



FEDERAL REGISTER

Vol. 80

Friday,

No. 233

December 4, 2015

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–85; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and 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) 2005–85. 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 2005–85 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–85

Item	Subject	FAR Case	Analyst
I	Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction (Interim).	2015–011	Davis.
II	Further Amendments to Equal Employment Opportunity	2015–013	Loeb.
III	Updating Federal Contractor Reporting of Veterans' Employment (Interim)	2015–036	Loeb.
IV	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections	2013–015	Davis.
V	Retention Periods	2015–009	Glover.
VI	Establishing a Minimum Wage for Contractors	2015–003	Loeb.
VII	Technical Amendment.		

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 2005–85 amends the FAR as follows:

Item I—Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction (FAR Case 2015–011) (Interim)

This interim rule amends the FAR to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless an agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

This interim rule has no significant impact on the Government and contractors, including small business entities.

Item II—Further Amendments to Equal Employment Opportunity (FAR Case 2015–013)

DoD, GSA, and NASA are issuing a final rule adopting an interim rule published April 10, 2015, without

change. The interim rule amended the FAR to implement Executive Order (E.O.) 13672, entitled “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity”. E.O. 13672 was signed July 21, 2014.

E.O. 11246, dated September 24, 1965, established requirements for non-discriminatory practices in hiring and employment for Federal contractors and subcontractors. The bases of discrimination prohibited by E.O. 11246 are race, color, religion, sex, and national origin. E.O. 13672 adds sexual orientation and gender identity to the prohibited bases of discrimination established by E.O. 11246. There is no significant impact on small entities.

Item III—Updating Federal Contractor Reporting of Veterans' Employment (FAR Case 2015–036) (Interim)

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement a final rule issued by the Department of Labor’s Veterans’ Employment and Training Service (VETS) that revised the regulations at 41 CFR part 61 implementing the reporting requirements under the Vietnam Era Veterans’ Readjustment Assistance Act, as amended (VEVRAA) and the Jobs for Veterans Act (JVA) (Pub. L. 107–288). VEVRAA requires Federal contractors and subcontractors to annually report

on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. The VETS rule requires contractors and subcontractors to comply with its revised reporting requirements using the new Form VETS–4212, in lieu of the VETS–100 and VETS–100A, beginning with the annual report filed in 2015.

There is no significant impact on small entities imposed by the FAR rule.

Item IV—Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013–015)

This final rule amends the FAR to implement a statutory pilot program enhancing whistleblower protections for contractor employees at FAR subpart 3.9. An interim rule was published September 30, 2013. The interim rule created a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017.

The four-year pilot program is mandated by section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013).

This rule has no significant impact on small business concerns.

Item V—Retention Periods (FAR Case 2015–009)

This final rule amends the FAR by updating the Government file retention periods to conform with the retention periods in the National Archives and Records Administration (NARA) General Records Schedule (GRS). Language is also added to instruct agencies that require a shorter retention period for certain records to request approval from NARA through the agency's record officer. This rule change does not place any new requirements on small entities; the only change is the timeframe for retention by the Government of Government records.

Item VI—Establishing a Minimum Wage for Contractors (FAR Case 2015–003)

DoD, GSA, and NASA are issuing a final rule adopting the interim rule published December 15, 2014, with change. The interim rule amended the FAR to implement Executive Order 13658 and a Department of Labor final rule issued on October 7, 2014, both entitled "Establishing a Minimum Wage for Contractors," which established a new minimum wage for covered service and construction contracts of \$10.10 per hour, as of January 1, 2015. The Executive Order minimum wage will be adjusted annually, by the Department of Labor. Contracting officers will include a clause in covered contracts and will adjust contract prices for the annual adjustments in the Executive Order minimum wage. Contractors shall consider any subcontractor request, including requests by small businesses subcontractors, for a subcontract price adjustment due to the annual adjustment in the Executive Order minimum wage.

There is no significant impact on small entities imposed by the FAR rule.

Item VII—Technical Amendment

Editorial change is made at FAR 1.106.

Dated: November 20, 2015.

William Clark,

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

Federal Acquisition Circular (FAC) 2005–85 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 2005–85 is effective December 4, 2015 except for item I and III which are

effective February 26, 2016, and item V which is effective January 4, 2016.

Dated: November 23, 2015.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy.

Dated: November 24, 2015.

Jeffrey A. Koses,

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

Dated: November 20, 2015.

William P. McNally,

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

[FR Doc. 2015–30455 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 4, 9, 12, and 52**

[FAC 2005–85; FAR Case 2015–011; Item No. I; Docket No. 2015–0011; Sequence No. 1]

RIN 9000–AN05

Federal Acquisition Regulation: Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction

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

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

DATES: *Effective date:* February 26, 2016.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 2, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–85, FAR Case 2015–011, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015–011". Select the link "Comment Now" that corresponds with "FAR Case 2015–011". Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015–011" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAC 2005–85, FAR Case 2015–011, Prohibition on Contracting with Corporation with Delinquent Taxes or a Felony Conviction, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three Days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–011.

SUPPLEMENTARY INFORMATION:**I. Background**

This interim rule amends the FAR to implement sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and section 523 of Division B of the same act.

A. Representation

This rule requires that all offerors responding to Federal solicitations make a representation regarding whether the offeror is a corporation with a delinquent tax liability or a felony conviction under Federal law, as required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts).

When an offeror provides an affirmative response in paragraph (b)(1) or (2) to the representation, the contracting officer is required to request additional information from the offeror and notify the agency official responsible for initiating debarment or suspension action. The contracting officer shall not make an award to the corporation unless an agency suspending or debarment official has considered suspension or debarment of the corporation and determined that this further action is not necessary to protect the interests of the Government.

B. Certification

This rule also adds a certification requirement regarding tax matters, in solicitations for which the resultant contract (including options) may have a value greater than \$5,000,000, and that will use funds made available by Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts).

Agencies funded by these acts include the Department of Commerce, the Department of Justice, NASA, as well as some smaller agencies.

If the certification regarding tax matters is applicable, then the contracting officer shall not award any contract in an amount greater than \$5,000,000, unless the offeror affirmatively certified in its offer to all the required certifications regarding tax matters in FAR Clause 52.209–12(b).

This certification will not be included in the annual representations and certifications, because it has very limited application. In accordance with 41 U.S.C. 1304, the certification included in this regulation is specifically required by statute, and therefore its inclusion in the FAR does not require the written approval of the Administrator for Federal Procurement Policy.

C. Applicability to Commercial Items (Including Commercially Available Off-the-Shelf (COTS) Items) and Acquisitions Not Greater Than the Simplified Acquisition Threshold

This interim rule implements sections 744 and 745 of Division E, Title VII, and section 523 of Division B, Title V, of the Consolidated and Further Continuing Appropriations Act, 2015. Sections 744 and 745 of Division E prohibit any Federal agency from using funds appropriated or otherwise made available by the Act or any other act to enter into a contract with a corporation that has delinquent unpaid taxes or has been convicted of a felony criminal

violation under any Federal law within the past 24 months, unless the Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the government. Section 523 of Division B, which affects Commerce, Justice, NASA, and some smaller agencies, requires certification with regard to violations of certain tax matters.

