

# FAR OPERATING GUIDE

JULY 1, 2015

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## **FAR Operating Guide**

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**FAR Drafting Guide**, available  
at [www.acq.osd.mil/dpap/dars/](http://www.acq.osd.mil/dpap/dars/), is incorporated by  
reference.

**This Operating Guide provides procedures for the processing  
of FAR rules by the FAR Principals,  
Case Managers, FAR Teams, and CAAC and DARC**

**I. Introduction.**

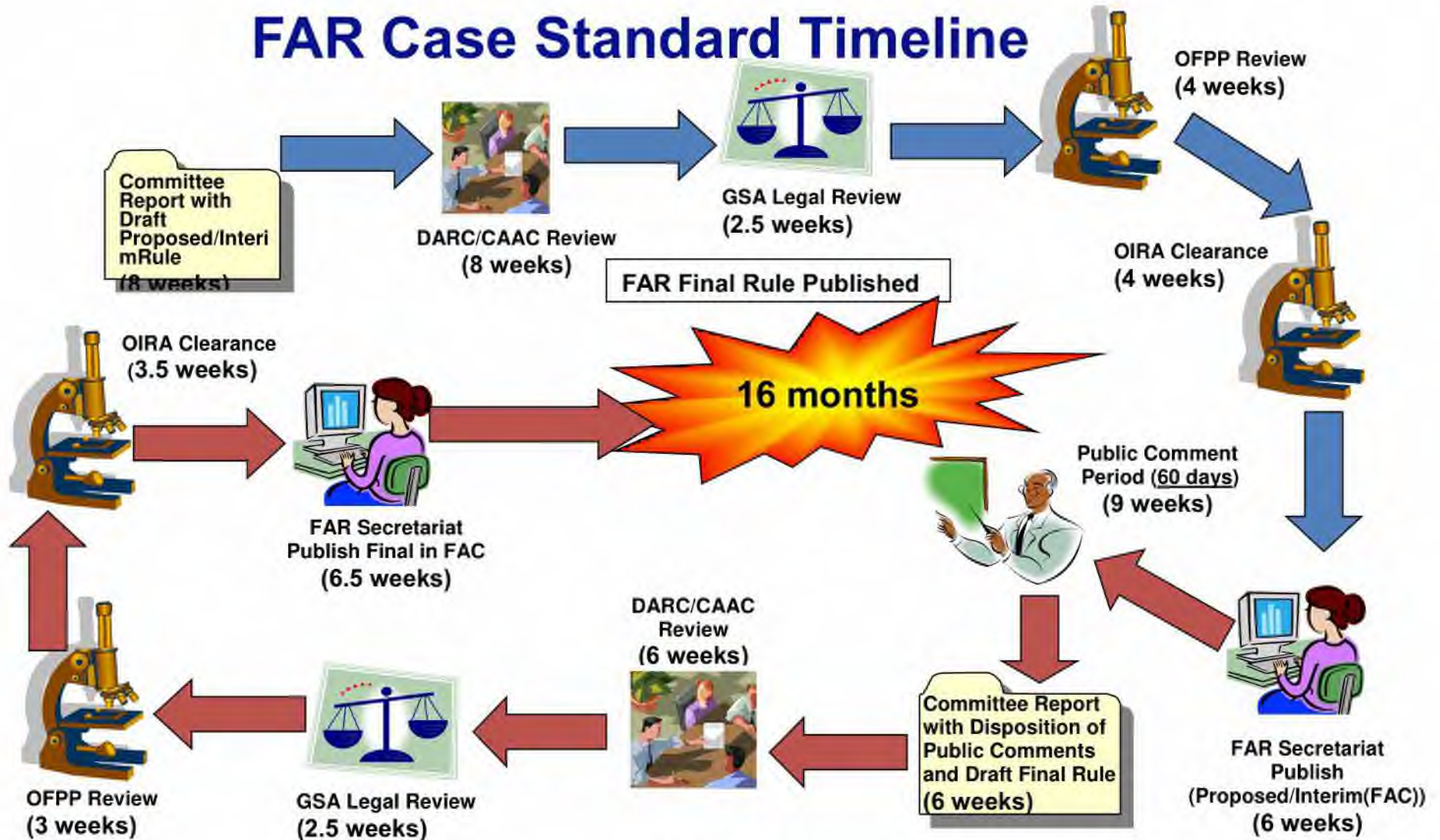
**A. Statutory Foundation.**

41 U.S.C. subtitle I, Federal Procurement Policy, established the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget. The Administrator for Federal Procurement Policy is responsible for providing overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

Specifically, 41 U.S.C. 1707, Publication of proposed regulations, governs the publication of the Federal Acquisition Regulation (FAR). Any regulation that has a significant effect beyond the internal operating procedures of the Federal Government or has a significant cost or administrative impact on contractors or offerors must be published in the Federal Register for public comment, generally for 60 calendar days.

Note that FAR rulemaking is not governed by the Administrative Procedures Act (5 U.S.C. 553), the law under which other Federal Agencies create regulations.

B. FAR Case Process Flow Chart.



**C. FAR Case Standard Timeline.**

The FAR Principals have agreed to the following standard timeline for cases. Noncomplex cases should take less than the standard time. Complex cases may take longer.

Open Case-Task Team- Initiate Intake Process for complex cases	Proposed/ Interim	Final
Submit report	8 weeks	6 weeks
DARC and CAAC separately agree to rule	4 weeks	4 weeks
Case resolution between CAAC and DARC	4 weeks	2 weeks
GSA Legal identifies issues	2 weeks	2 weeks
(2 working days for CAAC Counsel and 8 working days for GSA Legal)		
Resolve GSA Legal issues	.5 weeks	.5 weeks
OFPP identifies issues	2 weeks	2 weeks
Resolve OFPP issues	2 weeks	1 week
OIRA identifies issues	2 weeks	2 weeks
Resolve OIRA issues	1.5 weeks	1 week
Case manager forward to FAR SEC	.5 weeks	.5 weeks
FAR Secretariat -publish proposed rule, prepare FAC for interim/final	6 weeks	6.5 weeks
Total weeks to publication	32.5 weeks	27.5 weeks
+ 60 calendar days for public comments	9 weeks	
Total - Proposed-final		69 weeks (16 mo.)

**II. STRUCTURE OF COUNCILS AND FAR TEAMS.**

**A. Councils.**

The Federal Acquisition Regulatory (FAR) Council, established by authority of 41 U.S.C. 1302, provides the overall direction to the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC). The FAR Council is chaired by the Administrator for Federal Procurement Policy. The other FAR Council members are—

- The Director, Defense Procurement and Acquisition Policy (DPAP), Department of Defense (DoD);
- The Deputy Associate Administrator & Senior Procurement Executive (SPE), General Services Administration (GSA); and
- The Assistant Administrator for Procurement, National Aeronautics and Space Administration (NASA).

The CAAC and DARC independently deliberate all changes to the FAR and reach agreement on all proposed changes to the FAR, as well as agreeing on all collateral requirements, such as the Federal Register notice.

The CAAC is chaired by GSA. The CAAC members are Government employees and representatives of the following civilian agencies, each with a single vote -

Department of Agriculture  
Department of State  
Department of Commerce  
Department of Transportation  
Department of Energy  
Department of Education  
Department of Veterans Affairs  
Department of Interior  
Environmental Protection Agency  
Department of Labor  
Small Business Administration  
Department of Treasury  
Social Security Administration  
Department of Health and Human Services  
Department of Housing and Urban Development  
Department of Homeland Security  
U.S. Agency for International Development  
Department of Justice

The GSA CAAC Counsel and the Small Agency Council are non-voting members of the CAAC.

The DARC is chaired by the Deputy Director, DPAP/Defense Acquisition Regulations System (DARS). The Council members are Government employees and representatives of -

- Army
- Defense Logistics Agency
- Navy
- Air Force
- Defense Contract Management Agency
- NASA

Each agency on the DARC is represented by two members: a policy member with the agency vote, and a non-voting legal member. An agency legal member advises the respective agency policy member. In addition, a representative of the DoD Office of General Counsel attends the DAR Council and advises the DARC Director.

Staff of the Integrated Award Environment (IAE) Program Office, Federal Acquisition Institute (FAI), and Defense Acquisition University (DAU) are welcome to attend the CAAC and the DARC on an as-needed basis.

Attendance at CAAC and DARC meetings is limited to Government employees. Clerical support contractors are allowed to attend, only in the capacity of clerical support. Any other attendees will be allowed only on a case-by-case basis as approved by the DARC Director or the CAAC Chair, respectively, and should not be present during substantive discussions of the cases.

