

**FAR COUNCIL PLAN FOR RETROSPECTIVE ANALYSIS OF EXISTING RULES – STATUS UPDATE (August 2014)**

Agency Sub-agency	RIN/OMB Control Number	Title of Initiative/ Rule/ICR	Brief Description	Actual Target or Comp. Date	Anticipated savings in costs and/or information collection burdens, together with any anticipated change in benefits (please quantify to the extent feasible, and also specify baseline, time horizon, and affected groups)	Progress updates and anticipated accomplishments	Notes
1. FAR Council	N/A	Application of new regulatory requirements to commercial item acquisitions & small (simplified) purchases	Review approach taken by the FAR Council to identify whether new laws should be applied to acquisitions for commercial items, including commercially available off-the-shelf (COTS) items and acquisitions valued below the Simplified Acquisition Threshold (SAT).	Fiscal Year 2014	<p>Improved economy and efficiency</p> <p>Reduced barriers to entering the federal marketplace</p> <p>Increased small business participation</p>	<p>The FAR Council piloted a process where public input on potential burden was solicited early in the rulemaking process (e.g., before a proposed rule was issued) in connection with the implementation of Executive Order 13627 to strengthen protections against human trafficking in persons in federal contracting</p>	<p>The FAR Council published a proposed rule on September 26, 2013 seeking public comment on FAR Case 2013-001 to implement Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts and Title XVII of the NDAA of FY 13, Public Law 112-239, “The End Trafficking in Government Contracting.”</p> <p>The public comment period ended December 20, 2013. The public comments are being considered in the formulation of a final rule.</p>

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2. FAR Council	N/A	Improve outreach and communication with vendors	Review regulatory requirements governing exchanges with industry before contract award to determine sufficient guidance is included in the FAR about communication with industry.	Fiscal Year 2014	Improved economy and efficiency  Reduced barriers to entry	The FAR Council in coordination with the Chief Acquisition Officers Council, and the Chief Information Officers Council conducted a national dialogue to discuss burdens and barriers associated with the federal acquisition process and ways to address them. The dialogue was organized into three areas : (1) Reporting and compliance requirement; (2) Better procurement practices; and (3) Increased participation by small and minority businesses, new entrants, and non-traditional government contractors. The comment period closed on May 5, 2014.	The FAR Council anticipates reviewing the results of the Open Dialogue and will determine next steps to remove barriers and burdens in the FAR that prohibit businesses from participating in government contracting.
3. FAR Council	N/A	Reduce number of competitions that result in only one offer	Consider whether tailored regulatory changes might	Fiscal Year 2014	Reduce exposure to high risk contracting	The FAR Council is exploring options for reducing the number of competitions resulting in only one offer,	DoD issued a supplement to the FAR, DFARS rule 2011-D013, addressing one bid (one offer) competition.

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			assist agencies in their efforts to increase contractor interest in competitions that have received only one offer.		Better pricing and terms and conditions through improved use of competition	which could include clarifying the role of the competition advocate and/or the use of elevated review and approvals, improved up front analysis of the factors that influence industry bid/no-bid decisions, and improved government outreach and vendor engagement.	DoD’s final rule was published on Jun 29, 2012. (77 FR 29126).  The FAR Council is currently reviewing DoD’s supplement, to determine (1) if FAR coverage is needed; and (2) if needed, to what extent.
4. FAR Council	N/A	Revisit past performance regulations, policies, and procedures to improve timely and quality reporting and effective use of past performance information.	Consider and implement ways to enhance past performance policy to increase and improve agency use and reporting of performance information.	Fiscal Year 2014	Improved economy and efficiency. This action will standardize the past performance reporting requirements in the performance (CPARS) database.	FAR Case 2014-010— Enhancements to Past Performance Evaluation Systems to standardize the past performance reporting requirements under the Contractor Performance Assessment Reporting System (CPARS) database and remove references to the ACASS and CCASS module since these databases were merged into CPARS on July 1, 2014.	FAR Council anticipates publishing a rule this summer.