The FAR Council and the Administrator for Federal Procurement Policy have determined that it is not in the best interest of the United States to exempt contracts for the acquisition of commercial items (including commercially available off-the-shelf items) or acquisitions in amounts not greater than the simplified acquisition threshold (other than the certification requirement), because it imposes a minimal burden (just a representation or, in limited instances, a certification), in contrast to the benefit of avoiding awarding contracts to corporations that have delinquent unpaid taxes, or felony convictions for violations of Federal Law, or to prospective contractors with other violations relating to Federal tax matters. Tax liability is a serious matter and Congressional hearings (*e.g.*, the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate, held a hearing on May 24, 2011, entitled, “Stimulus Contractors Who Cheat On Their Taxes: What Happened?,” and the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives held a hearing on April 19, 2007, also concerning Federal contractors who abuse the Federal tax system) have been held to identify ways to ensure that funds are not spent with contractors with tax delinquencies. It is in the interest of the United States to only award contracts to entities that are responsible and law-abiding.

This determination is consistent with the current coverage in paragraph (h)(4) of the FAR clause at 52.212–3, Offeror Representations and Certifications—Commercial Items, which requires offerors to represent whether they have, within a three-year period preceding their offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

II. 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was 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.

III. Regulatory Flexibility Act

Although DoD, GSA, and NASA do not expect that this change will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This action is necessary to implement sections 744 and 745 of Division E of the Consolidated and Continuing Further Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts), to prohibit using any of the funds made available under that or any other act to enter a contract with any corporation with any delinquent Federal tax liability or a felony conviction, unless an agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

The rule also implements section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts). This section prohibits the award of any contract in an amount greater than \$5,000,000, using funds appropriated under Division B of the Consolidated and Continuing Further Appropriations Act, 2015, unless the offeror affirmatively certifies that it has filed all Federal tax returns required during the three years preceding the certification; has not been convicted of a criminal offense under the Internal Revenue Code of 1986; and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

The objective of the interim rule is to prohibit award to entities that are delinquent in the payment of Federal taxes or have been convicted of a felony under Federal law. The

legal basis for the rule is the above cited statutes.

Based on current data with regard to active registrants in the System for Award Management (SAM), the rule will apply to approximately 65,000 small business concerns, which are required to complete the annual representations and certifications at least once per year in order to keep their registration in SAM current.

The information collection requirement imposed by this rule is minimal—it is a brief representation, and in some cases also a certification. Each representation is estimated to require an average of six minutes to complete.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any significant alternatives that would reduce the impact on small businesses and still meet the objectives of the statute. However, other than the potential for not receiving award if the small entity is delinquent in payment of Federal taxes or has been convicted of a felony, there is no significant economic impact on small entities because the information collection burden imposed by the rule is minimal.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–011), in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has cleared this information collection requirement under OMB Control Number 9000–0193, titled: Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction.

A. Public Reporting Burden

The public reporting burden for this collection of information is estimated to average .1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

1. 52.209–11 Representation

The annual reporting burden for 52.209–11 is estimated as follows:

Respondents: 352,000.
Responses per respondent: Approximately 1.01.
Total annual responses: 355,520.
Preparation hours per response: .1 hours.
Total response Burden Hours: 35,552.

2. 52.209–12 Certification

The annual reporting burden for 52.209–12 is estimated as follows:
Respondents: 440.
Responses per respondent: 3.
Total annual responses: 1,320.
Preparation hours per response: .1 hours.
Total response Burden Hours: 132.

3. Total

The average annual reporting burden is estimated as follows:
Total annual responses: 356,840.
Preparation hours per response: .1 hours.
Total response Burden Hours: 35,684.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than February 2, 2016 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. Please cite OMB Control Number 9000–0193, Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction, in all correspondence.

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because these appropriations act restrictions apply to all funds appropriated under the respective acts, and it is important to provide immediate direction to contracting officers, so that they do not inadvertently violate the conditions placed upon the expenditure of the funds. The effective date is set as February 26, 2016, to allow the Government to conform its procurement databases. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 9, 12, and 52

Government procurement.

Dated: November 20, 2015.

William F. Clark,

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

Therefore, DoD, GSA and NASA amend 48 CFR parts 1, 4, 9, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 9, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text by adding, in sequence, FAR segments “52.209–11” and “52.209–12” and their corresponding OMB Control number “9000–0193”.

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.1202 by redesignating paragraphs (a)(8) through (29) as paragraphs (a)(9) through (30), respectively; and adding a new paragraph (a)(8) to read as follows:

4.1202 Solicitation provision and contract clause.

(a) * * *

(8) 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

PART 9—CONTRACTOR QUALIFICATIONS

■ 4. Amend section 9.104–5 by revising the section heading and paragraph (b) and adding paragraphs (c) and (d) to read as follows:

9.104–5 Representation and certifications regarding responsibility matters.

(b) The provision at 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, implements sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) (and similar provisions in subsequent appropriations acts). When an offeror provides an affirmative response in paragraph (b)(1) or (2) of the provision at 52.209–11 or paragraph (q)(2)(i) or (ii) of provision 52.212–3, the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror’s responsibility to the contracting officer (but see 9.405);

(2) Notify, in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action; and

(3) Not award to the corporation unless an agency suspending or debarment official has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

(c) If the provision at 52.209–12, Certification Regarding Tax Matters, is applicable (see 9.104–7(e)), then the contracting officer shall not award any contract in an amount greater than \$5,000,000, unless the offeror affirmatively certified in its offer, as required by paragraph (b)(1), (2), and (3) of the provision.

(d) Offerors who do not furnish the representation or certifications or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the representation or certifications or such information may render the offeror nonresponsible.

■ 5. Amend section 9.104–7 by adding paragraphs (d) and (e) to read as follows:

9.104–7 Solicitation provisions and contract clauses.

(d) The contracting officer shall insert the provision 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, in all solicitations.

(e) For agencies receiving funds subject to section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and similar provisions in subsequent appropriations acts, the contracting officer shall insert the provision 52.209–12, Certification Regarding Tax Matters, in solicitations for which the resultant contract (including options) may have a value greater than \$5,000,000. Division B of the Consolidated and Continuing Further Appropriations Act, 2015 appropriates funds for the following agencies: The Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the Office of Science and Technology Policy, the National Science Foundation, the Commission on Civil Rights, the Equal Employment Opportunity Commission, the U.S. International Trade Commission, the Legal Services Corporation, the Marine Mammal Commission, the Office of the United States Trade Representative, and the State Justice Institute.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 6. Amend section 12.301 by redesignating paragraphs (d)(4) through (6) as paragraphs (d)(5) through (7), respectively, and adding a new paragraph (d)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(d) * * *

(4) Insert the provision at 52.209–12, Certification Regarding Tax Matters, as prescribed at 9.104–7(e).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 7. Amend section 52.204–8 by—
■ a. Revising the date of the provision;
■ b. Redesignating paragraphs (c)(1)(vii) through (xxi) as (c)(1)(viii) through (xxii), respectively; and
■ c. Adding a new paragraph (c)(1)(vii).

