

FEDERAL ACQUISITION REGULATION (FAR)

The Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space are members of the Federal Acquisition Regulatory Council (FAR Council), and jointly issue and maintain a single Government-wide procurement regulation known as the Federal Acquisition Regulation (FAR). The FAR provides uniform policies and procedures for the acquisition of supplies and services by executive agencies. The FAR Council, which is chaired by the Administrator of Federal Procurement Policy, assists in the direction and coordination of Government-wide procurement policies to be implemented in the FAR.

Public Engagement

The FAR Council engages with the public on rules that will affect the FAR in several ways. First, in addition to publishing abstracts of and anticipated publication dates for upcoming rulemakings in the Office of Information and Regulatory Affairs biannual Unified Agenda, members of the public can track the progress of any open and pending FAR rule via the “Open FAR Cases” report, which is publicly available at https://www.acq.osd.mil/dpap/dars/far_case_status.html. The report is updated on a weekly basis and includes the following information: a case number, title, FAR parts anticipated to be impacted by the rule, a summary of the basis for the rule, and the rule status. Members of the public who are interested in a particular FAR case are encouraged to monitor the Open FAR Cases Report to track where a particular rule is in the rulemaking process.

In addition to the Open FAR Cases report, the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) independently engage with several industry associations on a quarterly basis including, but not limited to, the Aerospace Industries Association, the National Defense Industrial Association, and the Professional Services Council. During these meetings, DoD, GSA, and NASA often provide updates on open FAR cases and association representatives are able to provide feedback from their various members or member groups on upcoming rulemakings.

While developing certain FAR rules, DoD, GSA, and NASA may seek input from the public by publishing in the *Federal Register* an advance notice of proposed rulemaking (ANPR) or a general request for information (RFI). Such notices normally include a summary of the overarching policy objectives of the rule and a list of questions seeking input that will help the Government develop a proposed rule. Information on whether DoD, GSA, and NASA plan on publishing an ANPR or RFI is included in both the Open FAR Cases Report and OIRA's biannual Unified Agenda.

Occasionally, while a proposed or interim FAR rule is out for public comment, DoD, GSA, and NASA may hold a public meeting to provide an overview of the rule and allow the public to provide feedback to the Government in an open forum. Information about whether DoD, GSA, and NASA plan on holding a public meeting on a rule is normally included in the proposed or interim rule when it is published for public comment. Presentations made during the public meeting are included in the rule docket and made publicly available. Information provided during the public meeting is also considered during development of the final rule.

DoD, GSA, and NASA are also rethinking the types of supporting documentation that should be published with proposed or interim rules to facilitate public understanding of the rule. For example, for FAR Case 2022-006, Sustainable Procurement (RIN: 9000-AO43), DoD, GSA, and NASA included, as a supporting document in the rule docket at www.regulations.gov, a slide show that illustrates the overarching restructuring of existing content in FAR part 23, a visual aid intended to make clear the extensive edits presented in the amendatory language of the rule.

Finally, DoD, GSA, and NASA independently conduct outreach to industry regarding upcoming rulemakings. For example, the GSA Federal Acquisition Service (FAS) holds webinars with its industry partners to provide an update on the current policy landscape, including summaries of upcoming FAR rules expected to have a significant impact on industry. As part of these webinars, which are available to the public at <https://buy.gsa.gov/interact/community/11/activity->

feed, GSA FAS includes information on the rulemaking process, how to monitor FAR and GSA FAR supplement rules, and best practices for submitting public comments.

Rulemaking Priorities

Pursuant to Executive Order 12866, “Regulatory Planning and Review” (September 30, 1993), as reaffirmed and amended in Executive Order 13563, “Improving Regulation and Regulatory Review” (January 18, 2011), and Executive Order 14094, “Modernizing Regulatory Review” (April 6, 2023), the Regulatory Plan and Unified Agenda provide public notice about the FAR Council’s proposed regulatory and deregulatory actions within the Executive Branch. The Fall 2023 Unified Agenda consists of 56 active agenda items.

The FAR Council is required to amend the Federal Acquisition Regulation to implement statutory and policy initiatives. The FAR Council prioritization is focused on initiatives that:

- Tackle the climate change emergency,
- Advance equity and support underserved, vulnerable and marginalized communities,
- Promote economic resilience,
- Improve service delivery, customer experience, and reduce administrative burdens, and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

Rulemaking that Tackles Climate Change

FAR Case 2022-006, “Sustainable Procurement,” will implement requirements for the procurement of sustainable products and services per Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, and Office of Management and Budget Memorandum M-22-06. The rule will also reorganize FAR part 23 for consistency and clarity.