**B. FAR Teams.****1. Types of Teams.**

**a. Standing FAR Teams.** The standing FAR teams are responsible for all but the very routine cases in their assigned FAR parts. Cases in FAR parts not listed in the table below will be assigned to either a standing FAR team or an ad hoc team, depending on the nature of the case. The teams are comprised of "core" members and "rotational" members. Core members, or their designated representative, attend all team meetings. Rotational members are team members for specific cases that impact their assigned areas of responsibility. Supplemental advisors (OFPP, Defense Contract Audit Agency (DCAA), IAE systems personnel, FAI, DAU, etc.) also support the teams. Supplemental advisors are not voting members. Supplemental advisors may present a formal minority position.

The CAAC Chair, DARC Director, and NASA Policy Representative (FAR Principals) establish the composition of the standing FAR team's membership. The current FAR teams are:

FAR Team - Acquisition	FAR Parts
Environmental and Labor Law	22-24, 27, 33
Ethics and International Law	3, 9.1, 9.4, 9.5, 25, 50
Finance	15.4, 28, 29, 30-32
Implementation	4, 42, 43, 45-47, 49
Planning and Methods	7, 8, 10, 11-16 (except 15.4), 38, 51
Small Business	19, 26, 44
Strategy	5, 6, 9.2, 9.3, 9.6, 9.7, 17, 18, 34-37, 41, 48
Technology	39 and E-Commerce and IT issues without restriction to FAR part

The DARC maintains a current official list of FAR teams, including member names, e-mail addresses, phone numbers, and whether the member is core, rotational, or supplemental advisor. The information is available at [http://www.acq.osd.mil/dpap/dars/far\\_teams.html](http://www.acq.osd.mil/dpap/dars/far_teams.html)

**b. Ad Hoc Teams.** Ad hoc teams are established on a case-by-case basis to handle special taskings. The FAR Principals determine team membership based on each special

tasking. Ad hoc teams may include members with procurement policy expertise, program managers, lead agency subject matter experts, and other agency officials with expertise in the acquisition area under consideration.

**c. Staff Level Teams.** Staff level teams are responsible for routine or administrative cases, as assigned by the FAR principals, and are comprised of CAAC and DARS case managers. The CAAC Chair and DARC Director assign their respective case managers to these teams.

## **2. Appointment to Teams.**

**a. Chairs and Deputies.** Standing FAR teams are chaired by DOD, GSA, or NASA. The CAAC Chair, DARC Director, and NASA Policy Representative appoint their respective chairs and deputies. Each FAR Principal shall notify the other FAR Principals of any changes to team chairs and deputies.

The FAR Council has assigned team chair and deputy responsibility to the agencies as follows:

Team	Chair	Deputy
Environmental and Labor Law	DoD	GSA
Ethics and International Law	GSA	DoD
Finance	NASA	DoD/GSA
Implementation	GSA	DoD
Planning and Methods	NASA	DoD/GSA
Small Business	DoD	GSA
Strategy	DoD	GSA
Technology	GSA	DoD

**b. Team Members.** The CAAC Chair, DARC Director, and NASA Policy Representative appoint their respective team members. Each FAR Principal shall notify the other FAR Principals of any respective team member changes. Team membership is limited to Government employees.

**III. CASE PROCESSING ROLES AND RESPONSIBILITIES.**

These responsibilities apply to processing of all cases, whether processed by standing, ad hoc, or staff level teams.

**A. FAR Principals (CAAC Chair, DARC Director, and NASA Policy Representative).**

- Mutually decide whether to open a new case or close an on-going case without FAR changes. (see section IV.A.).
- Identify whether a case intake meeting is needed (see section IV.A.2.).
- Make certain that the IAE and DPAP PDI representatives are aware of FAR Case openings (see App. 6).
- Assign cases to the appropriate standing or ad hoc teams, or make determinations to assign cases to a staff level team. Assign a team chair for an ad hoc team, and identify which Council Chair/Director has responsibility (usually determined based on agency of the team chair).
- Issue team tasking. Provide specific direction to the teams on case objectives and request advice from the FAR Council when necessary. The CAAC Chair issues tasking to the FAR teams chaired by GSA and the DARC Director issues tasking to the FAR teams chaired by DoD or NASA. See section IV.B.1.
- Recommend whether case should be published as a proposed, interim, or final rule, or, in some cases, an advance notice of proposed rulemaking (ANPR). Publication of a proposed rule is the default, unless urgent and compelling circumstances justify interim rule or no cost or administrative impact justifies final rule (41 U.S.C. 1707)
  - o Additionally, the following factors weigh in favor of a proposed rule:
    - The rule is not mandated by statute or Executive order.
    - The new requirement is complex and requires subjective judgment to implement in the regulations, so that the Government expects substantial benefit from public comment before finalizing the rule.

- The rule will have significant cost or administrative impact on the public upon implementation.
- o The following considerations favor selecting an interim rule:
  - There are urgent and compelling circumstances such that failure to implement may cause harm to the Government, industry, or the public, especially if there are urgent life or death or public health reasons or significant cost or administrative impact if implementation is delayed.
  - A new statute, Executive order, or court decision mandates an effective date in a relatively short period of time.
  - Implementation of the requirement is relatively straightforward and objective, with little room for judgment.
  - It is otherwise in the best interest of the Government to implement immediately.
- o A final rule may be issued without obtaining public comment if it affects only the internal operating procedures of the Government and has no significant cost or administrative impact on the public.
- o A Request for Information or ANPR may be appropriate if no decision has yet been made as to whether a case is needed or if a case is in a very preliminary stage, such that industry perspective and identification of controversial issues would be beneficial before opening a case or publication of a proposed rule.
- Recommend the need for a public meeting at any stage of the rulemaking.
- Establish due dates for team reports. The team report shall include all associated TABs. If a streamlined team report is acceptable for a staff level team, notify the staff.
- Review team reports for quality and assess the responsiveness of the report to the tasking. If a report is seriously deficient, the FAR Principals should agree to—
  - o Return the report to the team, with an explanation of the corrective actions required (section IV.B.d. and Appendix 2); or
  - o Request a supplemental submission.
- Obtain staff for all teams.

- Provide input on team members' performance to agency procurement executives through the FAR signatories, and provide appropriate recognition for outstanding individual and team performance.
- Ensure team members and their managers understand that FAR cases are the highest priority job assignments.
- Hold periodic status meetings with teams and provide timely, constructive feedback to standing FAR team chairs and deputies on the quality and timeliness of team findings and recommendations, reports, and related documents.
- Provide appropriate team-related training to their respective chairs and team members.
- CAAC Chair sends rules to OIRA for clearance.

**B. Case Managers.**

DARS and CAAC case managers are responsible for managing the timely processing and quality of cases. Assigned by the DARC Director and CAAC Chair respectively, they are responsible for managing the development of each case assigned to them from initial assignment through final disposition, including issuance of a final rule or closing of the case. The assignment may be made prior to an agreement by the FAR Principals to open a case. This involves a number of general management responsibilities, as well as specific responsibilities at each phase of case development.

**1. General Responsibilities.**

- Prepare the draft opening Case Management Record (CMR) at the direction of the sponsoring FAR Principal for consideration by the other FAR Principals (See Appendix 1).
- Prepare and distribute the opening CMR to open new FAR cases in accordance with section IV.A.1. and in the format at Appendix 1. The CMR shall include a due date, generally assigned after consultation with the team chair.

- Prepare subsequent CMRs as needed for submissions to their respective FAR Principal/Council (e.g., request for extension, or submission of team report). For example, if the team cannot submit a required report by the established report due date, the case manager for the Council that has responsibility for the team must prepare a CMR to request an extension from the CAAC Chair or DARC Director, respectively, and provide an explanation of why the extension is needed along with a proposed due date.
- Serve as the primary liaison to their respective Councils, FAR Principal, OFPP staff, and the IAE systems personnel (see Appendix 6). Provide briefings on case status, timeline, or outstanding issues upon request by a FAR Principal or OFPP staff.
- Elevate issues that cannot be resolved in a timely manner to their FAR Principal.
- Actively promote the timely processing and quality of cases from development (in close coordination with team chairs) and consideration by Councils, through resolution at the Council, GSA Counsel, OFPP, and OIRA stage.
- Maintain case record files and databases. The CAAC Chair or designee or the DARS case manager will update the Defense Acquisition Regulations Management Information System (DARMIS). The CAAC case manager will work collaboratively on status with the DAR case manager to ensure accuracy of the DARMIS. The case status reports are generally publicly distributed on Fridays. See <http://www.acq.osd.mil/dpap/dars> and select "case status".

## **2. Responsibilities During Team Consideration.**

- If the FAR Principals decide that there is no need for a case intake meeting on a statutory case, then the case managers should coordinate with their respective Legal Counsel to verify that the team is correctly interpreting the statute.
- Participate as team members for assigned cases. However, each agency gets only one vote. The case managers are non-voting members, unless they are the team chair or the deputy. The case managers will nevertheless indicate concurrence or non-concurrence.
- Monitor team progress and advise the FAR Principals on the progress of team assignments for assigned cases.

Identify issues impeding progress and elevate to the FAR Principals. Examples of issues that may impede progress include lack of participation by team members, need for legal support or other expertise, or impasse.

### **3. Responsibilities During CAAC/DARC Consideration.**

- Forward the case report, including all TABs, to the appropriate Council. For CAAC case manager, obtain approval of CAAC Chair prior to submission to CAAC.
- Schedule and present cases to their respective Council.
- Brief case to respective Council for consideration with support from the team chair, if requested.
- Check the FAR baseline and update as necessary.
- Mark any CAAC/DARC changes in line-in/line-out with footnoting of rationale--see sections IV.E.2. and IV.F.
- Be prepared to brief the FAR Principals and OFPP staff on any cases on any differences between the approved CAAC and DARC cases. Apprise OFPP staff, through the FAR Principals, of any significant challenges that are delaying deliberations within the CAAC and DARC.
- Work together with their counterpart case manager to timely resolve differences between the CAAC and DARC, consistent with any guidance provided by FAR Principals and OFPP staff, and follow the coordination procedures in section IV.E. Provide periodic status updates to FAR Principals and OFPP staff if issues are not resolved within two weeks. Case managers should jointly provide--
- Description of the differences between the CAAC and DARC versions of the rule;
- Proposed solution (if available);
- Timeline (if proposed solution provided); and
- Any help requested (i.e., policy advice, legal advice, returned to CAAC and DARC, etc.)

### **4. Responsibilities During GSA Legal/OFPP/OIRA Consideration.**

- The CAAC case manager sequentially sends the case to GSA Legal, OFPP, then to the CAAC Chair (or designee) to forward to Office of Information and Regulatory

Affairs (OIRA) (see Appendix 10)), with copies to the DARS case manager and NASA Policy Representative at each phase.

- The CAAC case manager will coordinate at the appropriate time with GSA Legal, OFPP, and OIRA for their comments.
- The CAAC case manager will promptly notify the DARS case manager and the NASA Policy Representative of each step in the process and provide any comments received from GSA Legal, OFPP, or OIRA, working cooperatively with the DARS case manager to resolve the comments. If comments are significant, the case managers will include NASA in the resolution of comments.
- During OIRA's interagency coordination, the case managers will share a copy of any comment resolution and timeline adjustments with the IAE and DPAP PDI points of contact to coordinate the release of any changes in data collection or the alteration of any project plans associated with the rule that may be impacted by changes.
- DARS case manager and NASA Policy Representative obtain necessary approvals to publish proposed rules.
- The CAAC case manager must wait for the DARS case manager notification of approval to publish before the CAAC case manager sends the case to OFPP.
- Notify their FAR Principal if GSA Legal (including CAAC Counsel), OFPP, or OIRA review exceeds two weeks prior to identification of issues.
- Also notify the FAR Principals if resolution of GSA Legal (including CAAC Counsel), OFPP, or OIRA issues exceeds two weeks. Case managers should jointly provide—
- Description of the issues raised by GSA Legal/OFPP/OIRA;
- Proposed solution (if available);
- Timeline (if proposed solution provided); and
- Any help requested (i.e., policy advice, legal advice, returned to CAAC and DARS or team chair/team).
- CAAC case manager submits a "clean" copy of rule (basic bold and bracket and strikethroughs only for text, no bold and bracket or strikethroughs for Federal Register notice) to the FAR Secretariat for

entry into ROCIS within one working day of OIRA declaring the rule significant (see App. 10).

- Involve the IAE and DPAP PDI representatives–
- During OIRA's interagency consultation, so if changes result from OIRA's review, they can make certain the changes do not impact the potential data collection or system change; and
- When OIRA approves the rule, so they can schedule the system change or plan for the data collection requirement. (see App. 6)
- Advise the team chair and respective Council of final disposition of case resolution.

### **5. Responsibilities During Publication Preparation.**

- CAAC Case manager will remove the "do not disclose" footer notice and any line numbering.
- If the draft Federal Register notice includes identification of public commenter (names or numbers), remove them.
- The CAAC case manager will then send the case to the Regulatory Secretariat for publication, with copies to the DARS case manager and NASA Policy Representative.
- The CAAC Case manager will coordinate the publication of the case with the Regulatory Secretariat.
- Provide to the Regulatory Secretariat, to accompany the FAC, Determination and Findings (signed by OFPP) for applying laws to commercial items, commercially available off-the-shelf (COTS) items, and acquisitions below the simplified acquisition threshold, if applicable.
- Work with counterpart DARS case manager to review the rule documents prepared by the Regulatory Secretariat for publication.
- For proposed FAR rules, provide copy to NASA Policy Representative for approval to publish.
- Assure that the signature FAC reflects the OIRA approved version, revised for any subsequent minor editorial changes agreed to by DOD, GSA, and NASA, if any.
- Maintain communication with the IAE and DPAP PDI to coordinate release of the rule with any necessary systems changes (see Appendix 6).

**C. FAR Team Chairs.**

The team chair is responsible for managing the production of the team report, including all associated TABs, for cases assigned to their team. This involves responsibilities for managing schedules, team members, and outcomes, and includes the following.

- Convene and preside at team meetings.
- Ensure members are provided appropriate background materials prior to team meetings (e.g., copies of tasking CMR and related documents).
- Prior to team meetings, assign within the team the lead responsibility for each case; this includes the preparation of a draft to initiate team discussions. Other responsibilities may be individually assigned, including regulatory flexibility analyses (see App. 8), paperwork reduction analyses (see Appendix 9), or preparation of draft determinations for application to commercial items, COTS items, or below the simplified acquisition threshold.
- E-mail meeting agendas to team members, well in advance of meetings.
- Obtain the appropriate expert and functional advice, in consultation with the case managers. Ensure appropriate analysis of impact on business systems.
- Provide a draft of the FAR Data Collection/Reporting Needs Checklist and seek the advice of the IAE and DPAP PDI representatives at the beginning of the preparation of the case documentation to determine if there will be any impact to business systems for which continued coordination will be needed (see Appendix 6).
- Arrange for deputy chair or another team member to perform team chair duties during absences of team chair.
- Identify and recommend cases to the FAR Principals that may benefit from additional public outreach (e.g., public meetings, ANPRs, or Requests for Information).
- Ensure that team thoughtfully considers alternatives that may reduce public burden, especially as it applies to small business concerns.
- Ensure team meetings proceed in an efficient manner using member time wisely; members are provided a full

opportunity to provide timely input on all aspects of each case. While deliberation and healthy debate should not be discouraged, the team chair must ensure it is productive and progress is being made.

- Manage case work load in consultation with the case managers. Coordinate with the case managers regarding case status, major issues, need for expert consultants, need to elevate questions to the FAR Principals, or any other roadblocks to timely completion.
- Ensure the preparation and submission of quality, complete and accurate team reports, including draft Federal Register notice, and all associated documentation.
- Meet established deadlines and provide timely notification to the case manager when extensions are needed. Extensions will be approved by the Chair/Director of the Council with responsibility for the team.
- Keep in touch with the OFPP liaison.
- Submit reports, including report checklist and all other TABs, to the FAR Principals and their deputies (if any), with copies to Deputy Chair of Team, the case managers (if other than the Team Chair and Deputy Chair), and the individuals identified on the FAR Case Training Form and the Data Collection/Reporting Needs Checklist.
- Attend CAAC, DARC, or resolution meetings upon request by the relevant case manager or FAR Principal.
- Provide members copies of the FAR language and Federal Register Notices after the CAAC and DARC agree to the rule.
- Provide input to the appropriate FAR Principal on members' performance and make recommendations to recognize outstanding team and member performance, when opportunities for such recognition are available.
- Maintain records of attendance and participation. When a team member does not attend meetings, contact the team member to let them know that the team takes their lack of participation seriously. Involve the case managers and elevate to the appropriate FAR Principal (depending on agency of team member) if the team member continues to fail to attend or if the member fails to make a contribution.

