initiative>). It is expected that air carriers will leverage their existing internal reporting protocols to gather the required information on notifications received by the air carrier.

The Government anticipates that the contractor employee compiling and reporting this information is also in a position equivalent to a GS-12/Step 5 position in the Federal Government. The Government estimates that the air carrier will spend three hours compiling and submitting the annual report. Therefore, the total estimated public cost of this annual reporting requirement is \$38,880 per year (180 air carriers * 1 report/air carrier * 3 hours per report * \$72/hour).

2. Government Cost

The 180 air carriers are to submit their reports to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection by October 30th each year. Since there is no statutory requirement for these agencies to use or process the information in the reports in any specific manner, it is estimated that each agency will spend 15 minutes to review and log each report. The employee who is reviewing the report is anticipated to be a GS-12/Step 5 Government employee. Therefore, the total estimated Government cost associated with reviewing the reports from domestic air carriers is \$16,200 (5 agencies * 180 report * 0.25 hours/report * \$72/hour).

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess 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.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. 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. 601–612. The FRFA is summarized as follows:

DoD, GSA and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425). Section 111 requires that domestic carriers who contract with the Federal Government to provide transportation by air of passengers must submit an annual report with certain information related to prevention of human trafficking. Section 111 does not apply to contracts awarded by the Department of Defense.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis (IRFA).

The rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will impact domestic air carriers (*i.e.*, U.S.-flag air carriers as described in 49 U.S.C. 41102), including small business U.S.-flag air carriers.

Based on a review of the Department of Transportation (DOT) Certificated Air Carrier List (see <https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list>), the Government estimates that there may be approximately 180 U.S. Flag Air Carriers that contract with the Federal Government each year for air transportation. Of these air carriers, approximately 62 are small businesses for the NAICS codes for Scheduled Air Transportation and Nonscheduled Air Transportation industries (4811XX and 4822XX). Therefore, the estimated number of total small entities to which this rule could apply is 62.

This rule does not include any recordkeeping or other compliance requirements for small businesses. However, the rule does contain a reporting requirement for small businesses.

Small business U.S.-flag air carriers who contract with the Federal Government (except for DoD) for air transportation will be required to provide an annual report to five agencies, on the number of personnel trained in the detection of human trafficking, the number of notifications of human trafficking the contractor received, and actions the contractor took with regards to those notifications. This rule is not creating a training requirement nor does this contract clause create a mandatory reporting requirement to hot lines and law enforcement; those requirements already existed prior to section 111 (*e.g.*, 49 U.S.C. 44734(a)(4)), and are applied to all U.S.-flag air carriers, regardless of whether they are contractors of the Federal Government. This rule simply requires data related to the training that has occurred and notifications that have been made.

DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the statute.

The rule does not duplicate, overlap, or conflict with any other Federal rules. However, Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22) has amended the definition of “Sex trafficking” at 22 U.S.C. 7102. Those amendments are not included in this final rule; those changes are being implemented under FAR Case 2024–004, titled “Combating Trafficking in Persons—Definition and Agency Responsibilities.” The proposed rule was published July 18, 2024, at 89 FR 58323.

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

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has provided pre-approval of the revised information collection requirements under OMB Control Number 9000–0061, FAR Part 47 Transportation Requirements.

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control Number 9000–0061, FAR Part 47 Transportation Requirements.

B. Need and Uses

The rule creates a new contract clause at FAR 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, that requires domestic

carriers who contract with the Federal Government (excluding DoD), for air transportation to provide to five Federal Government agencies the annual report required by 49 U.S.C. 40118(g). The report must contain the number of personnel trained in the detection of human trafficking, the number of notifications of human trafficking the contractor received from staff and other passengers, and the actions the contractor took with regards to those notifications.

C. Annual Burden

Public reporting burden for this collection of information includes the time to compile and report information related to the number of personnel trained in the previous year and the time to compile and report information on notifications made to hotlines or law enforcement in the previous year. The following is a summary of the estimated burden associated with these reporting requirements for 180 air carriers.

- Respondents: 180.
- Total annual responses: 180.
- Estimated hrs/response: 5.
- Estimated total burden/hrs: 900.

D. Public Comment

As part of the proposed rule, a 60-day notice was published in the **Federal Register** at 88 FR 52102, on August 7, 2023. One comment was received. Specifically, one respondent suggested that the proposed rule expands the reporting requirements under 49 U.S.C. 40118(g) resulting in additional burden not required by the statute.

For example, the respondent stated that the rule improperly expands upon statutory requirements by requiring reporting of the date and method of notification of potential human trafficking instances.