FAR Case 2021-015, “Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,” will require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk, and to set science-based reductions targets per section 5(b)(i) of Executive Order 14030, “Climate-Related Financial Risk.”

FAR Case 2021-016, “Minimizing the Risk of Climate Change in Federal Acquisitions,” will ensure agencies minimize the risk of climate change and consider the social cost of greenhouse gas emissions in major procurements per section 5(b)(ii) of Executive Order 14030, “Climate-Related Financial Risk.” An advance notice of proposed rulemaking was published in October of 2021 seeking input from the public on ways in which the Government could consider greenhouse gas emissions and climate risks in Federal procurement. The feedback is being considered in the development of the proposed rule.

Rulemaking that Advances Equity and Supports Underserved Communities

FAR Case 2022-009, “Certification of Service-Disabled Veteran-Owned Small Businesses,” will clarify the certification requirements for service-disabled veteran-owned small businesses (SDVOSB) concerns to be eligible for the award of a sole source or set-aside SDVOSB contract.

FAR Case 2021-011, “Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors,” will permit small business first-tier subcontractors and joint venture members, in certain situations, to submit the past performance and experience they gained under these arrangements with their offers on Federal contracts. Contracting officers will be required to consider the capabilities and past performance provided by first-tier subcontractors and joint venture members in certain situations.

FAR Case 2023-011, “Small Business Participation on Certain Multiple Award Contract,” will update and clarify market research, acquisition planning, small business coordination, and the

use of set-asides during the placement of orders against certain multiple award contracts to increase small business participation in certain multiple award contracts.

Rulemaking that Promotes Economic Resilience

FAR Case 2022-004, “Enhanced Price Preference for Critical Items,” will add a list of critical items, along with their associated enhanced price preference, that will apply to acquisitions subject to the Buy American statute. This rule completes the framework added to the FAR as part of implementation of section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers.

FAR Case 2020-009, “List of Domestically Nonavailable Articles,” will amend the list of domestically nonavailable articles under the Buy American Act and the protocols to update the list. An advance notice of proposed rulemaking was published in May of 2020 seeking input from the public to assist in identifying domestic capabilities and for evaluating whether some articles on the list at FAR 25.104(a) should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The feedback is being considered in the development of the proposed rule.

FAR Case 2022-011, “Nondisplacement of Qualified Workers Under Service Contracts,” will require contractors and subcontractors to offer qualified employees employed under predecessor contracts a right of first refusal of employment under successor contracts in accordance with Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts and the associated Department of Labor regulations at 29 CFR part 9.

FAR Case 2022-003, “Use of Project Labor Agreement for Federal Construction Projects,” will require the use of project labor agreements for large-scale construction projects with a total estimated value of \$35 million or more in accordance with Executive Order 14063, Use of Project

Labor Agreements for Federal Construction Projects. Project labor agreements are often effective in preventing labor-related disruptions on projects by using dispute-resolution processes to resolve worksite disputes and by prohibiting work stoppages, including strikes and lockouts.

Rulemakings That Improve Service Delivery and Customer Experience

FAR Case 2019-015, “Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment,” will bring the procedures on suspension and debarment in the FAR into closer alignment with the Nonprocurement Common Rule (NCR) procedures, creating a more consistent experience for industry.

FAR Case 2021-001, “Increased Efficiencies with Regard to Certified Mail, In-person Business, Mail, Notarization, Original Documents, Seals, and Signatures,” will streamline certain essential contracting procedures by increasing flexibilities and efficiencies with regards to certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This rule makes permanent policy flexibilities introduced during the pandemic.

Rulemakings That Support National Security

FAR Case 2021-017, “Cyber Threat and Incident Reporting and Information Sharing,” will increase the sharing of information about cyber threats and incident information and require certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation pursuant to sections 2(b), (c), (g)(i) and 8(b) of Executive Order 14028, “Improving the Nation’s Cybersecurity.”

FAR Case 2021-019, “Standardizing Cybersecurity Requirements for Unclassified Information Systems,” will standardize cybersecurity contractual requirements across Federal agencies for unclassified information systems pursuant to sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation’s Cybersecurity.

FAR Case 2023-002, "Supply Chain Software Security," will require suppliers of software available for purchase by Federal agencies to comply with, and attest to complying with, applicable secure software development practices pursuant to section 4(n) and 4(k) of Executive Order 14028, Improving the Nation's Cybersecurity, and Office of Management and Budget Memorandum 22-18 and 23-16.

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