- Be prepared to keep the FAR Principals informed of the status of the team's work (in general or with respect to a particular case).
- Tell the case managers if a minority report is anticipated, so that case managers can alert the FAR Principals.

**D. Team Members.**

- Review all provided materials in advance of team meetings.
- Attend all meetings (preferably in person) and participate in case discussions.
- Provide broad and/or specific acquisition expertise to develop rules for Government-wide application. As appropriate, circulate the rule within the team member's agency for coordination.
- Review all draft reports (including appendices) before the team chair issues the report; ensure a quality product is written.
- At the direction of the team chair-
  - Assume lead responsibility for drafting quality draft FAR coverage, draft/final reports, and recommendations that consider all relevant information for deliberation by the full team and for meeting the established deadlines.
  - Attend CAAC, DARC, and related meetings.
- Keep the team chair informed of any change in work status (e.g., leave, extended travel, or change in phone or email address).
- Prepare and submit quality, complete and accurate team reports and Federal Register Notices.
- Team legal representative should informally stay in contact with the GSA/OGC attorney assigned to support their FAR team in order to eliminate legal issues that may arise during the GSA/OGC attorney legal sufficiency review. However, team legal representative should be aware that final legal concurrence authority remains with GSA/OGC.

**E. Supplemental Advisors.**

- Provide subject matter expertise.
- Assist in research, and in the development or review of draft proposed changes and reports.

**F. CAAC and DARC.**

- Review FAR cases either in parallel or sequentially, as appropriate for the case.
- Provide broad perspective, consistent with the guiding principles and conventions of the FAR.
- Before case discussion circulate the case within the member's agency for comment. For civilian agencies also circulate for comment to the OIRA point of contact for the agency.
- Provide department or agency final policy views on matters before the Council.

**IV. PROCEDURES.**

**A. Opening, Closing, and Placing FAR Cases on Hold.**

**1. Opening New FAR Cases.**

The FAR Principals must agree in order to open a new FAR case. The sponsoring FAR Principal submits a draft opening CMR (see Appendix 1) to the other Principals when the sponsor recommends opening a new case. Once the Principals finalize the opening CMR, the DARMIS assigns the FAR case number. Upon opening the case, the FAR Principals assign a due date prior to distribution of the CMR to the team (see section III.A.).

If the CAAC Chair or DARC Director receives a request for a new FAR case from an agency represented on its Council, the CAAC Chair or DARC Director may decide not to open a case without consulting with the FAR Principals.

However, if the CAAC Chair or DARC Director receives a request from a source not represented on its Council, the CAAC or DARC case manager will forward the request and their respective Chair/Director's position on opening the case to the FAR Principals. If the FAR Principals disagree and resolution cannot be reached, the FAR Principals may raise the issue to the FAR signatories. If the FAR

Principals do not open the case, the case manager will respond to the originator with rationale for not opening the case.

## **2. Case Intake Meeting.**

As part of the early processing for a new FAR case, the FAR Principals will make an initial assessment of the proposed case based upon the two categories listed below. The purpose is to thoroughly examine the case upfront and make informed decisions about team assignments, the need for special advisers, and to identify policy and legal issues.

### **CATEGORY I: NEEDS A CASE INTAKE MEETING.**

#### **Considerations:**

- o Complex/variable statutory or Executive order direction
- o Significant impact to existing contracting policy or systems Governmentwide
- o Significant impact to industry
- o Complex policy analysis needed
- o Possibly politically sensitive topic
- o Some policy analysis needed from outside of contracting community
- o High risk of potential litigation
- o Conflicting policy goals

### **CATEGORY II: NO NEED FOR A SEPARATE CASE INTAKE MEETING.**

#### **Considerations:**

- o Primarily only affects internal government operations, without major systems changes, e.g., involves only simple housekeeping changes
- o Not required by statute or Executive order;
- o Simple and clear statutory or Executive Order direction (If the FAR Principals decide that there is no need for a case intake meeting on a statutory case, then the case managers should coordinate with GSA/DoD Legal to verify that the team is correctly interpreting the statute.)

The case intake meeting should generally occur within 2 weeks of case opening. The FAR team is encouraged to begin work on the case—reviewing, researching, and drafting documents. The team should not wait to begin the

case until the intake meeting occurs. The time for the intake meeting is part of the time allotted for the report.

In advance of the case intake meeting, GSA OGC will assign a lawyer to the case. The GSA-assigned attorney and the DOD OGC representative to the DAR Council will review the case in advance of the intake meeting. At the case intake meeting, the GSA OGC and the DoD OGC lawyer, in conjunction with any other lawyers assigned to the case, will identify legal issues relating to the case. The others participants in the intake meeting are each responsible for identifying issues prior to the intake meeting and providing these issues to the case managers for transmission to and prior consideration by the attendees at the intake meeting.

Attendees at the case intake meeting should include the case managers, the team chair, GSA-assigned attorney, the DoD OGC representative to the DARC, the FAR Principals, OFPP staff, and any other subject matter experts that have been identified as significant to development of the case. Additionally, representatives for training and IAE system development should be invited (see Appendix 6).

The case managers will share the responsibility to distribute to the intake meeting attendees, copies of all pertinent documents needed to help process the case, e.g.

- CMR;
- Relevant statute(s) or Executive orders;
- Requesting organization's business case;
- Any existing industry comments; and
- Documents submitted in advance by the attendees.

If additional complexities are identified later in the process, the FAR Principals, the case managers, or the team chair, can ask for a follow-on meeting which may be scheduled for a case already identified as complex, or an initial meeting may be scheduled for a case that was originally considered simple.

### **3. Closing FAR Cases.**

Cases are closed when the final FAR rule is published

in the Federal Register. Cases may be closed without publication of a rule at the direction of the Office of Management and Budget (OMB), the FAR Council, or the FAR Principals. The Principals, with appropriate consultations with the DARC and CAAC may generally approve the closing of a case. In some instances (e.g., the FAR Council or OFPP specifically requested opening the case), closing a case may need FAR Council or OFPP approval.

#### **4. Placing FAR Cases on Hold.**

Cases may only be placed on hold at the direction of OMB or the FAR Council, or by agreement of the FAR Principals.

### **B. Standing and Ad Hoc FAR Team Procedures.**

#### **1. Team Tasking.**

The FAR Principals issue taskings to the standing FAR teams using the CMR (see Appendix 1). The opening CMR provides detailed information on the purpose of the case; provides any relevant supporting documentation, e.g. statute, GAO case, IT case, etc. The CMR identifies what is expected of the team, including any desired courses of action or conditions of implementation, any coordination necessary, and the report due date, which may be decided with input from the team chair. The due date will be based on any implementation mandates required by statute, the complexity of the subject matter, case priority, coordination required, and existing team workload.

#### **2. Team Meetings.**

Teams meet as frequently as necessary to complete their taskings by the established due dates. Teams must complete the tasking as outlined in the tasking CMR and may also propose alternative solutions with supporting rationale. Teams should begin discussions with a draft FAR coverage and report that contains, at a minimum, a summary of the issues (either the issues to be addressed by the team or, in the case of taskings after published proposed or interim rules, a summary of the issues identified by the public comments).

Attendance at team meetings is limited to Government employees. Other attendees will be allowed only on a case-

by-case basis as approved by all FAR Principals and should not be present during substantive discussions of the case.

### **3. Voting.**

Teams generally and preferably accomplish business on a consensus basis. If necessary, the team chair may call for a vote to reach agreement. Each team chair, deputy chair, and team member gets one vote, unless there is more than one member from the same agency, in which case each agency only gets one vote. Supplemental advisors do not vote. Case managers do not vote unless they are a core or rotational member of the team.

### **4. Team Reports.**

Except for streamlined staff reports, teams prepare reports in accordance with Appendix 2. Ensure that all members are provided a full opportunity to provide timely input on all aspects of each case. The report should reflect the views of all members who participated and concurred with the report. The concurrence by the team member should be coordinated within the agency of the team member. If a team member has not participated they may concur, but the fact that they did not participate in the development of the case should be annotated.

Team chairs submit reports, including all TABs, to the FAR Principals and their deputies (if any), with copies to the Deputy Chair of Team, the case managers (if other than the Team Chair and Deputy Chair), and the individuals identified on the FAR Case Training Form and the Data Collection/Reporting Needs Checklist. The assigned case managers submit reports, including all TABs, to their respective Councils in accordance with DARS or CAAC procedures.

