

FAR COUNCIL PLAN FOR RETROSPECTIVE ANALYSIS OF EXISTING RULES – STATUS UPDATE (December 2012)

Agency and Sub-agency	RIN/OMB Control Number	Title of Initiative/Rule/ICR	Brief Description	Actual or Target Completion Date	Anticipated savings in costs and/or information collection burdens, together with any anticipated changes in benefits	Progress updates and anticipated accomplishments	Notes
1. FAR Council	N/A	Application of new regulatory requirements to commercial item acquisitions & small (simplified) purchases	Review approach taken by the FAR Council to identify whether new laws should be applied to acquisitions for commercial items, including commercially available off-the-shelf (COTS) items and acquisitions valued below the SAT.	Winter/December 2012	<p>Improved economy and efficiency</p> <p>Reduced barriers to entering the federal marketplace</p> <p>Increased small business participation</p>	<p>The FAR Council has been considering ways to better evaluate the burden of new laws to the acquisition of commercial items, COTS, and small purchases, and ways to minimize such burden if laws were to be applied. As part of this effort, the FAR Council will pilot a process where public input on potential burden is solicited early in the rulemaking process (e.g., before a proposed rule is issued) in connection with the implementation of (1) Section 865 of the Ike Skeleton National Defense Authorization Act for fiscal year 2011, Public Law 111-383, which calls for a review of regulations addressing the acquisition</p>	FRN will invite public comment on whether additional guidance is needed on services acquisition.

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						of services, and (2) Executive Order 13627 to strengthen protections against human trafficking in persons in federal contracting.	
2. FAR Council	N/A	Quick pay to small businesses	Explore opportunities to accelerate payments to small businesses	Spring/Summer 2012 - memo/deviation issued Fall/Winter 2012 – the FAR Case may be released	Reduced barriers to entry Increased small business participation	In order to improve cash flow for small businesses and build on OMB Memorandum M-11-32 , which required agencies to accelerate payment to small business prime contractors, OMB issued Policy Memorandum M-12-16 , Providing Prompt Payment to Small Business Subcontractors, on July 11, 2012. This follow-on memorandum requires agencies to temporarily accelerate payment to all prime contractors so they, in turn, can pay their small business subcontractors on an accelerated timetable to the maximum extent practicable. On August 15, 2012, DoD directed its acquisition workforce to begin inserting a clause into its solicitations and contracts to implement the OMB policy. The clause	On July 25, 2012, the FAR Council opened FAR Case 2012-031, Accelerated Payment to Small Business Subcontractors, to incorporate OMB Memorandum M-11-32 and the temporary deviation into the FAR and seek public comment on the clause and related regulatory changes. Publication of the rule in the Federal Register is expected to occur during FY 13, Q1.

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						<p>was issued pursuant to a deviation (a document that gives agencies permission to bypass a particular rule).</p> <p>On August 16, 2012, GSA issued similar guidance to authorize civilian agencies to issue deviations to support their use of the same clause. Agencies are issuing deviations and are incorporating the clauses into their new solicitations and contracts.</p>	
3. FAR Council	N/A	Improved communications with vendors	Review regulatory requirements governing exchanges with industry before contract award to determine if sufficient guidance is included in the FAR about communication with industry.	Winter 2013	<p>Improved economy and efficiency</p> <p>Reduced barriers to entry</p>	<p>OFPP issued a Feb 2, 11 and May 7 12 Memo on Improving Communications</p>	<p>FAR Council is reviewing coverage in FAR 15.201 and 15.306 to assess if there are opportunities to clarify guidance so that agencies take full advantage of flexibilities for enhanced vendor communications.</p>
4. FAR Council	N/A	Reduce number of competitions that result in only one offer	Consider whether tailored regulatory changes might assist agencies in their efforts to	Winter 2013	<p>Reduced exposure to high risk contracting.</p> <p>Better pricing and terms and</p>	<p>The FAR Council is exploring options for reducing the number of competitions resulting in only one offer, which could include clarifying the role</p>	<p>The FAR Council is also reviewing DoD's supplement to the FAR, DFAR rule 2011-D013, addressing one bid</p>