The revision and addition read as follows:

52.204–8 Annual Representations and Certifications.

Annual Representations and Certifications (Feb 2016)

(c)(1) * * *

(vii) 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

■ 8. Add sections 52.209–11 and 52.209–12 to read as follows:

52.209–11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

As prescribed in 9.104–7(d), insert the following provision:

Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (Feb 2016)

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is [] is not [] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is [] is not [] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

52.209–12 Certification Regarding Tax Matters.

As prescribed in 9.104–7(e), insert the following provision:

Certification Regarding Tax Matters (Feb 2016)

(a) This provision implements section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), and similar provisions, if contained in subsequent appropriations acts.

(b) If the Offeror is proposing a total contract price that will exceed \$5,000,000 (including options), the Offeror shall certify that, to the best of its knowledge and belief, it—

(1) Has [] filed all Federal tax returns required during the three years preceding the certification;

(2) Has not [] been convicted of a criminal offense under the Internal Revenue Code of 1986; and

(3) Has not [], more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

(End of provision)

- 9. Amend section 52.212–3 by—
- a. Revising the date of the provision;
- b. Removing from the introductory text and the first undesignated paragraph in paragraph (b)(2) “through p” and adding “though q” in their places, respectively; and
- c. Adding paragraph (q).

The revision and addition read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Feb 2016)

* * * * *

(q) *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.* (1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an

agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is [] is not [] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is [] is not [] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

[FR Doc. 2015–30456 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 22, and 52**

[FAC 2005–85; FAR Case 2015–013; Item II; Docket No. 2015–0013, Sequence No. 1]

RIN 9000–AN01

Federal Acquisition Regulation; Further Amendments to Equal Employment Opportunity

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13672, entitled, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” and a final rule issued by the Department of Labor (DOL).

DATES: *Effective:* December 4, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 80 FR 19504 on April 10, 2015, to implement E.O. 13672, entitled, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” and a final rule issued by the Department of Labor at 41 CFR part 60. One public comment was submitted on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. The respondent had pointed to an error in a clause number in the interim rule publication. The error in FAR 52.213–4 was corrected in a Technical Amendment to Federal Acquisition Circular 2005–82 published in the **Federal Register** at 80 FR 26427 on May 7, 2015; therefore no further change to the interim rule is required.

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 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. 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. 604, *et seq.* The FRFA is summarized as follows:

This rule is necessary to implement Executive Order (E.O.) 13672, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” and a final rule issued by the DOL at 41 CFR part 60, which published in the **Federal Register** at 79 FR 72985 on December 09, 2014.

The interim rule, published on April 10, 2015, provides for a uniform policy to

prohibit discrimination in Federal Government procurement by adding sexual orientation and gender identity to the prohibited bases of discrimination established by E.O. 11246.

No public comments were submitted in response to the initial regulatory flexibility analysis. Therefore, there were no issues to assess and no changes were made to the interim rule.

The rule will apply to all contracts and subcontracts subject to the Equal Opportunity FAR clause 52.222–26, which is prescribed for all contracts over \$10,000 that are not completely exempted. Using Fiscal Year 2013 Federal Procurement Data System and Federal Subcontract Reporting System data it is estimated that awards were made to 168,758 unique small businesses and that subcontracts were awarded to 61,816 unique small businesses. It is noted that there is likely a good measure of overlap between the unique small businesses that receive Federal awards and those that receive subcontract awards resulting in a likely overestimated total of 230,574.

Recordkeeping and reporting requirements involve regulatory familiarization and administrative costs associated with incorporating revised language into policies, instructions, notices to employees, and subcontracts. Other changes made by the rule, such as the prohibition of segregation of facilities are expected to have only minimal cost impacts as they do not require modification or construction of additional facilities, but rather to provide equal access to existing facilities. An analysis of estimated costs of the regulatory changes was prepared for the DOL final rule, which published in the **Federal Register** at 79 FR 72985 on December 09, 2014.

No significant alternatives to the rule were identified that would accomplish the stated objectives of the E.O. and the DOL implementing regulations. Every effort has been made to minimize the burdens imposed.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, the information collection authorization is under the DOL regulations and is assigned OMB Control Number 1250–0009, entitled, “Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors.” This collection under 1250–0009 will be incorporated into 1250–0001 and 1250–0003.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: November 20, 2015.

William Clark,

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

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the **Federal Register** at 80 FR 19504 on April 10, 2015, is adopted as final without change.

[FR Doc. 2015–30457 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005–85; FAR Case 2015–036; Item III; Docket No. 2015–0036, Sequence No. 1]

RIN 9000–AN14

Federal Acquisition Regulation; Updating Federal Contractor Reporting of Veterans’ Employment

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

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a final rule issued by the Department of Labor’s (DOL) Veterans’ Employment and Training Service (VETS), which replaced the VETS–100 and VETS–100A Federal Contractor Veterans’ Employment Report forms with the new VETS–4212, Federal Contractor Veterans’ Employment Report form.

DATES: *Effective:* February 26, 2016.

Applicability: This rule applies to (1) solicitations and contracts awarded on or after the effective date; and (2) modifications on or after the effective date to existing contracts, if the contracts are otherwise being modified.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 2, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–85, FAR Case

2015–036, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2015–036” Select the link “Comment Now” that corresponds with “FAR Case 2015–036”. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2015–036” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–85, FAR Case 2015–036, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–036.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement a final rule issued by VETS of the DOL that was published in the **Federal Register** at 79 FR 57463 on September 25, 2014, which rescinded the regulations at 41 CFR part 61–250 and revised the regulations at 41 CFR part 61–300, which implemented the reporting requirements under the Vietnam Era Veterans’ Readjustment Assistance Act, as amended (VEVRAA) and the Jobs for Veterans Act (JVA) (Pub. L. 107–288). VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. One of the main purposes of the DOL’s rule was to revise the reporting requirement applicable to Government and

subcontracts over the simplified acquisition threshold by changing the manner in which Federal contractors report on their employment of veterans. DOL's final rule changed the name of the annual report required under those regulations to the Federal Contractor Veterans' Employment Report VETS-4212. Additionally, the FAR rule incorporates the revisions to certain definitions, the text of the reporting requirements clause included in Government contracts and subcontracts, and the methods of filing the annual report on veterans' employment covered by the new form. The VETS rule requires contractors and subcontractors to comply with its revised reporting requirements beginning with the annual report filed in 2015.

II. Discussion and Analysis

A. The VETS rule accomplished a number of revisions to the VEVRAA implementing regulations including the following:

1. Rescinded the regulations at 41 CFR part 61-250 that prescribed the reporting requirements applicable to Government contracts and subcontracts entered into before December 1, 2003 because those regulations were obsolete.

2. Changed the manner in which Federal contractors report on their employment of veterans. The previous VETS-100 and VETS-100A Reports did not ask contractors to provide the total number of protected veterans in their workforces nor who were hired during the reporting period. VETS found it would be preferable for contractors to report the total number of protected veterans employed and hired rather than the total number of veterans protected under each job category. Such data better assists contractors in complying with their affirmative action obligations under VEVRAA and in monitoring the success of their recruitment and outreach efforts to attract protected veterans. Accordingly, VETS revised the manner in which employment and hiring of protected veterans is reported.