If the team cannot submit a required report, including all TABs, by the established report due date, the case manager for the Council that has responsibility for the team must request an extension from the CAAC Chair or DARC Director, respectively, and provide an explanation of why the extension is needed along with a proposed due date. If requested, the team submits periodic progress reports.

Once the team report, including all TABs, has been filed with the CAAC and DARC, the team report shall not be

updated for any subsequent actions taken by the CAAC and DARC or any other party. However, the CAAC and DARC may direct the team to issue a supplemental team report as they deem necessary.

### **5. Minority Opinions.**

If a team member or advisor does not concur with the conclusions of the majority of the team members, the team should attempt to resolve the issues. The case managers should also notify the FAR Principals of the lack of consensus. If the team cannot resolve the issues, the issues should be documented in the team report. The member or advisor may also submit a minority opinion. Members or advisors should submit the minority opinion(s) to the team chair in time for the team to prepare a rebuttal. The rebuttal by the team majority, if any, shall address the salient points raised by the minority opinion(s). The team chair may establish a due date for the minority opinion. Both the minority opinion and the rebuttal are included as part of the team report. The minority opinion should include a detailed discussion of the basis of the dissent and the suggested alternative. A minority opinion may not be used to delay submission of a team report to the CAAC and DARC. If the due date for submission of the minority opinion cannot be met, the minority opinion may be provided to the CAAC and DARC when the team report is submitted, or subsequently in sufficient time for consideration by the CAAC and DARC on the scheduled discussion date for the team report.

### **C. Staff Level Reports.**

If a simple case is prepared at the staff level, a formal report may not be necessary. The DoD and GSA case managers can provide the necessary introductory information on a CMR with the list of attachments, together with the draft text, draft Federal Register notice, Data Collection/Reporting Checklist, Training Form, and any other necessary attachments. The Report Checklist may be used, but its attachment to a staff level report is optional. If this streamlined format is used in the analysis of public comments, the Federal Register notice may identify the respondents parenthetically, to be removed prior to publication. One of the case managers will agree to take the lead and submit the streamlined report to the FAR Principals.

**D. DARC and CAAC Deliberations.**

The DARC and CAAC deliberate cases using either-

**1. Formal Discussion.**

Formal discussions are normally used for **complex cases**. The CAAC and DARC meet and deliberate the case.

**2. "Simplified Approval Process" or "Reclama".**

"Simplified Approval Process" is a CAAC term. "Reclama" is the equivalent DARC term. These streamlined procedures are generally used for **non-complex cases**. The procedures are also used for cases previously discussed by the CAAC and DARC when the proposed or interim rule is being converted to a final rule without change.

**E. Resolving Differences Between the CAAC and the DARC.****1. Definitions.**

"Council 1" means the Council that first discusses a case when Council discussions occur sequentially rather than concurrently.

"Council 2" means the Council that receives Council 1's comments before its discussion of the case.

"Discussion baseline" means the current FAR baseline as amended by the FAR team's proposed changes.

"Revised discussion baseline" means the discussion baseline as amended by changes recommended by a Council after its review. All Council recommended changes must be annotated and explained via footnotes.

**2. Process.**

Case managers must check the FAR baseline used by the team and update it if the baseline does not reflect the current FAR language. If the baseline is incorrect, case managers should confer to ensure that each Council has the correct FAR baseline. The discussion baseline is to be presented to each Council.

**a. When a case is discussed concurrently.**

(1) Case managers will review the revised discussion baseline of the other Council and develop a plan for resolution of disagreements (resolution may require resubmission to the CAAC and DARC).

(2) Case managers will advise their respective Council chair of the resolution plan.

**b. When a case is discussed sequentially.**

(1) Council 1 will provide Council 2 a revised discussion baseline.

(2) Council 2 will provide the Council 1 revised discussion baseline to its members. If it is not possible for Council 2 to consider the Council 1 revised discussion baseline, the Council may proceed with procedures for concurrent discussions.

(3) If it is possible for Council 2 to consider the Council 1 revised discussion baseline, any Council 2 revisions must track to the Council 1 revised discussion baseline and be annotated and explained via footnote. Proceed with procedures for concurrent discussions.

Case managers must explain each change to the discussion baseline and revised discussion baseline via footnote. The explanation should clearly indicate why the change was needed. The FAC baseline should also be part of the legend.

**F. Marking Changes.**

**1. FAR text.**

Teams must not use the Microsoft Word track changes function in the draft FAR text revisions, even during Team deliberations. FAR text revisions must be made using the following conventions. Deviation from this format requires prior approval of the Principals.

In addition, each version should have a legend at the top of the first page (not in the header). This is an example of a legend, which would appear at the top of the first page:

**FAR Case 20XX-XXX****Case Title****Draft Final Rule**

Baseline is FAC 2005-XX.

The changes in the proposed rule published September 1, 20XX, are shown by **[additions]** and ~~deletions~~.

Team changes, January 3, 20XY, are shown by underlined **[additions]** and ~~deletions~~.

DARC changes January 10, 20XY, are shown by yellow highlight **[additions]** and ~~deletions~~.

CAAC changes January 17, 20XY, are shown by aqua highlight **[additions]** and ~~deletions~~.

A revision should use only one of the following: single underline, double underline, or one color for that revision. A revision should use the same color/underline marking for the Federal Register notice as for the FAR text.

If unchanged FAR language was put in the case to show context, but then is no longer needed, do not use strikeout to take it out of the case, as this will remove the section from the FAR instead of from the case.

If more words are to be added inside bracketed (new) FAR text language, additional nested brackets are not necessary. The change may be underlined or highlighted as necessary. Example:

"This revision was written **[by the CAAC and the DARC.]**"

Each Council should footnote the rationale for changes that are not typos.

When the case is a final rule following a proposed rule, show the proposed changes to the FAR text as the first set of changes, then the team changes to the proposed rule as the second set of changes.

First revision:

Deletions from baseline: ~~Strikethrough~~  
 Additions to baseline: **[Bolded and bracketed]**

Second revision:

Start with the first revision, showing baseline, deletions and additions of the first revision.  
 Now deletions from baseline: ~~Strikethrough and underline.~~  
 Now additions to baseline: **[Bolded and bracketed and underlined.]**  
 Reinstatement of previously deleted text: ~~Remove~~  
~~strikethrough and add underline.~~  
 Deletion of previously added text: ~~**[Bolded, bracketed, strikethrough, and underline]**~~

Third revision:

Start with the second revision, showing baseline, and the deletions and additions of the first and second revisions.  
 Now deletions: ~~Strikethrough and double underline.~~  
 Now additions: **[Bolded and bracketed and double underlined.]**  
 Reinstatement of previously deleted text: ~~Remove~~  
~~strikethrough and add double underline.~~  
 Deletion of previously added text: ~~**[Bolded, bracketed, strikethrough, and double underline]**~~

Subsequent revisions beyond the third revision:

Use colors to show changes. For example use blue to show changes made by the CAAC, and yellow for changes made by the DARC.

After the fourth or fifth revision, consider whether

earlier line-in-line-out changes should be dropped. Always keep the FAR baseline and the proposed rule, but drop intermediary stages and agree to the latest version as the second revision. The goal is to show in a meaningful way what the CAAC and DARC need to review.

**Submission to OIRA:** Remove all intermediary stages and footnotes, when forwarding the rule to OIRA, but retain the line-in/line out showing the change from the FAR text baseline to the final FAR text as agreed upon by the CAAC and DARC. The FAR text forwarded to OIRA must not have colors or underlines, or deleted material within brackets.

## **2. Federal Register notice.**

During case resolution and subsequent review phases, changes to the draft Federal Register notice may be indicated using the Microsoft Word track changes function or by highlighting, bolding, underlining, etc. Do not use brackets, because the document should be a clean document after agreement is reached by the CAAC and DARC, and removal of multiple brackets can be time-consuming in a long document. (The baseline for the change to the FAR text is the FAR text as of a certain date, while the baseline for the Federal Register notice is a clean or blank notice as it is developed during the course of the particular step in the rulemaking process.)

**Submission to OIRA:** The Federal Register notice forwarded to OIRA should be a clean copy, i.e., with no Microsoft Word track changes, colors, underlines, bolding, brackets, or strikethroughs.

