

## ***FAR Alert Notice (FAN)***

### ***Issuance of Proposed Rules and Federal Acquisition Circulars 2005-67 through 2005-72***

This *FAR Alert Notice (FAN)* provides awareness to the acquisition workforce about upcoming regulatory changes.<sup>1</sup> This FAN highlights noteworthy proposed rules, and interim and final rules recently published in the released Federal Acquisition Circular (FAC) that impact the acquisition workforce.<sup>2</sup>

A brief description of each rule is provided below with hyperlinks to an expanded version of the rules. Agencies are encouraged to disseminate this FAN widely across their acquisition workforce.

#### **Rules at a Glance**

##### **Proposed Rules**

FAR Case 2012-014, Small Business Protests and Appeals  
FAR Case 2012-016, Defense Base Act  
FAR Case 2012-024, Commercial and Government Entity Code  
FAR Case 2011-023, Irrevocable Letters of Credit  
FAR Case 2012-023, Uniform Procurement Identification  
FAR Case 2012-025, Applicability of the Senior Executive Compensation Benchmark  
FAR Case 2012-028, Contractor Comment Period, Past Performance Evaluations  
FAR Case 2013-001, Ending Trafficking in Persons  
FAR Case 2012-032, Higher-Level Contract Quality Requirements  
FAR Case 2012-022, Contracts Under the Small Business Administration 8(a) Program  
FAR Case 2014-006, Year Format

##### **FAC 2005-67 (published on June 21, 2013)**

FAR Case 2011-029, Contractors Performing Private Security Functions Outside the US  
FAR Case 2013-004, Contracting Officer's Representative  
FAR Case 2012-033, System for Award Management Name Change  
FAR Case 2012-010, Interagency Acquisitions: Compliance by Nondefense Agencies w DoD Procurement Req  
FAR Case 2013-005, Terms of Service and Open-Ended Indemnification/Unenforceability of Unauthorized Obligations  
FAR Case 2012-018, Price Analysis Techniques  
FAR Case 2013-010, Contracting with Women-owned Small Business Concerns  
FAR Case 2013-008, Deletion of Report to Congress on Foreign-Manufactured Products  
FAR Case 2012-027, Free Trade Agreement (FTA)-Panama  
FAR Case 2011-019, Updated Post Retirement Benefit (PRB) References

##### **FAC 2005-68 (Published on June 26, 2013)**

FAR Case 2012-017, Expansion of Applicability of the Senior Executive Compensation Benchmark

##### **FAC 2005-69 (Published on August 1, 2013)**

FAR Case 2013-003, Definition of Contingency Operation  
FAR Case 2012-030, Iran Threat Reduction  
FAR Case 2012-009, Documenting Contractor Performance  
FAR Case 2013-011, Repeal of Sunset for Certain Protests of Task or Delivery Order contracts  
FAR Case 2013-009, Least Developed Countries that are Designated Countries

##### **FAC 2005-70 (Published on September 30, 2013)**

FAR Case 2013-015, Pilot Program for Enhancement of Contractor Employee Whistleblower Protections  
FAR Case 2013-017, Allowability of Legal Costs for Whistleblower Proceedings

##### **FAC 2005-71 (Published on November 25, 2013)**

FAR Case 2012-031, Accelerated Payments to Small Business Subcontractors  
FAR Case 2013-019, New Designated Country – Croatia

##### **FAC 2005-72 (Published on December 31, 2013)**

FAR Case 2010-010, Service Contracts Reporting Requirements  
FAR Case 2009-024, Prioritizing Sources of Supplies and Services for Use by Government.  
FAR Case 2013-005, Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations  
FAR Case 2013-021, Trade Agreements Threshold

<sup>1</sup>This FAR Alert was established by the Office of Federal Procurement Policy (OFPP) in 2012 to help improve agency awareness of regulatory changes. GSA prepares the FAN for dissemination to the acquisition workforce via the FAI website. Questions about the individual rules should be directed to the analyst in the Federal Register Notice.

<sup>2</sup> Proposed rules announce future changes being considered to the Code of Federal Regulations (CFR), include proposed regulatory text, and solicit public comments. Interim rules announce immediate changes to the CFR are effective immediately upon publication, or on a specified date after publication, but may be amended based on public comment. Final rules make permanent changes to the FAR after considering public comment. Final rules are effective on a specified date after publication.

## **Proposed Rules**

**[FAR Case 2012–014, \*Small Business Protests and Appeals\*](#)**, published on 3/7/2013. This rule will update the small business size and small business status protest and appeal procedures, protest and appeal timeframes, and address the application of the Small Business Administration’s decisions on a protested concern’s size and other small business status determinations.

**[FAR Case 2012–016, \*Defense Base Act \(DBA\)\*](#)**, published on 3/20/2013. This rule will 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 DBA.

