

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 4]

Federal Acquisition Regulation: Federal Acquisition Circular 2005–100; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–100. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at <http://www.regulations.gov>.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–100 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–100

Item	Subject	FAR case	Analyst
I	Paid Sick Leave for Federal Contractors	2017–001	Delgado.
II	Non-Retaliation for Disclosure of Compensation Information	2016–007	Delgado.
III	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–100 amends the FAR as follows:

Item I—Paid Sick Leave for Federal Contractors (FAR Case 2017–001)

DoD, GSA, and NASA are converting to a final rule, without change, an interim rule that amended the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13706 and a Department of Labor final rule issued on September 30, 2016, both entitled Establishing Paid Sick Leave for Federal Contractors. The rule requires contractors to allow all employees performing work on or in connection with a contract covered by the E.O. to accrue and use paid sick leave in accordance with E.O. 13706 and 29 CFR part 13. Contracting officers will include a clause in covered contracts. This FAR rule neither increases nor decreases the cost of the interim rule (81 FR 91627), which has been in effect since January 1, 2017.

Item II—Non-Retaliation for Disclosure of Compensation Information (FAR Case 2016–007)

DoD, GSA, and NASA are converting to a final rule, without change, an interim rule that amended the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13665, Non-Retaliation for Disclosure of

Compensation Information. E.O. 13665, signed April 8, 2014, amended E.O. 11246, Equal Opportunity in Federal Employment. The interim FAR rule also implemented a final rule issued by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor, entitled Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions, which was published on September 11, 2015.

E.O. 11246, originally issued September 24, 1965, establishes nondiscrimination and affirmative action obligations in employment for Federal contractors and subcontractors. It prohibits employment discrimination because of race, color, religion, sex, sexual orientation, gender identity, and national origin. E.O. 13665 amends E.O. 11246 and its Equal Opportunity Clause by incorporating, as a covered prohibition, discriminating against employees and job applicants who inquire about, discuss, or disclose the compensation of the employee or applicant or another employee or applicant. Federal contractors and subcontractors must disseminate this nondiscrimination provision, using language prescribed by the Director of OFCCP, including incorporating the provision into existing employee manuals or handbooks and posting it. There is no significant impact on small entities imposed by the FAR rule.

Item III—Technical Amendments

Editorial changes and updates to web links are made at FAR 2.101, 4.1603, 4.1702, 5.102, 5.201, 5.207, 5.704, 5.705,

6.305, 7.103, 7.105, 7.107–4, 8.405–6, 8.501, 8.602, 9.406–3, 9.407–3, 14.201–2, 16.505, 17.502–1, 18.205, 19.704, 19.1503, 22.001, 22.404–3, 22.1001, 22.1021, 22.1022, 22.1304, 23.202, 23.203, 23.205, 23.401, 23.405, 23.802, 25.003, 25.703–2, 28.106–1, 28.106–3, 28.203–3, 28.204–3, 31.205–6, 36.104, 36.700, 41.301, 49.602, 52.208–8, 52.212–1, 52.212–3, 52.212–5, 52.213–4, 52.219–9, 52.222–6, 52.222–8, 52.222–30, 52.222–31, 52.222–32, 52.222–41, 52.222–43, 52.223–17, 52.225–5, 52.225–18, 52.225–25, 52.228–11, 52.243–1, 52.244–6, 53.000, 53.102, 53.209–1, 53.228, 53.249 and subpart 53.3.

Dated: July 31, 2018.

William F. Clark,

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

Federal Acquisition Circular (FAC) 2005–100 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–100 is effective August 22, 2018.

Dated: August 1, 2018.

Shay D. Assad,

Director, Defense Pricing/Defense Procurement and Acquisition Policy.

Dated: August 14, 2018.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: August 2, 2018.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

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48 CFR Parts 1, 11, 22, and 52

[FAC 2005-100; FAR Case 2017-001, Item I; Docket No. 2017-0001; Sequence No. 1]

RIN 9000-AN27

Federal Acquisition Regulation; Paid Sick Leave for Federal 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 are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order (E.O.), Establishing Paid Sick Leave for Federal Contractors. The interim rule also implemented a final rule issued by the Department of Labor.

DATES: *Effective:* August 22, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-100, FAR Case 2017-001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 81 FR 91627 on December 16, 2016, to implement E.O. 13706, Establishing Paid Sick Leave for Federal Contractors. The E.O. was signed September 7, 2015, and was published in the **Federal**

Register at 80 FR 54697 on September 10, 2015. The E.O. seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid sick leave for family care. The interim FAR rule also implemented the final rule issued by the Wage and Hour Division of the Department of Labor (DOL) to implement E.O. 13706. The DOL final rule, entitled “Establishing Paid Sick Leave for Federal Contractors”, was published in the **Federal Register** at 81 FR 67598 on September 30, 2016. Seven respondents submitted comments on the interim FAR rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

There are no changes to the interim rule.

B. Analysis of Public Comments

Comment: Six respondents strongly supported the interim FAR rule. The respondents stated that the interim rule is necessary to guarantee more workers the job and economic security that paid sick days provide, reduce workplace contagion, and increase productivity and retention. The respondents also presented rationale as to why the interim rule will benefit businesses, individual workers, taxpayers, and the economy.

Response: Noted.

Comment: One respondent provided a scenario and asked whether in that instance the contract was subject to the requirements of this FAR rule. The respondent described a contract action extending the term of the contract by exercising an option adjusting the price for escalations in labor rates.

Response: According to DOL (see Notice of Proposed Rulemaking, 81 FR 9592, published February 25, 2016), unilateral exercise of a contract option that has pre-negotiated prices that are subject to adjustment due to escalation in labor rates is not a new contract covered by E.O. 13706, as implemented in the DOL rule and FAR rule, as long as no bilateral negotiations occur (other than any necessary to determine and effectuate those pricing adjustments).

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, Improving Regulation and Regulatory Review, 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. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

V. 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 *et seq.* The FRFA is summarized as follows:

DoD, GSA, and NASA are converting to a final rule, without change, an interim rule that amended the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13706, Establishing Paid Sick Leave for Federal Contractors, dated September 7, 2015, and associated Department of Labor (DOL) regulatory requirements at 29 CFR part 13. DOL published a final regulatory flexibility analysis in their final rule (81 FR 67598 at 67703).

The FAR rule established requirements for contractors under contracts containing the clauses at FAR 52.222-6, Construction Wage Rate Requirements, or FAR 52.222-41, Service Contract Labor Standards, *i.e.*, “covered contracts,” to allow employees to accrue and use paid sick leave in accordance with E.O. 13706 and 29 CFR part 13. Contractors must also include a paid sick leave contract clause in covered subcontracts and require covered subcontractors to include the substance of the clause in covered lower-tier contracts.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule applies to contracts and subcontracts at all tiers covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute, which require performance in whole or in part within the United States. For procurement contracts where employees’ wages are governed by the Fair Labor