## Examples

Original:	Revision 1:	Revision 2:	Revision 3:	Revision 4:
(3) "Domestic concern," as used in this part, means a concern incorporated in the United States or an unincorporated concern having its place of business in the United States.	(3) "Domestic concern," as used in this part, means[- (i) A]a <del>concern</del> [firm] incorporated in the United States [(including a subsidiary that is incorporated in the United States, even if the corporation is a foreign concern);] or [(ii) A]an unincorporated <del>concern</del> [firm] having its place of business in the United States.	(3[6]) "Domestic concern," <del>as used in this part,</del> means[- (i) A]a <del>concern</del> [firm] incorporated in the United States [(including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern);] or [(ii) A]an unincorporated <del>concern</del> [firm] having its [principal] place of business in the United States.	(3[67]) "Domestic concern," as used in this part, <sup>1</sup> means[- (i) A]a <del>concern</del> [firm] incorporated in the United States [(including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern);] or [(ii) A]an unincorporated <del>concern</del> [firm] having its [principal] place of business in the United States.  <sup>1</sup> CAAC 1-20-2010 Rationale is XYZ.	(3[67]) "Domestic concern," as used in this part, <sup>1</sup> means[- (i) A]a <del>concern</del> [firm] incorporated in the United States [(including a subsidiary or affiliate that is incorporated in the United States, even if the parent corporation is a foreign concern);] or [(ii) A]an unincorporated <del>concern</del> [firm] [(e.g., a sole proprietorships or unincorporated partnership <sup>2</sup> ) having its [principal] place of business in the United States.  <sup>1</sup> CAAC 1-20-2010 Rationale is XYZ. <sup>2</sup> DARC 2-1-2010 Rationale is ZZZ.

**V. FAR OPERATING GUIDE UPDATES**

The FAR Principals approve all changes to this FAR Operating Guide.

Requested changes to this guide should be submitted by e-mail to the FAR Operating Guide editor at DFARS@osd.mil, and include the subject line: **FAR Operating Guide**.

The Guide will be updated when four changes have been requested or six months have elapsed since the last update, unless the requested change is of a very urgent nature.

## Case Management Record

<b>FAR Case:</b> 20XX-XXX		<b>Date Submitted:</b> Enter Date	
<b>Title:</b> Enter Case Title			
<b>Recommended Due Date:</b> _____ Insert date and check appropriate box <input type="checkbox"/> Report <span style="margin-left: 100px;"><input type="checkbox"/> Reclama</span>  <input type="checkbox"/> Discussion <span style="margin-left: 100px;"><input type="checkbox"/> Other _____</span>			
<b>Priority</b> 1 (Law, Urgent)	<b>Submitted By</b> Identify Submitter of CMR	<b>Origination Code</b> Enter Code	
<b>Case Manager(s)</b> Enter FAR and DARS case managers		<b>Case References</b> Enter appropriate reference to another related FAR Case	
<b>FAR Cite</b> Identify affected FAR cites			
<b>Cognizant Team</b> Identify Team			
<b>Coordination</b> Indicate required coordination			
<b>Additional Information:</b> For a new case, provide background and other relevant summary information. Attach any relevant statutes. Identify whether a case intake meeting is needed.  For a follow-on CMR to discuss a report submitted by a Team or case manager, identify the recommended action (e.g., CAAC and DARC discuss proposed, interim or final rule).  Example for a new case: This is a new FAR Case, proposed rule, to delete the Xxxx Program in FAR xx.x. We are removing the FAR provisions because the legislative authority for the Program terminated xxxxx xx, xxxx. . A Copy of the statute is at TAB X.  Example for follow-on CMRs on a case: Attached is the Xxxxxx Team report dated xxxx xx, providing an analysis of the impact of the case. The Team recommends a draft proposed FAR rule as shown at TAB A. All Team members concurred with the report.			
<b>Priorities:</b> 1 = Statutory or very high priority; 2 = all other <b>Origination codes:</b> A-Army; C-CAAC; D-DLA; E-Executive Branch (OFPP/OMB); F-Air Force; G-GAO; I-DoDIG; L-Legislation, M-DCMA; N-Navy; O-OSD; P-Public; R-DCAA; S-NASA			

## Report Content and Format

Date

MEMORANDUM FOR: CHAIR, CIVILIAN AGENCY ACQUISITION COUNCIL

DIRECTOR, DEFENSE ACQUISITION REGULATIONS  
COUNCIL

SUBJECT: (Same as subject line in tasking CMR)

**I. Case Summary.** Provide a brief synopsis of the events of case (e.g., when case opened, when case tasked, whether an Intake meeting was held, report due date).

**II. Recommendation.** Summarize the team's recommendations for publication, including type of rule. (E.g., publish TAB A as an interim rule, with the Federal Register Notice at TAB B)

**III. Background.** Define the problem and issues, including any redefinition of the problem, if appropriate. Identify any information required to place the case in appropriate context.

**IV. Discussion and Analysis.**

A. Address all relevant issues in the team's deliberation, including the following, which do not necessarily need to be addressed separately or in the following order:

- A description of the case intake meeting analysis and how the Team dealt with any recommendations provided at that time.
- A thorough analysis of all issues associated with the case and the complete rationale for the recommended action.
- A discussion of the alternatives considered by the team and a summary of the deliberations to include why alternatives were either accepted or rejected.
- Conclusions reached by the team and rationale for conclusions.

- An explanation of each recommended FAR revision.
- Identification of any definition additions or changes and an analysis of the impact on other parts of the FAR.
- Identification of other FAR Parts potentially impacted including consideration of cross-referencing.
- A recommendation as to whether or not any recommended provisions or clauses should be applicable below the simplified acquisition threshold, to the acquisition of commercial items, or to the acquisition of COTS items (for statutory requirements, see 41 U.S.C. 1905, 1906, and 1907, respectively);
- An explanation of any special requirement to delay the effective date of the proposed revision, such as time needed to conduct intensive training on a complex revision, or time required to reprogram automated systems.
- Any other recommendations as to applicability that vary from the standard at FAR 1.108(d).

B. Analysis of public comments.

When analyzing public comments on a proposed or interim rule, either—

1. A thorough review and analysis of all comments in the report and in the Federal Register notice. Start with constructing a Matrix of Public Comments (see paragraph IX.G). When duplicate or similar comments are received, comments shall be grouped and discussed by general topic. Identify comment groupings with a subject heading. For each issue, the report should describe the comment ("Comment:") and provide a team response ("Response:") in sufficient detail to fully understand the commenter(s) position and the team rationale. Do not start

response with "Concur," Non-concur," or "Partially concur;" or

2. Optionally, a reference in the report to the analysis of public comments in the Federal Register notice (identify the respondents in the draft Federal Register notice parenthetically, to be removed prior to publication), and only include in the report additional alternatives considered or rationale that is not included in the Federal Register notice.

For comments submitted late, the CAAC Chair and DARC Director will decide whether late comments should be considered. If late comments received before the team completes its report are considered, they should be handled the same as timely comments. If late comments received after the team completes its report are to be considered, they shall be tasked as a report addendum.

**V. Training.** Attach a completed training form to the Team Report (Appendix 5).

**VI. Associated Impacts of the Change.**

A. Discuss how and to what degree the proposed change will affect Government and contractor operations, especially small business.

1. For the effect on Government, address any impact on the contracting officer or the solicitation, negotiation, or award.

2. Provide the analysis from IAE with regard to what, if any, systems changes are necessary for this rule to become effective.

3. Attach a completed data collection/reporting needs checklist to the team report (Appendix 6). This checklist is required for all cases to document the impact (or lack of impact) on business systems.

B. Identify and quantify, if possible, any expected cost impact to the Government or contractors resulting from the proposed change.

**VII. Collateral Requirements.**

A. Address if the changes are significant revisions (see FAR 1.501-1) that require public comment. Address whether this is a significant regulatory action pursuant to Executive Order 12866 or a major rule under 5 U.S.C. 804 and include appropriate language in the draft Federal Register notice.

B. The Regulatory Flexibility Act applies to all rules when public comments are/were required (see Appendix 8). Include the appropriate analysis, if required by the Regulatory Flexibility Act, as a TAB and include appropriate language in the draft Federal Register notice. If the team plans to prepare a certification of no impact for signature with the FAC, the Regulatory Flexibility Act requires a rationale be part of the Federal Register notice. The team should discuss the adequacy of the rationale. If there is a possibility of a significant impact, it is better to do the IRFA, even if no significant impact is expected. We cannot later do a FRFA unless we did an IRFA.

C. If OMB approval under the Paperwork Reduction Act is required for any new or modified information collection requirements, include a summary of the approval request to be submitted to OMB as a TAB and include appropriate language in the draft Federal Register notice. An OMB Information Collection approval number is required before signature of the FAC. (Some historic and current information collections are viewable at <http://www.reginfo.gov/public/>.) (See Appendix 9.)