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			increase contractor interest in competitions that have received only one offer.		conditions through improved use of competition	of the competition advocate and/or the use of elevated review and approvals, improved up front analysis of the factors that influence industry bid/no-bid decisions, and improved government outreach and vendor engagement.	(one offer) competition. The comment period closed on Sept 23, 2011, and re-opened until Oct 7, 2011. DoD's final rule was published on Jun 29, 2012.
5. FAR Council	N/A	Revisit process for reviewing past performance information	Consider benefits and drawbacks of eliminating appeals process from past performance policies that currently provide for review of evaluations at a level above the contracting officer.	Winter 2013	Improved economy and efficiency	<p>FAR Case 2012-009, Documenting Contractor Performance will standardize performance evaluations and criteria.</p> <p>FAR Case 2012-028, Contractor Comment Period--Past Performance Evaluations, proposed rule, would reduce the time a contractor has to rebut a performance assessment before the assessment is made available to other agencies in the Past Performance Information Retrieval System.</p>	<p>This rule is out for public comment and comments are due on Nov 5, 2012.</p> <p>This case is under OFPP's review.</p>
6. FAR Council	<p>FAR rule (RIN 9000-AM12)</p> <p>SBA rule (RIN 3245-</p>	Work with SBA to modernize rules of using contract set-asides and			<p>Reduced barriers to entry</p> <p>Increased small business participation</p>	<p>FAR Council issued an interim rule (FAR Case 2011-024, Set Aside for Small Business) on November 2, 2011 to provide agencies with</p>	<p>The White House Small Business Working Group has worked with agencies to ensure they are taking full</p>

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	AG22)	small business subcontracting plans				<p>initial guidance to take advantage of set-aside and reserve authorities provided in section 1331 of the Small Business Jobs Act of 2010 while SBA completes drafting and coordination of its proposed rule. SBA's rule sets forth more complete guidance.</p> <p>The FAR Council also issued a final rule (FAR Case 2011-004 Socioeconomic Program Parity) to clarify that there is no order of precedence among the small business programs.</p> <p>FAR Council issued a final rule (FAR Case 2011-005 Repeal of the Small Business Competitiveness Demonstration Program) implementing section 1331 of the Small Business Jobs Act of 2010, effective on January 2011, to remove the Small Business Competitiveness Demonstration Program from the FAR.</p>	<p>advantage of the FAR interim rule. As part of these efforts, the FAR Council and SBA co-hosted a webinar on August 6, 2012, to outline strategies and success stories for using set-asides in connection with multiple award contracts.</p> <p>The FAR Council is prepared to move forward with additional rulemaking once SBA completes its review of public comment on its proposed implementation of section 1331 and issues a final rule.</p>
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<p>7. FAR Council</p>	<p>Organizational Conflicts of Interest (OCI) (RIN 9000–AL82)</p> <p>Personal Conflicts Of Interests (PCI) (RIN 9000–AL46)</p>	<p>Restructure rules addressing conflicts of interest – OCIs and PCIs</p>	<p>Rulemaking to update OCI coverage (unchanged since 1984) and to implement PCI coverage.</p>	<p>Spring/Fall of 2012 - completed</p> <p>OCI Final Rule (FAR Case 2011-001 – to be issued in Winter 2013</p> <p>Contractor Access to Protected Information Proposed Rule (FAR Case 2012-029) -to be issued in Winter 2013.</p>	<p>Updated OCI coverage and newly-implemented PCI coverage will enhance integrity and business ethics.</p>	<p>OCI- The FAR Council is completing its consideration of public comments on the proposed rule as it seeks to clarify rules for addressing the complex risks associated with OCI in a manner that minimizes burden both for industry and government. As part of its review, the FAR Council has made substantial changes to the proposed coverage regarding contractor access to protected information and intends to separate out this coverage from the OCI case and seek additional public comment on its changes.</p>	<p>PCI – FAR Case 2008-025, final rule was published on Nov 2, 2011. In conjunction with this publication, the FAR Council invited the public to comment on whether additional coverage should be considered and, based on the feedback, concluded in March 2012, that no further action is needed at this time.</p>
<p>8. FAR Council</p>	<p>Improving competition (RIN 9000–AL93)</p>	<p>Use of competition for blanket purchase agreements</p>	<p>Strengthen the competition rules for placing orders under multiple award contracts, consistent with section 863 of NDAA for FY 2009.</p>	<p>Spring 2012-Action Completed</p>	<p>Improved economy and efficiency</p> <p>Reduced exposure to high risk contracting.</p>	<p>After careful consideration of public comments, FAR Case 2007-012 "Requirements for Acquisitions Pursuant to Multiple-Award Contracts" was published as a final rule in Mar 2012.</p>	<p>No further action is required.</p>

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FAR Council's Implementation of Executive Orders (EO)