3. Updated definitions. A previous rulemaking by DOL's Office of Federal Contract Compliance Programs (OFCCP) that was published in the **Federal Register** at 78 FR 58614 on September 24, 2013, updated the requirements pertaining to affirmative action and nondiscrimination obligations of contractors and subcontractors regarding special disabled veterans, veterans of the Vietnam Era, disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and armed forces service medal veterans. The OFCCP rule

updated appropriate terms for protected categories of veterans by defining "active duty wartime or campaign badge veteran" and "protected veteran" and rendering obsolete the term "other protected veteran". A prior FAR rule that implemented the OFCCP rule that was published in the **Federal Register** at 79 FR 43575 on July 25, 2014, adopted these updated terms at FAR 22.1301, Definitions, and in the FAR subpart 22.13 prescribed clauses at 52.222-35, Equal Opportunity for Veterans, and 52.222-37, Employment Reports on Veterans. The VETS rule has adopted the updated terms from the OFCCP rule and has made conforming revisions.

4. Renamed the required annual report the "Federal Contractor Veterans' Employment Report VETS-4212" and updated methods of filing the report.

B. Following are the revisions required to the FAR text that implements the VEVRAA reporting requirements, as amended, in FAR subpart 22.13, the clause at 52.222-37, Employment Reports on Veterans, and related clauses:

1. FAR 22.1300, Scope of subpart. Removes the reference to the rescinded regulation at 41 CFR part 61-250.

2. FAR 22.1302, Policy; 22.1303, Applicability; 22.1304, Procedures; and 22.1306, Department of Labor notices and reports. Updates the title of the report from VETS-100 or VETS-100A to VETS-4212 in FAR 22.1302 through FAR 22.1304. Additionally, updates terms, instructional language, and internet links in FAR 22.1304 and 22.1306.

3. FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Updates the currency of clause dates.

4. FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). Updates the currency of clause dates.

5. FAR 52.222-37, Employment Reports on Veterans. Revises language in the clause to alphabetically order terms and conform to terms defined in FAR 22.1301, and provides updated instructional language and internet links.

6. FAR 52.222-38, Compliance with Veterans' Employment Reporting Requirements. Updates language and the VETS-4212 form number.

7. FAR 52.244-6, Subcontracts for Commercial Items. Updates the currency of clause dates.

C. This interim rule updates the OMB Control Numbers in FAR 1.106, OMB approval under the Paperwork Reduction Act. The information collections imposed by VEVRAA as

amended, and the VEVRAA reporting requirements are managed by Department of Labor's Office of Federal Contract Compliance Programs and VETS and are cited in the FAR.

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 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. Regulatory Flexibility Act

The change is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This interim rule is being issued to implement changes to 41 CFR parts 61-250 and 61-300 that were published in the **Federal Register** at 79 FR 57463 on September 25, 2014, by the Veterans' Employment and Training Service (VETS) of the Department of Labor (DOL).

The VETS rule revises the current regulations implementing 38 U.S.C. 4212. The VETS rule rescinded obsolete regulations at 41 CFR part 61-250, changed the manner in which Federal contractors report veterans' employment data, updated terminology, and revised the annual report, the report name, and methods of filing the report.

VETS used data in the VETS-100/100A Reporting System regarding reports on veterans' employment filed in 2012 to estimate the number of small entities that would be subject to its rule. The VETS rule applies to any industry represented by a Federal contractor with a contract of \$100,000 or more. Therefore, VETS used the Small Business Administration's "fewer than 500 employees" limit when making an across-the-board size standard classification for estimating purposes. VETS estimated that 15,000 Federal contractors will be subject to the reporting requirements of the rule and of that, VETS approximated that the number of small entities that would be subject to the rule would be 8,000 (approximately 53 percent of the total Federal contractors impacted by the rule).

This FAR rule does not add any new reporting, recordkeeping, or other

compliance burdens. The FAR rule makes contracting officers and contractors aware of the VETS reporting requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA are not aware of any significant alternatives to the rule which would accomplish the stated objectives of implementing the VETS final rule, while minimizing impact on small entities. DoD, GSA, and NASA do not have the flexibility of making any changes to the VETS rule, which has already been published for public comment and has taken effect as a final rule. There is no significant impact on small entities imposed by the FAR rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–036), in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* However, the applicable information collections are derived from the requirements of the 41 CFR part 61–300 regulations implementing the reporting requirements under VEVRAA; see detailed discussion in DOL’s rule under the Paperwork Reduction Act section which was published in the **Federal Register** at 79 FR 57463 on September 25, 2014. OMB assigned OMB Control Numbers 1250–0004, OFCCP Recordkeeping and Reporting Requirements, 38 U.S.C. 4212, Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, and 1293–0005, Federal Contractor Veterans’ Employment Report.

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space

Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary as the effective date of the VETS final rule was October 27, 2014. Contractors and subcontractors are required to comply with the new reporting requirements beginning with their annual report filed in 2015, which for some contractors and subcontractors is after September 30, 2015. Any further delays in implementing this rule may impact contractors’ and subcontractors’ ability to comply with the new reporting requirements. The effective date is set as February 26, 2016, to allow the Government to conform its procurement database. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: November 20, 2015.

William Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

- 2. Amend section 1.106 in the table following the introductory text, by—
- a. Removing FAR Segment “22.13” and its corresponding OMB Control Number “1293–0005 and 1250–0004”;
- b. Removing FAR Segment “52.222–37” and its corresponding OMB Control Number “1293–0005”; and
- c. Adding, in numerical sequence, FAR segments “52.222–37” and “52.222–38” and their corresponding OMB Control Numbers “1250–0004 and 1293–0005” in their places, respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

- 3. Amend section 22.1300 by revising paragraph (e) to read as follows:

22.1300 Scope of subpart.

* * * * *

(e) The regulations of the Secretary of Labor (41 CFR parts 60–300 and 61–300).

- 4. Amend section 22.1302 by revising paragraph (b) to read as follows.

22.1302 Policy.

* * * * *

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted the required annual VETS–4212, Federal Contractor Veterans’ Employment Report (VETS–4212 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 [Amended]

- 5. Amend section 22.1303 by removing from paragraph (c) “VETS–100A” and adding “VETS–4212” in its place.

- 6. Revise section 22.1304 to read as follows.

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS–4212 Report, the contracting officer may—

(a) Query the Department of Labor’s VETS–4212 Database via the Internet at <http://www.dol.gov/vets/vets4212.htm> under “Filing Verification”; and

(b) Contact the VETS–4212 customer support via email at VETS-4212-customersupport@dol.gov for confirmation, if the proposed contractor represents that it has submitted the VETS–4212 Report and is not listed on the verification file.

- 7. Amend section 22.1306 by revising paragraph (b) to read as follows.

22.1306 Department of Labor notices and reports.

* * * * *

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans, unless all of the terms of the clause at 52.222–35, Equal Opportunity for Veterans, have been waived see

22.1305). The contractor and subcontractor must file VETS-4212, Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.212-5 by revising the date of the clause and paragraphs (b)(31) and (e)(1)(viii) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (FEB 2016)

* * * * *

(b) * * *

(31) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

* * * * *

(e)(1) * * *

(viii) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

* * * * *

■ 9. Amend section 52.213-4 by revising the date of clause and paragraphs (a)(2)(viii) and (b)(1)(vi) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (FEB 2016)

(a) * * *

(2) * * *

(viii) 52.244-6, Subcontracts for Commercial Items (FEB 2016).

* * * * *

(b) * * *

(1) * * *

(vi) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212) (Applies to contracts of \$150,000 or more).

* * * * *

■ 10. Amend section 52.222-37 by—

■ a. Revising the date of the clause;

■ b. Revising paragraphs (a), (b)(1), (b)(2), and (c);

■ c. Removing from paragraph (d) "submit VETS-100A" and adding "file VETS-4212" in its place; and

■ d. Removing from paragraph (f) "VETS-100A" and adding "VETS-4212" in its place.

The revisions read as follows.

52.222-37 Employment Reports on Veterans.

* * * * *

Employment Reports on Veterans (FEB 2016)

(a) *Definitions.* As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) * * *

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

* * * * *

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

* * * * *

■ 11. Amend section 52.222-38 by revising the date of the provision and removing from the last sentence "submitted the most recent VETS-100A" and adding "filed the most recent VETS-4212" in its place.

The revision reads as follows.

52.222-38 Compliance With Veterans' Employment Reporting Requirements.

* * * * *

Compliance With Veterans' Employment Reporting Requirements (FEB 2016)

* * * * *

■ 12. Amend section 52.244-6 by revising the date of the clause and paragraph (c)(1)(viii) to read as follows.

52.244-6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (FEB 2016)

* * * * *

(c)(1) * * *

(viii) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

* * * * *

[FR Doc. 2015-30458 Filed 12-3-15; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 2005-85; FAR Case 2013-015; Item IV; Docket 2013-0015, Sequence 1]

RIN 9000-AM56

Federal Acquisition Regulation; Pilot Program for Enhancement of Contractor Employee Whistleblower Protections

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a statutory pilot program enhancing whistleblower protections for contractor employees.

DATES: *Effective:* December 4, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-85, FAR Case 2013-015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 78 FR 60169 on September 30, 2013, to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections," of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013).

Paragraph (a) of section 828 adds to title 41 a new section 4712 that contains the elements of the pilot program, which took effect by operation of law on July 1, 2013, and is effective through January 1, 2017. Paragraph (c) of section 828 suspends the pre-existing whistleblower protections in 41 U.S.C. 4705 "(w)hile section 4712 of this title is in effect . . ." (*i.e.*, from July 1, 2013 through January 1, 2017). Accordingly,

the interim rule created a new FAR section 3.908 to implement section 4712. The rule leaves intact FAR sections 3.901 through 3.906, which implement the pre-existing whistleblower protections in 41 U.S.C. 4705, but suspends their applicability during the period when the pilot is in effect. Absent Congressional action, these authorities will automatically be reinstated when the pilot authority sunsets.

The interim rule also clarified that the pilot authority applies to title 41 agencies and is inapplicable to DoD, NASA, and the Coast Guard. The latter three agencies are covered by 10 U.S.C. 2409, which was amended by section 827 of the NDAA to impose permanent requirements very similar to the temporary requirements of the pilot program established in title 41.

Section 4712 and its implementing regulations (1) protect contractor or subcontractor employees against reprisal for activities protected by FAR 3.908–3(a) and (2) do not change any right or remedy otherwise available to the employee.

FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, was unaffected by this rule.

One respondent submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the response received in development of the final rule.

Only one response was received. A discussion of the response is provided as follows:

Comment: The respondent stated that FAR 3.908 “violates a core tenet of any legitimate law by failing to include any due process rights for the accused,” but notes also that the statute contains no due process rights for the accused. The respondent urges revision of the interim rule to reactivate current FAR 3.905 during the pilot program.

Response: The interim rule provides at FAR 3.908–5 that investigation of complaints by the Inspector General will be in accordance with 41 U.S.C. 4712(b).

In general, FAR 3.905 is based on 41 U.S.C. 4705. Paragraph (c) of section 828 of the National Defense Authorization Act for Fiscal Year 2013, upon which this rule is based, suspends the pre-existing whistleblower protections in 41 U.S.C. 4705 “(w)hile section 4712 of this title is in effect . . .” However, the additional due process rights in current FAR 3.905(c), (d) and (e) were not based

on 41 U.S.C. 4705, and have been incorporated in the final rule at 3.908–5(b), (c), and (d).

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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was 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. 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:

The interim rule, upon which the final rule is issued with change, was initiated to amend the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). The law establishes a pilot program for the period ending on January 1, 2017. Based on a reading of 41 U.S.C. 3101(c) and sections 827 and 828 of the NDAA for FY 2013, the pilot program will apply to all Federal agencies except DoD, NASA, and the Coast Guard. Except for contracts funded under the American Recovery and Reinvestment Act of 2009 (see 3.907), the current protections for contractor whistleblowers are established in law at 41 U.S.C. 4705; paragraph (c) of section 828 suspends 41 U.S.C. 4705 “(w)hile section 4712 of this title is in effect . . .” Paragraph (a) of section 828 adds the new section 4712 to title 41 that contains the elements of the pilot program and is effective until January 1, 2017.

With the exception of DoD, NASA, and the Coast Guard, as well as any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)), the pilot program applies to the employees of Government contractors and their subcontractors. DoD, GSA, and NASA do not expect the pilot program, which applies to the majority of entities doing business with the Government

regardless of business size, to have a significant economic impact specific to small entities. The following information is provided as a means of estimating the overall numbers of entities to which the rule will apply. Based on Federal Procurement Data System reporting data, in Fiscal Year 2012, a Government-wide total of 273,970 new awards that exceeded the simplified acquisition threshold were made to small businesses and other than small businesses by agencies other than DoD, NASA, and the Coast Guard. Of that total, 95,436 new award actions were made to small business entities. The remaining 178,534 award actions were made to other than small businesses.

A new contract clause is provided for the pilot program, in accordance with paragraph (d) of section 4712. The clause informs offerors that employees working on any contract awarded are subject to the whistleblower rights and remedies of the pilot program and requires the contractor (and its subcontractors), regardless of business size, to inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712.

There is no requirement for small entities to submit any information under this clause. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subject in 48 CFR Parts 3 and 52

Government procurement.

Dated: November 20, 2015.

William Clark,

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

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 3 and 52, which was published in the **Federal Register** at 78 FR 60169 on September 30, 2013, is adopted as final with the following changes:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 1. The authority citation for 48 CFR part 3 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Revise section 3.908–5 to read as follows.

3.908–5 Procedures for investigating complaints.

(a) Investigation of complaints will be in accordance with 41 U.S.C. 4712(b).

(b) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

(c) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(d) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

■ 3. Revise the section heading for section to read as follows:

3.908–6 Remedies.

* * * * *

[FR Doc. 2015–30459 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 4

[FAC 2005–85; FAR Case 2015–009; Item V; Docket No. 2015–0009, Sequence No. 1]

RIN 9000–AN12

**Federal Acquisition Regulation;
Retention Periods**

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 issuing a final rule amending the Federal Acquisition Regulation (FAR) to update the Government contract file retention periods to conform with the retention periods in the National

Archives and Records Administration (NARA) General Records Schedule.

DATES: *Effective:* January 4, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule to update the Government file retention periods identified at FAR 4.805, Government contract files, to conform with the retention periods in the revised NARA General Records Schedule (GRS) 1.1, Financial Management and Reporting Records notice, which was published in the **Federal Register** at 79 FR 54747 on September 12, 2014. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>.

NARA has undertaken a 5-year project to redraft the entire GRS to reflect the realities of current Government business practices and make it more useful in a world where almost all record keeping is electronic. NARA is charged with oversight of how all records of the Federal Government are managed and retained for business use and historical research. Its research on writing a new schedule for Financial Management and Reporting Records (GRS 1.1) was carried out under that authority.

NARA's research has shown that many agencies believe the break between procurements over and under the simplified acquisition threshold (6 years, 3 months versus 3 years retention) is no longer useful to them. NARA polled records management personnel at numerous agencies regarding records created in largely electronic acquisition systems. It also examined and tallied statistics regarding some 675,000 boxes of hard-copy records stored in the Federal Records Center system. As such, NARA eliminated the distinction between over and under the simplified acquisition threshold for purposes of record keeping and unified all retention under a single figure of 6 years under GRS 1.1, item 010.

The retention periods for Government contract records at FAR section 4.805 is changed to conform to the revised NARA GRS 1.1, as follows:

- Language at paragraph (a) regarding agency procedures for contract file disposal is removed.

- Language at paragraph (b) regarding retention periods for acquisitions conducted prior to July 3, 1995 is removed.

- Language is added at a new paragraph (c) to require agencies to request approval from NARA through the agency's records officer if a shorter retention is needed.

- In the Table at 4–1:

- The retention period identified for records related to Contract Disputes statute actions is removed; the requirement is covered by paragraphs numbered (1) and (8).

- The retention period for all contracts and related records is changed to 6 years after final payment.

- The retention period for unsolicited proposals not accepted by the agency is changed to be in accordance with agency procedures.

II. Publication of This Final Rule for Public Comment is Not Required By Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only changes the retention periods for Government contract files. These requirements affect only the internal operating procedures of the Government.

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 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. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subject in 48 CFR Part 4

Government procurement.
Dated: November 20, 2015.

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Revise section 4.805 to read as follows.

4.805 Storage, handling, and contract files.

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files, in accordance with the National Archives and Records Administration (NARA) General Records Schedule 1.1, Financial Management and Reporting Records. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic

images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. When original documents have been converted to alternate media for storage, the requirements in Table 4-1 of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part.

(c) An agency that requires a shorter retention period than those identified in Table 4-1 shall request approval from NARA through the agency's records officer.

TABLE 4-1—RETENTION PERIODS

Record	Retention period
(1) Contracts (and related records or documents, including successful and unsuccessful proposals, except see paragraph (c)(2) of this section regarding contractor payrolls submitted under construction contracts).	6 years after final payment.
(2) Contractor's payrolls submitted under construction contracts in accordance with Department of Labor regulations (29 CFR 5.5(a)(3)), with related certifications, anti-kickback affidavits, and other related records.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date (see paragraph (c)(8) of this section).
(3) Unsolicited proposals not accepted by a department or agency	Retain in accordance with agency procedures.
(4) Files for canceled solicitations	6 years after cancellation.
(5) Other copies of procurement file records used for administrative purposes.	When business use ceases.
(6) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(7) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements exceeding the micro-purchase threshold, and information required under 4.603.	6 years after submittal to FPDS.
(8) Investigations, cases pending or in litigation (including protests), or similar matters (including enforcement actions).	Until final clearance or settlement, or, if related to a document identified in paragraphs (c)(1) through (7) of this section, for the retention period specified for the related document, whichever is later.

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 22, and 52**

[FAC 2005–85; FAR Case 2015–003; Item VI; Docket No. 2014–0050; Sequence No. 1]

RIN 9000–AM82

**Federal Acquisition Regulation:
Establishing a Minimum Wage for
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 have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order (E.O.) Establishing a Minimum Wage for Contractors, and a final rule issued by the Department of Labor (DOL).

DATES: *Effective:* December 4, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–85, FAR Case 2015–003.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 79 FR 74544 on December 15, 2014, to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, and a final rule issued by DOL at 29 CFR part 10. A correction to the interim rule was published at 79 FR 75434 on December 18, 2014 establishing the rule's effective date as December 15, 2014. For a discussion of the FAR implementation of the E.O., see the interim rule. One respondent submitted a public comment on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment submitted in the development of the final rule. A discussion of the comment follows.

A. Changes

The interim rule is converted to a final rule with only minor changes.

B. Analysis of Public Comment

One respondent submitted one comment.

Comment: Although the respondent was generally supportive of the intent of the E.O. raising the minimum wage for workers performing on or in connection with Federal contracts, the respondent expressed deep concern that the E.O. and the implementing FAR rule will have a negative impact on the employment of individuals with significant disabilities, specifically those who earn commensurate wages under special subminimum wage certificates issued by DOL pursuant to Section 14(c) of the Fair Labor Standards Act (FLSA). The respondent suggested a number of actions that the Federal Government could take to mitigate unintended consequences of the rule:

1. Provide adequate funding to ensure no workers with disabilities lose their jobs as a result of wage increases required by the rule.

2. Compile data regarding the number of such individuals displaced from employment or shifted to non-Federal contract work as a result of the rule.

3. Allow contractors to request a price adjustment for these individuals based on the difference between the current wage paid and the higher E.O. minimum wage, and provide an example of such a price adjustment in the rule.

Response: Executive Order 13658 expressly provides that its minimum wage protections extend to workers with disabilities whose wages are governed pursuant to special certificates issued under Section 14(c) of the FLSA. The Councils appreciate the concerns raised by this respondent regarding the potential loss of employment that could result from requiring that the E.O. minimum wage be paid to FLSA Section 14(c) workers, particularly workers with significant disabilities, performing on or in connection with covered contracts who are currently paid a lower commensurate wage rate. The Councils do not have the discretion to adjust the rule, as the rule implements the E.O. and the DOL implementing regulation, which both specifically require application of the rule to workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

With regard to the respondent's suggestions for mitigating negative impacts—

1. The E.O. did not provide for appropriation of funds to ensure that no workers with disabilities lose their jobs;

2. The E.O. did not require information or data collection methods in order to evaluate the rule's effects; therefore, this suggestion is beyond the scope of the E.O., and outside the implementation of the FAR rule; and

3. When contracts become subject to the E.O., the minimum wage is considered in the contract price either through the offer/bid process when an offeror is responding to a solicitation or, in the case of a modification, through appropriate consideration, in accordance with FAR conventions (see FAR 1.108(d)(3)), therefore explicit price adjustment language is not necessary. However, the rule does provide that contractors may request price adjustments for any worker based on an increase in labor costs resulting from the annual inflation increases in the E.O. minimum wage beginning January 1, 2016. This is depicted in the table at FAR 22.1904(b)(2). The Councils have revised the language at FAR paragraph 22.1904(b)(2) and in the table to specify that service or construction wage determination rates should only be considered if they are applicable to the worker. The revised language recognizes that workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) may not have been paid the full applicable service wage determination rate.

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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant rule and, therefore, 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. 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:

This rule is needed to implement Executive Order (E.O.) 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and associated Department of Labor (DOL) regulatory requirements at 29 CFR part 10.

The interim rule published December 15, 2014 (and correction published December 18, 2014) established requirements for contractors with covered contracts containing the FAR clauses at 52.222–6, Construction Wage Rate Requirements, or 52.222–41, Service Contract Labor Standards, *i.e.*, “covered contracts,” to pay no less than the applicable E.O. minimum wage to workers for all hours worked on or in connection with a covered contract. Contractors must also include a minimum wage contract clause in covered subcontracts and require covered subcontractors to include the substance of the clause in covered lower-tier contracts.

The objective of this rule is to implement the above referenced E.O. and DOL requirements. To accomplish this implementation, the interim rule established a new FAR clause, 52.222–55, Minimum Wages Under Executive Order 13658, and mandated its inclusion in all covered contracts (and in subcontracts as indicated above) performed wholly, or in part, in the United States.

No public comments were submitted in response to the initial regulatory flexibility analysis. Therefore, there were no issues to assess, and no changes to the rule were necessary.

This rule applies to new 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. When performance is in part within and in part outside the United States, the rule applies to the part of the contract or subcontract performed within the United States.

The rule applies to workers as defined at FAR 22.1901. As provided in that definition—

- Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the individual;
- Workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), are covered; and
- Workers registered in a bona fide apprenticeship program or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

This rule does not apply to—

- Fair Labor Standards Act (FLSA)-covered workers performing in connection with covered contracts, *i.e.*, those workers who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts.

- Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(i) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(ii) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(iii) Individuals employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

Small businesses in the service or construction industry with covered FAR-based contracts or subcontracts for which the solicitation was issued on or after December 15, 2014 are impacted unless an exclusion listed above applies. The rule requires these contractors and subcontractors to raise their workers’ minimum hourly rate to \$10.10 per hour, beginning January 1, 2015, then annually adjust it thereafter, if necessary, based on the annual minimum wage rate determined by DOL.

Data available through the Federal Procurement Data System (FPDS) for Fiscal Year 2013, reveals 16,264 contracts were awarded to unique small business vendors for services which contained the FAR clause at 52.222–41, Labor Standards. Additionally, 5,211 contracts were awarded to unique small business vendors for construction which contained the FAR clause at 52.222–6, Construction Wage Rate Requirements, for a total of 21,475 unique small businesses. Subcontract data is available from the USASpending Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS); however, this system does not distinguish small businesses from other than small businesses. Data for Fiscal Year 2013 shows there were a total of 20,127 subcontracts for services and construction reported, and of those, 5,391 were unique Data Universal Numbering System (DUNS). These 5,391 first tier unique subcontracts are approximately 25 percent of the 21,475 unique contracts. Given that first tier subcontracts account for 25 percent, then for estimating purposes, 20 percent of subcontracts have a second tier, 10 percent of second tier have a third tier, and 5 percent of third tier have a fourth tier. This calculation estimates the total number of subcontracts is 6,631. However, since the FSRS does not distinguish small businesses, this is likely an overestimate.

DOL noted in its final rule (79 FR 60634 at 60691) that the rule did not impose any additional notice or recordkeeping requirements on contractors and therefore, the burden for complying with the recordkeeping requirements was not adjusted. However, DOL submitted a revised information collection request (ICR), to the Office of Management and Budget to revise the existing Information Collection Request for control number 1235–0018 to incorporate the recordkeeping regulatory citations in its final rule.

DOL, in its final rule, estimated the average wage for affected employees is \$8.79; thus, affected firms must raise the hourly wage for affected employees by \$1.31 per hour. Additionally, contractors must adjust related payroll and unemployment taxes and fringe benefits. Under covered contracts, contractors are entitled to recover increases in labor costs resulting from the E.O. minimum wage requirements by including such costs in their offers and when requesting contract price adjustment under existing and future contracts for the additional costs related to the increase in the minimum wage rate for workers performing under the contract. DOL notes increases in economy and efficiency and expects these added costs to be offset by an increase in employee morale and productivity, reduced absenteeism, reduced supervisory costs, and reduced turnover.

To remind contractors of their obligation to ensure that subcontractor workers are paid in compliance with the minimum wage requirement, the following text was included in the FAR clause 52.222–55, Minimum Wages Under Executive Order 13658:

(j) *Subcontractor compliance.* The contractor is responsible for subcontractor compliance with the requirements of this subpart, and may be held liable for unpaid wages due subcontractor’s workers.

The rule provides that subcontractors may be entitled to adjustments due to the new minimum wage and that contractors shall consider any subcontractor(s) requests for such price adjustment (52.222–55(b)(3)(ii)).

The rule does not address late payments to small business subcontractors, however pending FAR case 2014–004 implements section 1334 of the Small Business Jobs and Credit Act of 2010 (Public Law 111–240) and the Small Business Administration’s final rule at 78 FR 42391. The rule will require a contractor to self-report to the contracting officer when the contractor makes late or reduced payments to small business subcontractors.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 1235–0018, Records to be Kept by Employers—Fair Labor Standards Act.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: November 20, 2015.

William F. Clark,

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

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 22 and 52, which was published in the Federal Register at 79 FR 74544 on December 15, 2014, is adopted as final with the following changes:

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Amend section 22.1904 by revising the first two sentences in paragraph (b)(1) and paragraph (b)(2) to read as follows:

22.1904 Annual Executive Order minimum wage rate.

* * * * *

(b)(1) The contractor may request a price adjustment only after the effective date of a new annual E.O. minimum wage determination published pursuant

to paragraph (a). Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors. * * *

(2) The wage rate price adjustment under this clause is the lowest amount calculated by subtracting from the new E.O. wage rate the following: The current E.O. minimum wage rate; the current service or construction wage determination rate under the contract (if the wage rate is applicable to that worker); or the actual wage currently paid the worker. If the amount is zero or below, there will be no increase paid for this worker.

(i) Example 1—New E.O. wage rate is \$11.10

Previous E.O. wage rate is \$10.70
The current service or construction wage determination rate applicable to this worker under the contract is \$10.75.
The actual wage currently paid to the worker is \$10.80.

Analysis: The calculation is \$11.10 - \$10.80 = \$.30. The price adjustment for this worker is \$.30.

(ii) Example 2—New E.O. wage rate is \$10.50

Previous E.O. wage rate is \$10.10
The current service or construction wage determination rate applicable to this worker under the contract is \$10.75.
The actual wage currently paid to the worker is \$10.80.

Analysis: The calculation is \$10.50 - \$10.80 = -\$0.30. There is no price adjustment for this worker.

3. Amend section 22.1905 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

22.1905 Enforcement of Executive Order minimum wage requirements.

(a) * * *

(2) Contracting officers shall withhold payment at the direction of the Administrator.

(3) The contracting officer shall withhold payment, without a request from the Administrator, if the contractor fails to comply with the requirements in paragraph (e)(2) of 52.222-55, Minimum Wages Under Executive Order 13658 to furnish payroll records, until such time as the noncompliance is corrected.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend 52.212-5 by:

- a. Revising the date of the clause;
b. Revising paragraphs (c)(8) and (e)(1)(xv); and
c. In Alternate II, revising paragraph (e)(1)(ii)(N).

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DEC 2015)

* * * * *

(c) * * *

(8) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (E.O. 13658).

* * * * *

(e)(1) * * *

(xv) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (E.O. 13658).

* * * * *

Alternate II * * *

(e)(1) * * *

(ii) * * *

(N) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (E.O. 13658).

* * * * *

5. Amend section 52.213-4 by revising the date of the clause and paragraphs (a)(2)(viii) and (b)(1)(ix) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEC 2015)

(a) * * *

(2) * * *

(viii) 52.244-6, Subcontracts for Commercial Items (DEC 2015).

* * * * *

(b) * * *

(1) * * *

(ix) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (Executive Order 13658) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia)).

* * * * *

6. Amend section 52.222-55—

- a. By revising the date of the clause;
b. In paragraph (a), amending the definition of “worker” by—
1. Adding an em-dash to the end of paragraph (1) introductory text;
2. Removing the comma from the end of paragraph (1)(i) and adding a semicolon in its place; and
3. Removing the comma from the end of paragraph (1)(ii) and adding “; and” in its place;
c. Revising the heading of paragraph (b); and
d. Revising paragraphs (b)(2) and (b)(3)(i).

The revisions read as follows:

52.222-55 Minimum Wages Under Executive Order 13658.

* * * * *

Minimum Wages Under Executive Order 13658 (DEC 2015)

* * * * *

(b) *Executive Order minimum wage rate.* * * *

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the **Federal Register** no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on *www.wdol.gov* (or any successor Web site), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

* * * * *

■ 7. Amend 52.244–6 by revising the date of the clause and paragraph (c)(1)(xi) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (DEC 2015)

* * * * *

(c)(1) * * *

(xi) 52.222–55, Minimum Wages under Executive Order 13658 (DEC 2015).

* * * * *

[FR Doc. 2015–30461 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 2005–85; Item VII; Docket No. 2015–0052; Sequence No. 4]

Federal Acquisition Regulation; Technical Amendment

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

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make an editorial change.

DATES: *Effective:* December 4, 2015.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–85, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update a certain element in 48 CFR part 1 this document makes an editorial change to the FAR.

List of Subject in 48 CFR Part 1

Government procurement.

Dated: November 20, 2015.

William Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 1 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

RULES LISTED IN FAC 2005–85

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text by adding in numerical sequence “52.244–2” and its corresponding OMB Control Number “9000–0149”.

[FR Doc. 2015–30462 Filed 12–3–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–85; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–85, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–85, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: December 4, 2015.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–85 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

Item	Subject	FAR Case	Analyst
* I	Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction (Interim).	2015–011	Davis.

RULES LISTED IN FAC 2005–85—Continued

Item	Subject	FAR Case	Analyst
* II	Further Amendments to Equal Employment Opportunity	2015–013	Loeb.
* III	Updating Federal Contractor Reporting of Veterans' Employment (Interim)	2015–036	Loeb.
* IV	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections	2013–015	Davis.
V	Retention Periods	2015–009	Glover.
* VI	Establishing a Minimum Wage for Contractors	2015–003	Loeb.
VII	Technical Amendment.		

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 2005–85 amends the FAR as follows:

Item I—Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction (FAR Case 2015–011)

This interim rule amends the Federal Acquisition Regulation to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless an agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

This interim rule has no significant impact on the Government and contractors, including small business entities.

Item II—Further Amendments to Equal Employment Opportunity (FAR Case 2015–013)

DoD, GSA, and NASA are issuing a final rule adopting an interim rule published April 10, 2015, without change. The interim rule amended the FAR to implement Executive Order (E.O.) 13672, entitled “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity”. E.O. 13672 was signed July 21, 2014.

E.O. 11246, dated September 24, 1965, established requirements for non-discriminatory practices in hiring and employment for Federal contractors and subcontractors. The bases of discrimination prohibited by E.O. 11246 are race, color, religion, sex, and national origin. E.O. 13672 adds sexual orientation and gender identity to the prohibited bases of discrimination

established by E.O. 11246. There is no significant impact on small entities.

Item III—Updating Federal Contractor Reporting of Veterans' Employment (FAR Case 2015–036)

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement a final rule issued by the Department of Labor's Veterans' Employment and Training Service (VETS) that revised the regulations at 41 CFR part 61 implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA) and the Jobs for Veterans Act (JVA) (Pub. L. 107–288). VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. The VETS rule requires contractors and subcontractors to comply with its revised reporting requirements using the new Form VETS–4212, in lieu of the VETS–100 and VETS–100A, beginning with the annual report filed in 2015.

There is no significant impact on small entities imposed by the FAR rule.

Item IV—Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013–015)

This final rule amends the Federal Acquisition Regulation (FAR) to implement a statutory pilot program enhancing whistleblower protections for contractor employees at FAR subpart 3.9. An interim rule was published September 30, 2013. The interim rule created a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017.

The four-year pilot program is mandated by section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013).

This rule has no significant impact on small business concerns.

Item V—Retention Periods (FAR Case 2015–009)

This final rule amends the Federal Acquisition Regulation (FAR) by updating the Government file retention periods to conform with the retention periods in the National Archives and Records Administration (NARA) General Records Schedule (GRS). Language is also added to instruct agencies that require a shorter retention period for certain records to request approval from NARA through the agency's record officer. This rule change does not place any new requirements on small entities; the only change is the timeframe for retention by the Government of Government records.

Item VI—Establishing a Minimum Wage for Contractors (FAR Case 2015–003)

DoD, GSA, and NASA are issuing a final rule adopting the interim rule published December 15, 2014, with change. The interim rule amended the FAR to implement Executive Order 13658 and a Department of Labor final rule issued on October 7, 2014, both entitled “Establishing a Minimum Wage for Contractors,” which established a new minimum wage for covered service and construction contracts of \$10.10 per hour, as of January 1, 2015. The Executive Order minimum wage will be adjusted annually, by the Department of Labor. Contracting officers will include a clause in covered contracts and will adjust contract prices for the annual adjustments in the Executive Order minimum wage. Contractors shall consider any subcontractor request, including requests by small businesses subcontractors, for a subcontract price adjustment due to the annual adjustment in the Executive Order minimum wage.

There is no significant impact on small entities imposed by the FAR rule.

Item VII—Technical Amendment

Editorial change is made at FAR 1.106.

Dated: November 20, 2015.

William Clark,

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

[FR Doc. 2015-30463 Filed 12-3-15; 8:45 am]

BILLING CODE 6820-EP-P