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5. FAR Council		Modernize rules for small business set-asides and small business subcontracting plans (FAR Council and SBA joint review)	Review statutory and regulatory requirements governing set-asides for small businesses and small business subcontracting plans to determine sufficient guidance is included in the FAR	Fiscal Year 2014	<p>Reduced barriers to entry</p> <p>Increase small business participation</p>	<p>SBA published a final rule on October 2, 2013 (78 FR 61114), effective December 31, 2013, which implemented sections of Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, which was designed to protect the interests of small businesses and boost their opportunities in the Federal marketplace.</p> <p>The FAR Council is in the process of implementing SBA’s final rule through the publication of several FAR cases. Among them are:</p> <ol style="list-style-type: none"> <li>1. FAR Case 2014-002, Set Asides Under Multiple Award Contracts;</li> <li>2. FAR Case 2014-003, Small Business Subcontracting Improvements;</li> </ol>	<p>FAR Case 2014-002, Set Asides Under Multiple Award Contracts, which implements section 1311, (addresses the definition of multiple award contracts), and section 1331, (addresses small business set-asides under multiple award contracts)</p> <p>FAR Case 2014-003, implements section 1321, to address the assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities.</p>

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						<p>3. FAR Case 2014-004, Payment to Subcontractors; and</p> <p>4. FAR Case 2014-015, Consolidation of Contract requirements.</p>	<p>FAR Case 2014-004, implements section 1334, to require a prime contractor that has a subcontracting plan to notify the contracting officer in writing whenever a payment to a subcontractor is reduced or is 90 days or more past due for goods and services provided for the contract and for which the Federal agency has paid the contractor.</p> <p>FAR Case 2014-015, implements section 1313, which prohibits from consolidating contract requirements exceeding \$2M unless the acquisition strategy includes results of market research, identification of alternative</p>

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						<p>OMB Memorandum M-14-10, Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors, was issued on July 10, 2014, which extends until December 31, 2016, the policy in M-12-16. OMB Memorandum M-12-16 established the Executive Branch policy that agencies should, to the full extent permitted by law; temporarily accelerate payments to all prime contractors – with a goal of paying them within 15 days of receipt of proper invoices – in order to allow them to provide prompt payments to small business subcontractors.</p>	<p>approaches that would involve a lesser degree of contract consolidation, and a determination by the Senior Procurement Executive that the contract consolidation is necessary and justified</p> <p>On November 25, 2013, the FAR Council published a final rule under FAR Case 2012-031 to implement OMB Memorandum M-12-16, M-13-15, and the temporary deviation into the FAR.</p> <p>OMB Memorandum M-14-10, Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors, extends the policy established under the subject FAR case.</p>

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6. FAR Council	Organizational Conflicts of Interest (OCI) (RIN 9000–AL82)	Restructure regulations addressing conflicts of interest – OCIs	Consider whether an update is required to enhance OCI coverage (unchanged since 1984) and to implement PCI coverage	Spring/Fall of 2012 - completed Final Rule (FAR Case 2011-001) to be issued in Fiscal Year 2014	Updated OCI coverage	OCI - The FAR Council is completing its consideration of public comments on the proposed rule as it seeks to clarify rules for addressing the complex risks associated with OCI in a manner that minimizes burden both for industry and government. As part of its review, the FAR Council has made substantial changes to the proposed coverage regarding contractor access to protected information and intends to separate out this coverage from the OCI case and seek additional public comment on its changes.	OCI – The FAR Council opened a final rule under FAR Case 2011-001, which Implements section 841 of the NDAA for FY 2009 (Pub. L. 110-147). Section 841 requires consideration of how to address the current needs of the acquisition community with regard to Organizational Conflicts of Interest. Separately addresses issues regarding unequal access to information.

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7. FAR Council	Personal Conflicts Of Interests (PCI)	Restructure regulations addressing personal conflicts of interest	FAR Case 2013-022 Consider whether an update is required to enhance PCI coverage	Fiscal Year 2014	Implemented new PCI coverage will enhance integrity and business ethics.	PCI - The FAR Council is proposing to publish a rule to implement section 829 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239). Section 829 requires the Secretary of Defense to review existing guidance on personal conflicts of interest for contractor employees performing acquisition functions closely associated with inherently governmental functions, to determine whether it would be in the best interest of DoD and the taxpayers to extend such guidance to contractor personnel performing certain other functions or contract types. As a matter of policy, any such revisions will apply Governmentwide.	PCI – The FAR Council opened FAR Case 2013-022, Preventing Personal Conflicts of Interest for Contractor Employees to implement section 829 of the NDAA for Fiscal Year 2013 (Pub. L. 112-239). The rule proposes to extend regulations on personal conflicts of interest to contractor employees performing all functions that are closely associated with inherently governmental functions (not just acquisition functions) and to personal services contracts (to the extent such contracts are authorized by law, e.g., legal or medical).