EO No.	Title/Date signed	Description	Action Taken
<u>13494</u>	<u>Economy and Efficiency in Government Contracting (January 2009)</u>	This EO prohibits agencies from reimbursing contractors for activities intended to persuade employees either to organize collectively or not to organize collectively.	The Federal Acquisition Regulatory Council (FAR Council) issued a final rule in June 2011 that amends the cost principle in the Federal Acquisition Regulation (FAR) addressing reimbursement of labor relations costs to explicitly prohibit agencies from reimbursing federal contractors for expenses incurred in connection with persuading or dissuading employees from bargaining collectively.
<u>13495</u>	<u>Nondisplacement of Qualified Workers Under Service Contracts</u> (January 2009)	When a new service contractor is selected to replace an incumbent contractor performing services covered by the Service Contract Act, the EO requires that the incoming contractor give employees of the incumbent contractor the ability to retain their jobs on the successor contract (i.e., a right of first refusal).	The Department of Labor issued comprehensive regulations in August 2011. The FAR Council is in the process of finalizing contract clauses and other regulatory guidance for contracting officers to implement the requirements of the EO and the DOL rule.
<u>13496</u>	<u>Notification of Employee Rights Under Federal Labor Laws</u> (January 2009)	This EO ensures that all employees of Federal contractors are aware of their right to associate and to bargain.	In May 2010, the Department of Labor issued a rule which elaborates on and clarifies the requirements set forth in the EO. In December 2010, the FAR Council issued an interim final rule to implement the requirements set forth in the EO and DOL regulation and finalized the rule in November 2011 after considering public comments.
<u>13502</u>	<u>Use of Project Labor Agreements in Federal Construction Projects</u> (February 2009)	This EO encourages federal agencies to consider requiring the use of project labor agreements on large-scale construction projects, where the total cost to the Government is \$25 million or more. (A PLA	In April 2011, the FAR Council finalized regulatory changes to help agencies make reasoned evaluations about whether a PLA is appropriate for a given construction project. The rule provides (1) factors to help agencies in considering whether a PLA would be beneficial, (2) guidance regarding the content of

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		<p>is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.)</p>	<p>such an agreement, and (3) solicitation provisions and contract clauses to use in construction acquisitions if a decision is made to require a PLA.</p> <p>OMB issued guidance requiring agencies to track and report on their use of PLAs.</p>
<p>13520</p>	<p><u>Reducing Improper Payments and Eliminating Waste in Federal Programs</u> (November 2009)</p>	<p>This EO requires agencies to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal government.</p>	<p>In April 2012, the Office of Management and Budget issued a memorandum to all Executive departments and agencies entitled “Reducing Improper Payments through the “Do Not Pay List.” The memorandum, sent to the heads of all Executive departments and agencies, directs agencies to develop a plan for how the Do-Not-Pay” information and capabilities will be used in agency pre-award and pre-payment.</p> <p>As part of this plan, agency Chief Acquisition Officers were asked to evaluate if additional information available through the Do-Not-Pay portal could be used to complement information in FAPIIS, which remains a required source of information for Federal contracting officers</p> <p>A new “one-stop” tool, The Federal Awardee Performance and Integrity Information System, has been launched to help agencies identify responsible, quality contractors. The Federal Awardee Performance and Integrity Information System is improving agency access to information on contractor performance to motivate better contractor performance as well as information on business integrity and ethics so that they can more easily determine whether a company is playing by the rules. Suspensions and debarments have increased in each of the past three years, from just over 1900 in FY 2009 to more than 3000 in FY 2011, as senior accountable officials have taken steps to make sure their agencies have both the ability to consider and, when necessary, act to prevent a contractor from putting an agency’s mission in harm’s way.</p>

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<p>13540</p>	<p>Interagency Task Force in Veterans Small Business Development</p>	<p>This EO directed SBA to Chair an Interagency Task Force on Veterans Small Business Development to improve opportunities and access for small businesses owned by Veterans and service-disabled Veterans in a number of areas associated with small business development, including federal contracting.</p>	<p>In November 2011, the Task Force issued a report to the President with 18 recommendations to strengthen the Federal Government’s role in supporting Veterans who are, or who want to become, business owners, including tools to simplify access to information for veteran and service-disabled veteran-owned small businesses, enhance agencies’ ability to find these businesses, and streamline the certification process to be used by these businesses to certify their status.</p> <p>In FY 2011, for the fifth consecutive year, federal prime contracting dollars awarded to service-disabled veteran-owned small businesses (SDVOSBs) increased -- to \$11.2 billion or 2.65 percent in FY 2011. This is up 2.50 percent from \$10.793 billion in FY2010.</p> <p>In FY 2012, the VA exceeded its contracting goals for SDVOSBs and veteran-owned small businesses (VOSBs), awarding more than 20 percent of its total procurements to SDVOSBs and 23% to VOSBs.</p> <p>In FY2012, the VA reduced its average time to certify a business as a SDVOSB by more than a third – from over 120 days to 85 days on average.</p>
<p>13563</p>	<p>Improving Regulation and Regulatory Review (January 2011)</p>	<p>This EO tasks agencies to engage in periodic reviews of existing significant regulations by promoting retrospective analysis of rules that are outmoded, ineffective, insufficient, or excessively burdensome. The EO also requires agencies to maximize opportunities for public comment in the rulemaking process, especially from those who are likely to be affected.</p>	<p>In accordance with the EO, the FAR Council is taking action and developed an implementation plan. In accordance with the plan, OMB and agencies reviewed current prompt payment provisions and identified opportunities to work with OMB on its policy to accelerate payments to small businesses. The FAR Council has also taken action to improve competition in the supply schedules.</p>
<p>13589</p>	<p>Promoting Efficient</p>	<p>This EO directed agencies to establish plans</p>	<p>Agencies have reduced contract spending for management</p>