Response: The specific reporting requirements in the rule align with the requirements in 49 U.S.C 40118(g). In particular, 49 U.S.C. 40118(g)(2) requires reporting of “the number of notifications of potential human trafficking victims received from staff or other passengers.” Further, 49 U.S.C. 40118(g)(3) requires the annual report include “whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking, and if so, when the notification was made.” In implementing these reporting requirements, FAR 52.247–69(b)(2)(iii) seeks the number of notifications received by the contractor; the date of any such notification; and the method

by which the notification was made. The Government interprets the statutory language “when the notification was made” in 49 U.S.C. 41108(g)(3) as requiring the “date” the notification was made. The Government interprets the statutory language “whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport” in 49 U.S.C. 41108(g)(3) as requiring the “method” by which the contractor made the notification, *e.g.*, whether the Contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport. These are reasonable interpretations of the statute and are not viewed as creating burden beyond what is required by 49 U.S.C. 40118(g). No changes were made to the final rule because of this public comment. Written comments and recommendations for these information collections should be sent within 30 days of publication of this rule to www.reginfo.gov/public/do/PRAMain. Find these information collections by selecting “Currently under Review—Open for Public Comments” or by using the search function.

E. Obtaining Copies

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control Number 9000–0061, Federal Acquisition Regulation Part 47 Transportation Requirements.

List of Subjects in 48 CFR Parts 1, 12, 22, 47, and 52

Government procurement.

William F. Clark,

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

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 1, 12, 22, 47, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 12, 22, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

- 2. In section 1.106 amend in the table following the introductory text, by adding in numerical order, an entry for “52.247–69” to read as follows.

1.106 OMB approval under the Paperwork Reduction Act.

*	*	*	*	*
FAR segment		OMB control No.		
*	*	*	*	*
52.247–69	9000–0061		
*	*	*	*	*

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 3. Amend section 12.503 by revising paragraph (b)(4) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

* * * * *

(b) * * *
 (4) 49 U.S.C. 40118, Requirement for a clause under provisions of the Government-financed air transportation statute, commonly referred to as the Fly America Act, except that 49 U.S.C. 40118(g) is applicable to the acquisition of commercial services (see 47.405).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

- 4. Amend section 22.1703 by revising the introductory text to read as follows:

22.1703 Policy.

The United States Government has adopted a policy prohibiting trafficking in persons, including the trafficking-related activities below. Additional information about trafficking in persons may be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>. See 47.405(b) for contract reporting requirements concerning training to prevent human trafficking for domestic carrier air transportation; 47.405(b) is not applicable to contracts awarded by the Department of Defense or contracts for commercial products. Government solicitations and contracts shall—

* * * * *

PART 47—TRANSPORTATION

- 5. Amend section 47.101 by revising paragraph (g) to read as follows:

47.101 Policies.

* * * * *

(g) Agencies shall comply with the requirements for Government-financed air transportation (commonly referred to as the Fly America Act), the Cargo Preference Act, and related statutes as prescribed in subparts 47.4, Air Transportation by U.S.-Flag Carriers, and 47.5, Ocean Transportation by U.S.-Flag Vessels.

* * * * *

■ 6. Add section 47.400 to subpart 47.4 to read as follows:

47.400 Scope of subpart.

This subpart prescribes policies and procedures for implementing 49 U.S.C. 40118, Government-financed air transportation, commonly referred to as the Fly America Act.

■ 7. Amend section 47.401 by revising the definition of “U.S.-flag air carrier” to read as follows:

47.401 Definitions.

* * * * *

U.S.-flag air carrier means an entity granted authority to provide air transportation in the form of a certificate of public convenience and necessity under 49 U.S.C. 41102.

■ 8. Revise section 47.402 to read as follows:

47.402 Policy.

Federal employees and their dependents, consultants, contractors, grantees, and others must use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, if available (49 U.S.C. 40118, Government-financed air transportation, commonly referred to as the Fly America Act).

■ 9. Revise section 47.405 to read as follows:

47.405 Contract clauses.

(a) The contracting officer shall insert the clause at 52.247–63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in part 13 or contracts for commercial products (see part 12).

(b) The contracting officer shall insert the clause at 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, in solicitations and contracts with a U.S.-flag air carrier for the transportation by air of passengers.

This clause is not applicable to solicitations issued or contracts awarded—

- (1) By the Department of Defense; or
- (2) For commercial products.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.212–5 by revising the date of the clause and adding paragraph (c)(10) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025)

* * * * *

(c) * * *

(10) 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking (JAN 2025) (49 U.S.C. 40118(g)).

* * * * *

■ 11. Amend section 52.213–4 by revising the date of the clause; and adding paragraph (b)(1)(xxiv) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms And Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025)

* * * * *

(b) * * *

(1) * * *

(xxiv) 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking (JAN 2025) (49 U.S.C. 40118(g)). (Applies to contracts with a U.S.-flag carrier for the transportation by air of passengers; does not apply to contracts awarded by the Department of Defense or contracts for commercial products).

* * * * *

■ 12. Amend section 52.247–63 by—

- a. In the introductory text, removing “47.405” and adding “47.405(a)” in its place;
- b. Revising the date of the clause;
- c. In paragraph (a), revising the definition of “U.S.-flag air carrier”;
- d. Revising paragraph (b); and
- e. Adding headings to paragraphs (c), (d) and (e).

The revisions read as follows:

52.247–63 Preference for U.S.-Flag Air Carriers.

* * * * *

Preference for U.S.-Flag Air Carriers (JAN 2025)

(a) * * *

U.S.-flag air carrier means an entity granted authority to provide air transportation in the form of a certificate of public convenience and necessity under 49 U.S.C. 41102.

(b) *U.S. Government-financed international air transportation.* 49 U.S.C. 40118, Government-financed air transportation (commonly referred to as the Fly America Act), requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the General Services Administration to issue regulations that, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) *Use of U.S.-flag carriers for international air transportation.* * * *

(d) *Statement of unavailability of U.S.-flag air carriers.* * * *

(e) *Subcontracts.* * * *

* * * * *

■ 13. Add section 52.247–69 to read as follows:

52.247–69 Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking.

As prescribed in 47.405(b), insert the following clause:

Reporting Requirement for U.S.-Flag Air Carriers Regarding Training To Prevent Human Trafficking (JAN 2025)

(a) *Definitions.* As used in this clause—
Human trafficking means “Severe forms of trafficking in persons” or “Sex trafficking.”

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Annual reporting requirement.*

(1) In accordance with 49 U.S.C. 40118(g), the Contractor shall provide the annual

report described in paragraph (b)(2) of this clause by October 30th, via email, to the following agencies:

- (i) General Services Administration: TraffickingPreventionReport@gsa.gov;
- (ii) U.S. Department of Transportation: trafficking@dot.gov;
- (iii) Department of Labor: AirCarrier-HTReports@dol.gov;
- (iv) Transportation Security Administration: ics-cchtfams@tsa.dhs.gov;
- (v) U.S. Customs and Border Protection: CLP@cbp.dhs.gov; and
- (vi) DHS Center for Countering Human Trafficking: Info@CCHT.dhs.gov.

(2) The annual report shall include information from the preceding Government fiscal year (October 1 through September 30) regarding—

- (i) The number of personnel trained in the detection and reporting of potential human trafficking, including the training required under 49 U.S.C. 44734(a)(4);
- (ii) The number of notifications of potential human trafficking victims received from staff or other passengers; and
- (iii)(A) Whether the Contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking; and
- (B) If the Contractor made a notification, the date the notification was made and the method of notification (e.g., text to Hotline, call to law enforcement).

(c) *Training.* In accordance with 49 U.S.C. 44734 and 44738, personnel trained in the detection and reporting of potential human trafficking should include the following:

- (1) Flight attendants;
- (2) Ticket counter agents;
- (3) Gate agents; and
- (4) Other air carrier workers whose jobs require regular interaction with passengers.

(End of clause)

[FR Doc. 2024–29373 Filed 12–13–24; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 6, 9, 18, 19, and 52

[FAC 2025–02; FAR Case 2022–009, Item II; Docket No. FAR–2022–0009; Sequence No. 1]

RIN 9000–AO46

Federal Acquisition Regulation: Certification of Service-Disabled Veteran-Owned Small Businesses

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, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the final rules published by the Small Business Administration to implement sections of the National Defense Authorization Acts for Fiscal Years 2021 and 2022.

DATES: Effective December 16, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at carrie.moore@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–02, FAR Case 2022–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule at 89 FR 13950 on February 23, 2024, to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published on November 29, 2022, at 87 FR 73400 and at 88 FR 42592 on July 3, 2023, to implement section 862 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283; 15 U.S.C. 657f). This final rule also partially implements section 863 of the NDAA for FY 2022 (Pub. L. 117–81; 15 U.S.C. 634(i)), as implemented by SBA in its final rule published on April 27, 2023, at 88 FR 26164. For further details please see the interim rule. Three respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

There are no significant changes from the interim rule.

B. Analysis of Public Comments

1. Exceptions to Implementation

Comment: One respondent recommended the grace period for certification be extended to allow businesses additional time to comply with the new requirements.

Response: This rule implements section 862 of the NDAA for FY 2021. Section 862 provides for a one-year grace period after the transfer date of January 1, 2023, for service-disabled veteran-owned small businesses (SDVOSBs) to submit an application for certification to SBA.

Therefore, since the grace period is statutory, it cannot be extended by the Councils.

Comment: One respondent recommended that SBA expand its outreach and support services to ensure that all interested businesses are able to successfully navigate the certification process.

Response: To implement SDVOSB certification, SBA established a website at <https://veterans.certify.sba.gov>. This website streamlines and facilitates the SDVOSB certification process and provides links for SDVOSBs to obtain assistance, including both online and telephonic support.

2. Outside the Scope of the Rule.

Comment: One respondent submitted a comment that is unrelated to this case.

Response: This comment is outside of the scope of this rule.

Comment: One respondent took exception to the certification requirements for SDVOSBs and took exception to the three-year certification period for SDVOSBs, indicating that it is too long and may result in fraud.

Response: This rule implements regulatory changes made by the SBA in its final rules published on November 29, 2022, at 87 FR 73400 and at 88 FR 42592 on July 3, 2023. SBA regulations regarding the Veteran Small Business Certification Program, including SDVOSB certification requirements, are addressed at 13 CFR part 128. SBA's regulations regarding recertification requirements are implemented at 13 CFR 128.306. This rule simply implements SBA's regulations; therefore, this comment is outside the scope of this rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the following provisions and clauses at FAR: 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions—