

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

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

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

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

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

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

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

(3) The head of the contracting activity.

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

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

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

**3.908–6 Remedies.**

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 4**

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

RIN 9000–AN12

**Federal Acquisition Regulation;  
Retention Periods**

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

**ACTION:** Final rule.

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

Archives and Records Administration (NARA) General Records Schedule.

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

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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

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

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

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

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

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

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

- In the Table at 4–1:

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

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

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

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

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

**III. Executive Orders 12866 and 13563**

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

rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

**V. Paperwork Reduction Act**

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

**List of Subject in 48 CFR Part 4**

Government procurement.  
Dated: November 20, 2015.

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

**PART 4—ADMINISTRATIVE MATTERS**

■ 1. The authority citation for 48 CFR part 4 continues to read as follows:

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

■ 2. Revise section 4.805 to read as follows.

**4.805 Storage, handling, and contract files.**

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files, in accordance with the National Archives and Records Administration (NARA) General Records Schedule 1.1, Financial Management and Reporting Records. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic

images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. When original documents have been converted to alternate media for storage, the requirements in Table 4-1 of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part.

(c) An agency that requires a shorter retention period than those identified in Table 4-1 shall request approval from NARA through the agency's records officer.

TABLE 4-1—RETENTION PERIODS

Record	Retention period
(1) Contracts (and related records or documents, including successful and unsuccessful proposals, except see paragraph (c)(2) of this section regarding contractor payrolls submitted under construction contracts).	6 years after final payment.
(2) Contractor's payrolls submitted under construction contracts in accordance with Department of Labor regulations (29 CFR 5.5(a)(3)), with related certifications, anti-kickback affidavits, and other related records.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date (see paragraph (c)(8) of this section).
(3) Unsolicited proposals not accepted by a department or agency .....	Retain in accordance with agency procedures.
(4) Files for canceled solicitations .....	6 years after cancellation.
(5) Other copies of procurement file records used for administrative purposes.	When business use ceases.
(6) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(7) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements exceeding the micro-purchase threshold, and information required under 4.603.	6 years after submittal to FPDS.
(8) Investigations, cases pending or in litigation (including protests), or similar matters (including enforcement actions).	Until final clearance or settlement, or, if related to a document identified in paragraphs (c)(1) through (7) of this section, for the retention period specified for the related document, whichever is later.

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

[FAC 2005–85; FAR Case 2015–003; Item VI; Docket No. 2014–0050; Sequence No. 1]

RIN 9000–AM82

**Federal Acquisition Regulation:  
Establishing a Minimum Wage for  
Contractors**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order (E.O.) Establishing a Minimum Wage for Contractors, and a final rule issued by the Department of Labor (DOL).

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–003.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 79 FR 74544 on December 15, 2014, to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, and a final rule issued by DOL at 29 CFR part 10. A correction to the interim rule was published at 79 FR 75434 on December 18, 2014 establishing the rule's effective date as December 15, 2014. For a discussion of the FAR implementation of the E.O., see the interim rule. One respondent submitted a public comment on the interim rule.

**II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment submitted in the development of the final rule. A discussion of the comment follows.

**A. Changes**

The interim rule is converted to a final rule with only minor changes.

**B. Analysis of Public Comment**

One respondent submitted one comment.

*Comment:* Although the respondent was generally supportive of the intent of the E.O. raising the minimum wage for workers performing on or in connection with Federal contracts, the respondent expressed deep concern that the E.O. and the implementing FAR rule will have a negative impact on the employment of individuals with significant disabilities, specifically those who earn commensurate wages under special subminimum wage certificates issued by DOL pursuant to Section 14(c) of the Fair Labor Standards Act (FLSA). The respondent suggested a number of actions that the Federal Government could take to mitigate unintended consequences of the rule:

1. Provide adequate funding to ensure no workers with disabilities lose their jobs as a result of wage increases required by the rule.

2. Compile data regarding the number of such individuals displaced from employment or shifted to non-Federal contract work as a result of the rule.

3. Allow contractors to request a price adjustment for these individuals based on the difference between the current wage paid and the higher E.O. minimum wage, and provide an example of such a price adjustment in the rule.

*Response:* Executive Order 13658 expressly provides that its minimum wage protections extend to workers with disabilities whose wages are governed pursuant to special certificates issued under Section 14(c) of the FLSA. The Councils appreciate the concerns raised by this respondent regarding the potential loss of employment that could result from requiring that the E.O. minimum wage be paid to FLSA Section 14(c) workers, particularly workers with significant disabilities, performing on or in connection with covered contracts who are currently paid a lower commensurate wage rate. The Councils do not have the discretion to adjust the rule, as the rule implements the E.O. and the DOL implementing regulation, which both specifically require application of the rule to workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

With regard to the respondent's suggestions for mitigating negative impacts—

1. The E.O. did not provide for appropriation of funds to ensure that no workers with disabilities lose their jobs;

2. The E.O. did not require information or data collection methods in order to evaluate the rule's effects; therefore, this suggestion is beyond the scope of the E.O., and outside the implementation of the FAR rule; and

3. When contracts become subject to the E.O., the minimum wage is considered in the contract price either through the offer/bid process when an offeror is responding to a solicitation or, in the case of a modification, through appropriate consideration, in accordance with FAR conventions (see FAR 1.108(d)(3)), therefore explicit price adjustment language is not necessary. However, the rule does provide that contractors may request price adjustments for any worker based on an increase in labor costs resulting from the annual inflation increases in the E.O. minimum wage beginning January 1, 2016. This is depicted in the table at FAR 22.1904(b)(2). The Councils have revised the language at FAR paragraph 22.1904(b)(2) and in the table to specify that service or construction wage determination rates should only be considered if they are applicable to the worker. The revised language recognizes that workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) may not have been paid the full applicable service wage determination rate.

**III. Executive Orders 12866 and 13563**

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

**IV. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory