

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Ch. 1**

**Semiannual Regulatory Agenda**

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

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of regulations being developed by the Civilian Agency

Acquisition Council and the Defense Acquisition Regulations Council 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, 1275 First Street NE., Washington, DC 20417, (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: November 6, 2012.

**Joseph A. Neurauter,**  
Director, Office of Acquisition Policy and Senior Procurement Executive.

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

Sequence No.	Title	Regulation Identifier No.
412 .....	Federal Acquisition Regulation (FAR); FAR Case 2012-031; Accelerated Payments to Small Business Subcontractors.	9000-AM37
413 .....	Federal Acquisition Regulation (FAR); FAR Case 2012-001; Performance of Inherently Governmental Functions and Critical Functions.	9000-AM41
414 .....	Federal Acquisition Regulation (FAR); FAR Case 2012-029; Contractor Access to Protected Information	9000-AM42

**DOD/GSA/NASA (FAR)—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
415 .....	Federal Acquisition Regulation (FAR); FAR Case 2011-001; Organizational Conflicts of Interest .....	9000-AL82
416 .....	FAR Case 2010-013, Privacy Training .....	9000-AM02
417 .....	Federal Acquisition Regulation (FAR); FAR Case 2011-011; Unallowability of Costs Associated With Foreign Contractor Excise Tax.	9000-AM13
418 .....	Federal Acquisition Regulation (FAR); FAR Case 2011-020; Basic Safeguarding of Contractor Information Systems.	9000-AM19
419 .....	Federal Acquisition Regulation (FAR); FAR Case 2011-029; Contractors Performing Private Security Functions Outside the United States.	9000-AM20
420 .....	Federal Acquisition Regulation (FAR); FAR Case 2011-028; Nondisplacement of Qualified Workers Under Service Contracts.	9000-AM21
421 .....	Federal Acquisition Regulation (FAR); FAR Case 2011-025; Changes to Time-and-Materials and Labor-Hour Contracts and Orders.	9000-AM28
422 .....	Federal Acquisition Regulation (FAR); FAR Case 2012-027, Free Trade Agreement—Panama .....	9000-AM43
423 .....	Federal Acquisition Regulation (FAR); FAR Case 2008-039; Reporting Executive Compensation and First-Tier Subcontract Awards.	9000-AL66

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

*Proposed Rule Stage*

**412. • 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.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/12	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Edward Chambers, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, Phone: 202 501-3221, *Email:* [edward.chambers@gsa.gov](mailto:edward.chambers@gsa.gov).  
*RIN:* 9000-AM37

**413. • Federal Acquisition Regulation (FAR); FAR Case 2012-001; Performance of Inherently Governmental Functions and Critical Functions**

*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 to implement acquisition-related requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, entitled "Performance of Inherently Governmental and Critical Functions", published September 12, 2011 (65 FR 56227), with a correction published February 13, 2012 (77 FR 7609). OFPP Policy Letter 11-01 was issued in response to (1) the Presidential Memorandum on Government Contracting, signed March 4, 2009, and published March 6, 2009 (74 FR 9755), and (2) section 321 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-417).

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/13	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Patricia Corrigan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20714, *Phone:* 202 208-1963.

*RIN:* 9000-AM41

**414. • Federal Acquisition Regulation (FAR); FAR Case 2012-029; Contractor Access to Protected Information**

*Legal Authority:* 10 U.S.C. ch 137; 40 U.S.C. 486(c); 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to address contractor access to protected information. On April 26, 2011, DoD, GSA, and NASA proposed amending the Federal Acquisition Regulation (FAR) to provide additional coverage regarding contractor access to nonpublic information (76 FR 23236), with an extension for public comment published June 29, 2011 (76 FR 38089). The first proposed rule was combined with proposed revised regulatory coverage on organizational conflicts of interest (FAR Case 2011-001). DoD, GSA, and NASA are proposing substantial changes to the proposed coverage based on the public comments received. Therefore, DoD, GSA, and NASA decided to separate this coverage from the organizational conflicts of interest rule in order to publish for additional public comments.

The coverage provided in this proposed rule differs from the coverage provided in the first proposed rule in a number of important respects. 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 (2012), available at: <https://www.acquisition.gov>.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/13	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Marissa Petrusek, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20714, *Phone:* 202 501-0136, *Email:* [marissa.petrusek@gsa.gov](mailto:marissa.petrusek@gsa.gov).

*RIN:* 9000-AM42

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

*Final Rule Stage*

**415. Federal Acquisition Regulation (FAR); FAR Case 2011-001; Organizational Conflicts of Interest**

*Legal Authority:* 10 U.S.C. ch 137; 40 U.S.C. 486(c); 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing 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 and 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 (2012), 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 .....	04/00/13	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Deborah Erwin, Attorney-Advisor in the Office of Governmentwide Policy, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20714, *Phone:* 202 501-2164, *Email:* [deborah.erwin@gsa.gov](mailto:deborah.erwin@gsa.gov).

*RIN:* 9000-AL82

**416. FAR Case 2010-013, Privacy Training**

*Legal Authority:* 5 U.S.C. 552a; 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to ensure that all contractors are required to complete training in the protection of privacy and the handling and safeguarding of Personally Identifiable Information (PII). A number of agencies currently require that contractors who handle personally identifiable information or operate a system of records on behalf of the Federal Government complete agency-provided privacy training. However, in some circumstances an agency may provide a contractor the Privacy Act requirements, and the contractor will train its own employees, and shall upon request, provide evidence of privacy training for all applicable employees. The proposed FAR language provides flexibility for agencies to conduct the privacy training or require the contractor to conduct the privacy training.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/14/11	76 FR 63896
NPRM Comment Period End.	12/13/11	
Final Rule .....	12/00/12	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501-2364, *Email:* [karlos.morgan@gsa.gov](mailto:karlos.morgan@gsa.gov).

*RIN:* 9000-AM02

**417. Federal Acquisition Regulation (FAR); FAR Case 2011-011; Unallowability of Costs Associated With Foreign Contractor Excise Tax**

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

*Abstract:* DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation to implement the requirements of the James Zadroga 9/11 Health and Compensation Act of 2010 regarding the imposition of a 2 percent tax on certain foreign procurements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/22/12	77 FR 10461
NPRM Comment Period End.	04/23/12	
Final Rule .....	06/00/13	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Edward Chambers, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501-3221, *Email:* edward.chambers@gsa.gov.

*RIN:* 9000-AM13

**418. 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 .....	04/00/13	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia Corrigan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20714, *Phone:* 202 208-1963.

*RIN:* 9000-AM19

**419. Federal Acquisition Regulation (FAR); FAR Case 2011-029; Contractors Performing Private Security Functions Outside the United States**

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

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to implement Governmentwide requirements in National Defense Authorization Acts that establish minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions outside the United States.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/23/12	77 FR 43039
NPRM Comment Period End.	09/21/12	
Final Rule .....	06/00/13	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.

*RIN:* 9000-AM20

**420. Federal Acquisition Regulation (FAR); FAR Case 2011-028; Nondisplacement of Qualified Workers Under Service Contracts**

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

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to implement an Executive order for nondisplacement of qualified workers under service contracts, as implemented in Department of Labor regulations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/03/12	77 FR 26232
NPRM Comment Period End.	07/02/12	
Final Rule .....	12/00/12	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Edward Loeb, Program Manager, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501-0650, *Email:* edward.loeb@gsa.gov.

*RIN:* 9000-AM21

**421. • Federal Acquisition Regulation (FAR); FAR Case 2011-025; Changes to Time-and-Materials and Labor-Hour Contracts and Orders**

*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 provide additional guidance when raising the ceiling price or otherwise changing the scope of work for a time-and-materials or labor-hour contract or order.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/26/12	77 FR 43780
NPRM Comment Period End.	09/24/12	
Final Rule .....	04/00/13	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.

*RIN:* 9000-AM28

**422. • Federal Acquisition Regulation (FAR); FAR Case 2012-027, Free Trade Agreement—Panama**

*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 issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Panama Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Panama.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	11/20/12	77 FR 69723
Interim Final Rule Comment Period End.	01/22/13	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Cecelia Davis, Program Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 219-0202, *Email:* cecelia.davis@gsa.gov.

*RIN:* 9000-AM43

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

*Completed Actions*

**423. Federal Acquisition Regulation (FAR); FAR Case 2008-039; Reporting Executive Compensation and First-Tier Subcontract Awards**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA adopted as final, with changes, the interim rule that amended the Federal

Acquisition Regulation to implement section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252, which requires the Office of Management and Budget (OMB) to establish a free, public, Web site containing full disclosure of all Federal contract award information. This rule requires contractors to report executive compensation and first-tier subcontractor awards on contracts expected to be \$25,000 or more, except classified contracts, and contracts with individuals.

*Completed:*

Action	Date	FR Cite
Final Rule .....	07/26/12	77 FR 44047
Final Rule Effective.	08/27/12	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Clark,  
*Phone:* 202 219-1813, *Email:*  
*william.clark@gsa.gov.*

*RIN:* 9000-AL66

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