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	<p>Spending (November 2011)</p>	<p>for reducing administrative costs -- including contract costs for administrative support – by not less than 20 % below FY 2010 levels in FY 2013.</p>	<p>support, which includes services such as information technology systems development, program management, and engineering services, where costs quadrupled over the past decade. Between FY 2010 and FY 2011, agencies brought spending down by seven percent, or \$3 billion, and preliminary analysis indicates agencies have reduced spending against FY 2010 levels by 15 percent, or close to \$7 billion, as of the end of FY 2012. These efforts have been supported by guidance issued jointly from the OFPP Administrator and the Controller of the United States. This issued guidance identifies rules and responsibilities and best practices for internal controls.</p> <p>Agencies have successfully leveraged the government’s purchasing power, as the world’s largest customer, for everyday commodities, such as office supplies and overnight delivery services. Use of government-wide contracts for office supplies – which include tiered pricing discounts – have saved taxpayers more than \$140 million since these contracts were put in place just two years ago.</p>
<p>13590</p>	<p>Iran Sanctions (November 2011)</p>	<p>Among other things, this EO prohibits any agency from procuring goods or services from a person or company where the Secretary of State has determined that the person or company knowingly aided the development of petroleum resources in Iran.</p>	<p>In November 2011, the FAR Council published an interim rule which immediately imposed a prohibition on relating to contracts with persons that export certain sensitive technologies to Iran, and issued a final rule in April 2012. The rule establishes a contract clause to be inserted in all solicitations, requires potential contractors to represent that they have not engaged in any activities prohibited by the EO, and outlines comprehensive waiver requirements.</p>
<p>13627</p>	<p>Strengthening Protections Against Trafficking In Persons In Federal Contracts (September 2012)</p>	<p>This EO strengthens existing protections to prohibit contractors and subcontractors from engaging in specific trafficking-related activities.</p>	<p>The FAR Council is drafting a proposed rule to incorporate the requirements set forth in the EO, including requirements for contractors to develop compliance plans and to affirmatively certify to their compliance.</p>

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FAR Council Burden Reduction Initiatives

Office	Title	Description	Estimated Reduction (in burden hrs)	Results of Reduction	How was the change implemented	Stakeholders impacted/ were there public comments	What type of change?
FAR	Reduction of Government Property (Scrap List) Reporting Requirement – OMB No. 9000-0075	Production scrap is unusable material resulting from contract activities -- such as production, engineering or operation and maintenance, but may have value from remelting or reprocessing. Examples include textile and metal clippings, trimmings, etc. Previous FAR guidelines required the Government to approve contractor scrap procedures prior to disposal. In addition, the FAR required contractors, without approved scrap procedures, to submit inventory schedules or scrap lists prior to disposition. The Government removed approval of contractor scrap procedures and	1,875,700	As a result of the rule change, Contractors would realize savings from not having to review instructions, search existing data, gather and maintain the data needed to complete, review, keep records and then submit a separate scrap list.	The FAR final rule published in the Federal Register at 77 FR 12937 on March 2, 2012. Revisions were needed to the Information Collection and were approved in October 2012.	Contractors/No	Regulatory

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		<p>submission of a scrap list because the requirements had no real utility to the Government and added costs to contractor operations. A contractor can now dispose of the scrap in accordance with its own property management procedures -- usually without prior approval of the Government.</p>					
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FAR Council’s Implementation of Presidential Memorandum

Title/Date signed	Description	Action Taken
<p>Presidential Memorandum on Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement (February 2011)</p>	<p>This Presidential Memorandum directs agencies to take a series of steps to emphasize biobased purchasing in their acquisitions.</p>	<p>The FAR Council issued a final rule in April 2012, which includes new clauses that require Federal agencies to purchase biobased products identified for a Federal Procurement Preference and contractors to report on their use of biobased products.</p> <p>Government-wide management scorecards were revised to emphasize the procurement of biobased products beginning in January 2012.</p>