**[FAR Case 2012–024, \*Commercial and Government Entity Code \(CAGE\)\*](#)**, published on 4/18/2013. This rule will require the use of CAGE codes, including North Atlantic Treaty Organization CAGE codes for foreign entities, for awards valued at greater than the micro-purchase threshold.

**[FAR Case 2011–023, \*Irrevocable Letters of Credit\*](#)**, published on 5/7/2013. This rule will 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.

**[FAR Case 2012–023, \*Uniform Procurement Identification\*](#)**, published on 6/6/2013. This rule will implement a uniform Procurement Instrument Identification (PIID) numbering system, which will require the use of Activity Address Codes (AACs) as the unique identifier for contracting offices and other offices, in order to standardize procurement transactions across the Federal Government.

**[FAR Case 2012-025, \*Applicability of the Senior Executive Compensation Benchmark\*](#)**, published on 6/26/2013. This rule will continue the implementation of the requirements of section 803 of the National Defense Authorization Act for Fiscal Year 2012. The proposed rule seeks public comments on applying section 803 with respect to that provision’s expansion with respect to contracts that had been awarded by DoD, NASA, and the Coast Guard before the date of enactment of section 803 (which was December 31, 2011) of the application of the senior executive compensation benchmark amount.

**[FAR Case 2012-028, \*Contractor Comment Period, Past Performance Evaluations\*](#)**, published on - 8/7/2013. This rule will implement provisions of law limiting the periods allowed for contractor comments on past performance evaluations and making past performance evaluations available to source selection officials sooner.

**[FAR Case 2013–001, \*Ending Trafficking in Persons\*](#)**, published on 9/26/2013. This rule will strengthen protections against trafficking in persons in Federal contracts. These changes are intended to implement E.O. 13627 and Title XVII of the National Defense Authorization Act for Fiscal Year 2013.

**[FAR Case 2012-032, \*Higher-Level Contract Quality Requirements\*](#)**, published on 12/3/2013. This rule will 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.

**[FAR Case 2012-022, \*Contracts Under the Small Business Administration 8\(a\) Program\*](#)**, published on - 2/3/2014. This rule will implement revisions made by the Small Business Administration (SBA) to its regulations implementing section 8(a) of the Small Business Act, and to provide additional FAR coverage regarding protesting an 8(a) participant’s eligibility or size status, procedures for releasing a requirement for non-8(a) procurements, and the ways a participant could exit the 8(a) Business Development program.

**[FAR Case 2014-006, \*Year Format\*](#)**, published on 3/25/14. This rule will amend the FAR to delete obsolete coverage relating to the year 2000 compliance at FAR 39.002, 39.101(a), and 39.106.

## Interim and Final Rules

### FAC 2005-67 (Published on June 21, 2013)

#### [FAR Case 2011-029, Contractors Performing Private Security Functions Outside the United States.](#)

This final rule amends the FAR to implement Government-wide requirements contained in section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110-181), as amended by section 853 of the NDAA for FY 2009 (Pub. L. 110-417) and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383). See 10 U.S.C. 2302 Note. These statutes establish minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions outside the United States.

#### [FAR Case 2013-004, Contracting Officer's Representative.](#)

This final rule amends the FAR to improve contract surveillance by clarifying the contracting officer's representative (COR) responsibilities in FAR 1.602-2(d). In addition, a corresponding change is also made at FAR 7.104(e).

#### [FAR Case 2012-033, System for Award Management Name Change, Phase 1 Implementation.](#)

This final rule amends the FAR by updating references and names to conform to the System for Award Management (SAM) designation. The SAM is a Federal Government owned and operated free web site that consolidates the capabilities in certain legacy systems that are used by Federal officials in the procurement and awards process.

#### [FAR Case 2012-010, Interagency Acquisitions: Compliance by Nondefense Agencies with Defense Procurement Requirements.](#)

This final rule adopts with minor changes an interim rule published in the Federal Register at 77 FR 69720 on November 20, 2012. The interim rule amended the FAR to implement section 801 of Pub. L. 110-181, as amended (10 USC 2304 Note).

#### [FAR Case 2013-005, Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations.](#)

This interim rule amends the FAR to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel that determined the Anti-Deficiency Act is violated when a government contracting officer or other employee with the authority to bind the government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause.

#### [FAR Case 2012-018, Price Analysis Techniques.](#)

This final rule amends the FAR to clarify a reference used in FAR 15.404-1(b)(2)(i). FAR 15.404-1(b)(2) delineates the various price analysis techniques (to ensure a fair and reasonable price) with 15.404-1(b)(2)(i) being the comparison of proposed prices received from multiple offerors in response to a solicitation.

#### [FAR Case 2013-010, Contracting with Women-owned Small Business Concerns.](#)

This interim rule amends FAR 19.1505 to remove the dollar limitation for set-asides to an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-owned Small Business (WOSB) Program.

#### [FAR Case 2013-008, Deletion of Report to Congress on Foreign-Manufactured Products.](#)

This final rule amends the FAR to eliminate an obsolete Congressional reporting requirement imposed by the United States Troops Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (41 U.S.C. 8302(b)(1)).

#### [FAR Case 2012-027, Free Trade Agreement \(FTA\)—Panama.](#)

This final rule adopts without change an interim rule published November 20, 2012, which implemented a new Free Trade Agreement with Panama (see the United States—Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note)).

**[FAR Case 2011-019, Updated Postretirement Benefit \(PRB\) References.](#)**

This final rule amends the FAR to replace the obsolete references to paragraphs 110, 112, and 113 of (the now-superseded) Financial Accounting Standard (FAS) 106 in FAR 31.205-6(o)(2)(iii)(A)(1) with explicit criteria that generally replicate the substance of the formerly referenced GAAP methodology.

**FAC 2005-68 (Published on June 26, 2013)**

**[FAR Case 2012-017, Expansion of Applicability of the Senior Executive Compensation Benchmark.](#)**

This interim rule amends the FAR to implement Section 803 of the National Defense Authorization Act for 2012, which expands application to a broader group of contractor employees on contracts awarded by DoD, NASA and the Coast Guard of the senior executive compensation benchmark amount which limits the reimbursement of compensation costs.

**FAC 2005-69 (Published on August 1, 2013)**

**[FAR Case 2013-003, Definition of Contingency Operation.](#)**

This final rule amends the FAR to revise the definition of “contingency operation” pursuant to a statutory change in the definition contained in the National Defense Authorization Act for 2012.

**[FAR Case 2012-030, Iran Threat Reduction.](#)**

This final rule amends the FAR to require certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran’s Revolutionary Guard Corps, as contained in titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012.

**[FAR Case 2012-009, Documenting Contractor Performance.](#)**

This final rule amends the FAR to implement government-wide, standardized past performance evaluation factors and performance rating categories, and require past performance information to be entered into the Contractor Performance Assessment Reporting System (CPARS).

**[FAR Case 2013-011, Repeal of Sunset for Certain Protests of Task or Delivery Order contracts.](#)**

This final rule amends the FAR to implement a section of the National Defense Authorization Act for 2013, relative to removing the sunset date for protests against certain orders under task-order or delivery-order contracts for the Department of Defense, NASA and the Coast Guard.

**[FAR Case 2013-009, Least Developed Countries that are Designated Countries.](#)**

This final rule amends the FAR to implement a revision by the U.S. Trade Representative to the list of least developed countries that are designated countries under the Trade Agreements Act of 1979.

**FAC 2005-70 (Published on September 30, 2013)**

**[FAR Case 2013-015, Pilot Program for Enhancement of Contractor Employee Whistleblower Protections.](#)**

This interim rule amends the FAR to implement a statutory pilot program enhancing whistleblower protections for contractor employees.

**[FAR Case 2013-017, Allowability of Legal Costs for Whistleblower Proceedings.](#)**

This interim rule amends the FAR to implement the National Defense Authorization Act for 2013, which 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.

**FAC 2005-71 (Published on November 25, 2013)**

**[FAR Case 2012-031, Accelerated Payments to Small Business Subcontractors.](#)**

This final rule amends the FAR to implement OMB policy directives (M-12-16 and M-13-15) by incorporating a new clause to provide accelerated payments to small business subcontractors.

**[FAR Case 2013-019, New Designated Country – Croatia.](#)**

This final rule amends the FAR to add Croatia as a new designated country under the World Trade Organization, Government Procurement Agreement (WTO GPA).

**FAC 2005-72 (Published on December 31, 2013)**

**[FAR Case 2010-010, Service Contracts Reporting Requirements.](#)**

This final rule amends the FAR to implement section 743 of Division C of the Consolidated Appropriations Act, 2010. Section 743 calls for agencies, except where the Department of Defense has fully funded the contract or order, to submit annual inventories of service contracts.

**[FAR Case 2009-024, Prioritizing Sources of Supplies and Services for Use by Government.](#)**

This final rule amends the FAR to limit the section of the FAR addressing the priorities for use of Government supply sources to a discussion of the mandatory Government sources of supplies and services. Also, a new section is added to encourage agencies to give priority consideration to using non-mandatory sources.

**[FAR Case 2013-005, Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations.](#)**

This final rule amends the FAR to address Anti-Deficiency Act violations where a Government agent agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause.

**[FAR Case 2013-021, Trade Agreements Threshold.](#)**

This final rule amends the FAR to incorporate revised thresholds for application of the World Trade Organization, Government Procurement Agreement (WTO GPA) and the Free Trade Agreements, as determined by the U.S. Trade Representative.