**VIII. Concurrences.** Identify the team member with lead responsibility for the report, list all members who participated in team deliberations, and indicate which members concur. Provide an explanation of any minority opinions by voting or nonvoting members (attach copy of the minority opinion and other supporting documentation as a TAB). List as nonresponsive any members (or agencies, as appropriate) that failed to participate in team deliberations or respond to requests for final coordination in a reasonable time period.

**Signature.** The Team Chair (or an Acting Chair) shall date and sign the report. The signature page will be a PDF page attachment.

**Notice.** Include the following notice as a footer on all reports, draft rules, and Federal Register notices, and any other attachments to the report where it would be applicable:

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**ATTENTION: THIS IS A CONFIDENTIAL, DELIBERATIVE, AND PRE-DECISIONAL FEDERAL ACQUISITION REGULATIONS SYSTEM DOCUMENT, PROTECTED FROM UNAUTHORIZED DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT AND OTHER LEGAL AUTHORITIES. THIS DOCUMENT SHALL NOT BE DISTRIBUTED OUTSIDE AUTHORIZED RULEMAKING CHANNELS WITHOUT THE PRIOR APPROVAL OF THE CAAC CHAIR OR DARC DIRECTOR. IF YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, YOU MAY NOT READ, COPY, DISTRIBUTE, OR USE THE DOCUMENT OR INFORMATION CONTAINED THEREIN. FURTHERMORE, YOU MUST IMMEDIATELY NOTIFY THE SENDER BY REPLY EMAIL OR OTHER MEANS AND THEN DELETE OR DESTROY ALL COPIES OF THE DOCUMENT. ANY DISTRIBUTION OF THIS DOCUMENT MUST CONTAIN THIS LEGEND.**

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**IX. Enclosures.** Include a complete list of enclosures identified as Tabs A, B, C, etc. Identification of TABs after Tabs A and B may vary, depending on which TABs are applicable—

**A. FAR Text and Clauses.**

1. Submit recommended additions, deletions, or revisions to FAR text or clauses as TAB A to the team report. Begin Tab A with a legend, and mark the changes as shown in section III.F. of the Operating Guide. Update the text so that the baseline is the current FAR.

2. Within the FAR text add a citation to the appropriate authority if the revisions are based on public law or Executive order.

3. The current FAR is viewable at the FAR homepage, [www.acquisition.gov/far](http://www.acquisition.gov/far) and the e-CFR is viewable at <http://ecfr.gpoaccess.gov>.

4. When the case is an interim rule being finalized without change, the FAR text should not show the interim rule line-in-line-out changes, as they are already in effect; instead Tab A should say "This is Tab A – The final rule will finalize the interim rule without change. A copy of the interim rule as published in the Federal Register is attached for information purposes.", and attach the copy (the PDF version).

When an interim rule is being finalized with changes, show the entire interim rule (not just the sections being changed), re-baselined to current FAR, with changes to the interim rule annotated as strikethroughs for deletions, bold and brackets for additions.

**B. Federal Register Notice (FRN).**

Include a complete draft FRN for all proposed, interim, and final rules, in accordance with Appendix 4. The Federal Register notice should generally be briefer than the FAR team report, providing detail sufficient for the public to understand the rationale behind the rule, but not all the details of developing the position.

- Lengthy FRNs may have a table of contents, for readability.
- If public comments were received, include analysis (see IV.J.).
- Do not use an acronym unless it is used more than once; spell it out the first time it is used. Do not capitalize "section" or "part". See FAR Drafting Guide for further editorial guidance.

**C. Federal Acquisition Circular (FAC) Introduction:**

This is a short summary done for interim and final rules. The FAC Intro is prepared in accordance with Appendix 4.

**D. Minority Opinions:** Provide minority opinion and rebuttal (if any).

**E. Paperwork Reduction Act Supporting Statement:** As addressed in paragraph VII.C.

**F. Regulatory Flexibility Analysis:** As addressed in paragraph VII.C.

**G. List of Respondents and Matrix of Public Comments:** Group public comments by topic area or category and indicate which of the respondents provided that comment. Include a table or matrix, similar to the following, which lists all respondents and tracks public comment categories to respondents. The number assigned to

the respondent shall be the number assigned by the Regulatory Secretariat in the transmittal memorandum of public comments.

Comments should not just be listed numerically, but should have a heading indicating the essence of the comment category, expressed neutrally. (For example, use heading "Scope" rather than "Scope is too narrow." Like comments should be grouped together. If the answer to two comments is the same or similar, then they should be combined. To the extent feasible, comments should be arranged in a logical order. The resultant report should fit into the form of an outline of the issues.

- **List of respondents on (proposed or interim) rule:**

<u>Number</u>	<u>Name of Respondent</u>
1.	ABC, Incorporated
2.	R. L. Brown, Assoc.
3.	Parry and Sons
4.	Johnson and Jones, Ltd.

- **Matrix:**

<b>Respondent</b>	<b>Issues</b>			
	1	2.a.	2.b.	3
1.				X
2.	X		X	
3.	X			
4.	X	X	X	

- **Outline of Issues:**

1. The rule fails to address the direction in Section 1010 of the statute.
2. Applicability
  - a. Commercial items
  - b. COTS items
3. The information collection requirement is burdensome and unnecessary.

**H. Statute or Executive order:** If the team is implementing a statute or Executive order, attach the copy of the pertinent section. For a statute, make sure that the version is the version passed by the House and Senate and signed by the President. The report writer should

double check that the version attached is the version the team actually used.

**I. Standard/Optional Forms:** If a Standard or Optional Form is being proposed or amended, attach a draft or marked up copy of the form. The CAAC case manager will need to coordinate with the GSA Forms organization to obtain a finished version for publication with the rule.

**J. Checklists/Forms:** Include a completed copy of the following:

- Report Checklist at Appendix 3;
- Training Form at Appendix 5;
- Data Collection/Reporting Needs Checklist at Appendix 6; and
- Provision/Clause Matrix at Appendix 7, if applicable.

**K.** Draft Determination and Findings for application of a rule based on statute to acquisitions of commercial items or commercially available off-the-shelf items and acquisitions at or below the simplified acquisition threshold.

[Report Checklist for team report - Submit this two page checklist with the Team Report]

## **A QUALITY TEAM REPORT SHOULD INCLUDE:**

### **1. PREPARATION OF THE TEAM REPORT**

- a. \_\_\_\_ The report format in the FAR Operating Guide, Appendix 2, is followed.
- b. \_\_\_\_ All aspects of the source document are fully and accurately implemented.
- c. \_\_\_\_ Team deliberations are explained in the Report (issues identified, rationale pro/con, and resolution). Major alternatives/options that were considered are explained.
- d. \_\_\_\_ Tab A is the FAR text, or for an interim rule adopted as final without change, a copy of the Federal Register publication of the interim rule.
- e. \_\_\_\_ The team chair (or acting chair) has signed the report.
- f. \_\_\_\_ The training form and the data collection/reporting checklist were sent to the people listed on the forms. The provision/clause matrix was completed if applicable.

### **2. DRAFT FAR CHANGES**

- a. \_\_\_\_ Above the FAR text, a legend shows the date of the team report, type of rule, the Federal Acquisition Circular (FAC) upon which it was baselined, and how the line-in-line-out changes are marked.
- b. \_\_\_\_ If this is a final rule following a proposed rule, the proposed rule FAR text changes are marked as the first set of line-in-line-out changes, and second set of changes are the team changes marked with underlining, showing the change from the proposed rule to the final rule.
- c. \_\_\_\_ The FAR text changes have been double-checked against the FAR for marking accuracy.
- d. \_\_\_\_ All the terms used in the draft FAR text conform to definitions in 2.101 or a relevant subpart.
- e. \_\_\_\_ The impact on commercial items, commercially available off-the-shelf (COTS) items, and use of simplified procedures has been considered. (Including any necessary changes to 12.503 through 12.505 (if a statute does not apply to commercial items) or 52.212-5, 52.213-4, and 52.244-6) (if it applies to commercial items or below the SAT). If a clause that applies to commercial items is not required by statute or Executive order, it must be added at 12.301(d).
- f. \_\_\_\_ If the draft rule contains a representation or certification that will be included in ORCA, the appropriate changes have been made to 4.1202 and 52.204-8, and for commercial items 52.212-3.
- g. \_\_\_\_ A search has been run through the FAR for the section and paragraph numbers being changed, to catch cross-references which need updating.
- h. \_\_\_\_ If there is a new Paperwork Burden OMB clearance number, it has been added to the list at 1.106.