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8. FAR Council	9000-AM05  IC 9000-0150	Updating regulations to remove obsolete and outdated text - - Federal Contracting Programs for Minority-Owned and Other Small Businesses	FAR Case 2009-016, This Final rule remove certain coverage involving procurements with small disadvantaged business concerns and certain institutions of higher education that is based on authority which has expired and been found to be unconstitutional by the Court of Appeals for the Federal Circuit.	Fiscal Year 2014	The rule will remove the reporting burden of approximately 15,000 hours imposed by the Federal Government on the public associated with OMB Control number 9000-0150.	A proposed rule was published in the Federal Register on September 9, 2011 (76 FR 55849).	

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9. FAR Council		Updating regulations to remove obsolete and outdated text - Year Format	The FAR Case 2014-006, Year Format was established to delete to delete regulations relating to the Y2K compliance		Removes outdated information from the FAR.	A proposed rule was published in the Federal register at 79 FR 16274, on March 25, 2014	
10. FAR Council	9000–AM53	Updating regulations to remove obsolete and outdated text - Irrevocable Letters of Credit	FAR Case 2011-023, Irrevocable Letters of Credit (ILC), removes all references to outdated ILC information , and provides updated sources of data required to verify the credit worthiness of a financial entity issuing or confirming an ILC.	Fiscal Year 2014	Removes outdated information from the FAR and updates the FAR with current information	A proposed rule was published in the Federal Register on September 9, 2011 (78 FR 26573).	It is anticipated that a final rule will be published this fiscal year

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<b>COMPLETED ACTIONS</b>							
FAR Council	9000–AM59	FAR Case 2013-010 - Contracting With Women-Owned Small Businesses	This rule amends the FAR by removing the dollar limitation for set-asides to economically disadvantaged women-owned small business (EDWOSB) concerns, and eligible women-owned small business (WOSB) concerns.	June 2014	Removing the dollar threshold for set-asides under the WOSB Program will provide greater access to Federal contracting opportunities for women-owned small businesses.	This rule finalizes changes set forth in section 1697 of the National Defense Authorization Act for Fiscal Year 2013. Section 1697 eliminated the statutory limitations (thresholds) at section 8(m) of the Small Business Act, for set-asides to EDWOSB concerns and to WOSB concerns eligible under the WOSB Program in industries that are underrepresented or substantially underrepresented by WOSB concerns.  The final rule was published on June 25, 2014 (79 FR 35864).	Action Completed
FAR Council	9000-AM40	FAR Case 2012-028, Contractor Comment	This rule allowed for contractor comments on past performance	May 2014	This rule would shorten the contractors' response time, but	Implement section 853 of the National Defense Authorization Act (NDAA) for FY 2013 (Pub. L. 112-239, enacted January 2,	Action Completed

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		Period, Past Performance Evaluations	evaluations and requires that past performance evaluations be made available to source selection officials sooner.		it would not expand the reporting requirement.	2013) and section 806 of the NDAA for FY 2012 (Pub. L. 112-81).  The final rule was published on May 30, 2014 (79 FR 31197).	
FAR Council	9000-AM77  IC 9000-0166; 9000-0167; 9000-0168; 9000-0169; and 9000-0176.	FAR Case 2014-016, Repeal of the Recovery Act Reporting Requirements	Future reporting requirements after January 31, 2014, were repealed by section 627 of Division E of the Consolidated Appropriations Act, FY 2014. The reporting website has closed for future reporting.	May 2014	This rule deleted the public burden estimated for the associated information collections. As a result, the public burden for reporting recovery actions has been reduced by 419,019 hours.	This rule adopts as final, with changes, two interim rules published under FAR case number 2009-009 and 2010-008. The interim rules amended the FAR to implement reporting requirements of the American Recovery Reinvestment Act-Reporting Requirements  The final rule was published on May 30, 2014 (79 FR 31193).	Action Completed
FAR Council	9000-AM37	FAR Case 2012-031, Accelerated Payments to	This new clause requires the prime contractor, upon receipt of	November 2013	This rule may have a positive impact on small business subcontractors as it	This final rule amends the FAR to add a new clause, Providing Accelerated Payments to Small Business Subcontractors, as	Action Completed

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		Small Business Subcontractors	accelerated payments from the Government, to make accelerated payments to small business subcontractors, to the maximum extent practicable, after receipt of a proper invoice and all proper documentation from small business subcontractors.		is designed to accelerate payment from Federal contractors to their small business subcontractors, improving small business cash flow overall.	part of the implementation of OMB Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors (as extended by OMB Memorandum M-13-15, Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors).  The final rule was published on November 25, 2013 (78 FR 70477).	
FAR Council	9000–AM09	FAR Case 2012-009, Documenting Contractor Performance	Provide Government-wide standardized past performance evaluation factors and performance rating categories	August 2013	Rule codifies in the FAR existing past performance reporting guidelines and practices. There are no new	The final rule was published on August 01, 2013 (78 FR 46787).	Action Completed

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			and require that past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS) system.		requirements placed on small entities. □		
<b>FAR Council’s Implementation of Executive Orders (EO)</b>							
EO No.	Title/Date signed	Description			Action Taken		
13563	<b>Improving Regulation and Regulatory Review</b> (January 2011)	This executive order tasks agency to engage in periodic reviews of existing significant regulations by promoting retrospective analysis of rules that are outmoded, ineffective, insufficient, or excessively burdensome. The EO also requires agencies to maximize opportunities for public comment in the rulemaking process, especially from those who are likely to be affected.			In accordance with the EO, the FAR Council is taking action and developed an implementation plan. In accordance with the plan, OMB and agencies reviewed current prompt payment provisions and identified opportunities to work with OMB on its policy to accelerate payments to small businesses (see FAR Case 2012-031). The FAR Council has also taken action to improve competition in the supply schedules (see FAR Case 2007-012).		
13627	<b>Strengthening Protections Against Trafficking in Persons in Federal</b>	This executive order strengthens existing protections to prohibit contractors and subcontractors from engaging in specific trafficking-related activities.			The FAR Council published a proposed rule (FAR Case 2013–001) on September 26, 2013, amending the Federal Acquisition Regulation to strengthen protections against trafficking in		

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	<b>Contracts</b> (9/25/2012)					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. The public comments submitted in response to the FAR Case will be considered in the formulation of a final rule.	
<b>13658</b>	<b>Establishing a Minimum Wage for Contractors</b> (2/14/2014)		This executive order seeks to increase efficiency and cost savings in the work performed by parties that contract with the Federal Government by raising the hourly minimum wage paid by those contractors to workers performing on covered Federal contracts to: \$10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor. The Executive Order directs the Secretary to issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act to implement the Order's requirements.			The Department of Labor is required to issue regulations to implement the Executive Order and the FAR Council is required to provide for inclusion of a contract clause in solicitations and resultant contracts subject to the Executive Order. OMB issued Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014. The OMB memorandum requested that the FAR Council provide standard wording for a contract clause to be used pending issuance of Department of Labor and FAR regulations.  On June 17, 2014 (79 FR 34568), the U.S. Department of Labor's Wage and Hour Division published a proposed rule requesting public comments on its proposal to implement the executive order.  To implement OMB's request, the FAR Council agencies issued deviations and instructions to the acquisition workforce.	

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						<p>Specifically, the Department of Defense issued a class deviation and NASA issued a class deviation to implement requirements of the Order. The Civilian Agency Acquisition Council (CAAC) Chair issued the attached CAAC letter and deviation regarding the implementation of (1) Executive Order 13658 and OMB Policy Memorandum M-14-09. The CAAC letter provides a contract clause for use in all new FAR based contracts negotiated after the date of the Order, but before the effective date of the implementing regulations by the FAR Council. The clause only covers contracts that are subject to the FAR.</p> <p>The FAR Council is taking additional action to implement the Executive Order.</p>	
<p><b>11478 and 11246</b></p>	<p><b>Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity</b></p>		<p>Amendments to the Executive Orders 11478 and 11246 add “sexual orientation” and “gender identity” to the list of protected categories in the existing Executive Order covering federal contractors.</p>			<p>Department of Labor (DOL) is required to issue regulations to implement these Executive Orders. The FAR Council will take additional action, as necessary, to implement the Executive Order.</p>	



**FAR COUNCIL PLAN FOR RETROSPECTIVE ANALYSIS OF EXISTING RULES – STATUS UPDATE (August 2014)**

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13673	<b>Fair Pay and Safe Workplaces</b>		This Executive Order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws.			Department of Labor (DOL) is required to issue guidance to implement this Executive Orders. The FAR Council will take additional action, as necessary, to implement the Executive Order.	