### **3. FEDERAL REGISTER NOTICE (FRN)**

- a. \_\_\_\_ The FRN conforms to each of the templates in FAR Operating Guide Appendix 4.
- b. \_\_\_\_ The FRN describes the major FAR text changes.
- c. \_\_\_\_ The Regulatory Flexibility Act statement and the Paperwork Reduction Act statement (if any) are supported by available Federal Procurement Data System or other data.
- d. \_\_\_\_ If there is an Initial Regulatory Flexibility Analysis (IRFA) or a Final Regulatory Flexibility Analysis (FRFA) – it conforms to the statutory format and it discusses the actual impact on small businesses. --OR-- If there is no IRFA/FRFA, there is a strong rationale supporting the assertion of no impact.

- e. \_\_\_\_ The FAC Intro (for interim and final rules) describes in easily understood language the major FAR changes made by this rule. It addresses the impact on the contracting officer, and on small business.
- f. \_\_\_\_ If a statute is made applicable to COTS items/commercial items/below the simplified acquisition threshold (SAT), the D&Fs are described in the FRN.

**If this rule follows the receipt of public comments:**

- g. \_\_\_\_ If the team uses the team's Microsoft Word documents etc. from the proposed/interim rule as the starting point for the final rule, the Word documents have been updated to show the FRN version as actually published in the Federal Register (e.g., include changes made by OMB before publication). The documents have been further updated to show this is now a final rule.
- h. \_\_\_\_ If this rule is following a proposed rule or Advance Notice of Proposed Rulemaking (ANPR), the FRN describes the major changes made to the proposed rule or ANPR.
- i. \_\_\_\_ Where there are multiple public comments on a topic, they have been grouped.
- j. \_\_\_\_ The description of each comment(s) accurately summarizes that comment.
- k. \_\_\_\_ The team's response to each comment is adequate.
- l. \_\_\_\_ If a comment's response says that a change to FAR section X is being made, the change appears in Tab A FAR text changes.
- m. \_\_\_\_ Regulations.gov shows the same public comments as the team considered (not more or fewer).
- n. \_\_\_\_ The previous rule PDF is an attachment to the case.

**4. OTHER REQUIRED TABS.**

- a. \_\_\_\_ The FAC Intro Item is attached (required for interim or final rules).
- b. \_\_\_\_ The Supporting Statement for any information collection requirement is attached (required if draft rule will impose new information collection requirement or affect an existing requirement).
- c. \_\_\_\_ An IRFA or FRFA is attached (unless the FRN justifies that there will be no impact on small entities).
- d. \_\_\_\_ The FAR Case Training Form is attached.
- e. \_\_\_\_ The Data Collection/Reporting Checklist is attached.
- f. \_\_\_\_ Draft D&F for application of a rule based on statute to acquisitions of commercial items, COTS items, or acquisitions at or below the SAT (required if statute does not impose civil or criminal penalties, does not specifically require application to commercial items, COTS items, or at or below the SAT)
- g. \_\_\_\_ A list of respondents and matrix of public comments (required if public comments were received from more than two respondents)
- h. \_\_\_\_ A copy of the statute, Executive order, or other source document used by the team is attached.
- i. \_\_\_\_ A marked up copy of any form being changed.

REQUIREMENT	
<p>Document Format— Font - Courier New 12 Double-spaced 1-inch margin on top, bottom, and sides Number all pages on bottom center.</p> <p>DO NOT use Microsoft Word Track Changes in any Federal Register Document.</p> <p>For interim and final rule, also prepare a FAC Intro Item (see p. 20)</p>	

REQUIREMENT	ALWAYS AS FOLLOWS-
<p><b>HEADING:</b> Begin each rule document with headings that identify the FAR signatory agencies and the subject matter of your document. The headings of a rule document also identify the CFR title and part(s) your document (1) proposes to amend for proposed rules and (2) amends for interim and final rules. The HEADING includes.</p> <ul style="list-style-type: none"> <li>• FAR signatory agency</li> <li>• CFR Citation</li> <li>• Docket Number, and Sequence Number are provided by Reg Sec</li> <li>• RIN is Regulation Identifier Number, provided by Reg Sec</li> <li>• Subject Heading, including Title and Case Number</li> </ul>	<p><b>DEPARTMENT OF DEFENSE</b></p> <p><b>GENERAL SERVICES ADMINISTRATION</b></p> <p><b>NATIONAL AERONAUTICS AND SPACE ADMINISTRATION</b></p> <p><b>48 CFR Part(s) XX</b></p> <p><b>Docket XXXX-XXX, Sequence XX</b></p> <p><b>RIN 9000</b></p> <p><b>Federal Acquisition Regulation: (Insert case title and case number)</b></p>

REQUIREMENT	ALWAYS AS FOLLOWS-
<p><b>PREAMBLE:</b> Each rule published in the Federal Register must contain a preamble. The preamble follows the subject heading of the document. It identifies the FAR signatory agencies and explains the basis and purpose of the regulatory text, but contains no regulatory text. It arranges basic information on the "who, what, where, when, and why" of a document for the reader's convenience. These captions must appear in the order shown.</p>	<p><b>AGENCIES:</b></p> <p><b>ACTION:</b></p> <p><b>SUMMARY:</b></p> <p><b>DATES:</b></p> <p><b>ADDRESSES:</b></p> <p><b>FOR FURTHER INFORMATION CONTACT:</b></p> <p><b>SUPPLEMENTARY INFORMATION:</b></p>
REQUIREMENT	ALWAYS AS FOLLOWS-
<p><b>AGENCIES:</b> The agency caption states the "who" of the document.</p>	<p><b>AGENCIES:</b> Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).</p>
REQUIREMENT	OPTIONS
<p><b>ACTION:</b> The ACTION caption identifies the type of document. It does not summarize the substance of a document.</p>	<p><b>ACTION:</b> Advance notice of proposed rulemaking.</p> <p><b>ACTION:</b> Proposed rule.</p> <p><b>ACTION:</b> Interim rule.</p> <p><b>ACTION:</b> Final rule.</p>

REQUIREMENT	EXAMPLES
<p><b>SUMMARY:</b> Under the SUMMARY caption you explain the "what," "why," and "effect" of the document. In the SUMMARY, you must answer these three questions:</p> <ul style="list-style-type: none"> <li>• What action is being taken?</li> <li>• Why is the action necessary? Explain the content and purpose of the document.</li> <li>• What is the rule's intended effect?</li> </ul> <p>Use the following guidelines in preparing a SUMMARY.</p> <ul style="list-style-type: none"> <li>• Use language a non-expert will understand.</li> <li>• Describe what the document does, not how it affects the CFR.</li> <li>• Refer to an act of Congress by the popular name of the act.</li> <li>• Do not use legal citations (e.g., Public Laws, U.S.C., etc.) or FAR references.</li> <li>• Do not include regulatory history or extensive background.</li> <li>• Do not include qualifications, exceptions, or specific details.</li> <li>• Be brief.</li> </ul>	<p><b><i>ADVANCE NOTICE OF PROPOSED RULEMAKING</i></b></p> <p><b>SUMMARY:</b> DoD, GSA, and NASA are considering amending the Federal Acquisition Regulation (FAR) to ...</p> <hr/> <p><b><i>PROPOSED RULE</i></b></p> <p><b>SUMMARY:</b> DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to ...</p> <hr/> <p><b><i>INTERIM RULE</i></b></p> <p><b>SUMMARY:</b> DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of [insert popular name of act]. This section extends ...</p> <hr/> <p><b><i>PROPOSED TO FINAL RULE or FINAL RULE issued without obtaining public comment</i></b></p> <p><b>SUMMARY:</b> DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to ...</p>

REQUIREMENT	EXAMPLES
<p><b>SUMMARY CONTINUED:</b> You may not use the SUMMARY to prove a point or argue a case. Supporting information, details, discussion of the regulatory history, and precise legal citations are essential in an adequate preamble but do not belong in the SUMMARY. Extended discussion of the rule belongs in the SUPPLEMENTARY INFORMATION section.</p>	<p><b>INTERIM TO FINAL RULE NO CHANGES</b> <b>SUMMARY:</b> DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of (insert popular name of act). This section provides ...</p>
	<p><b>INTERIM TO FINAL RULE WITH CHANGES</b> <b>SUMMARY:</b> DoD, GSA, and NASA are adopting as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to ...</p>
REQUIREMENT	OPTIONS
<p><b>DATES:</b> The DATES caption presents the "when" of a document. Include the dates that are essential to the document. Include the following dates, if appropriate:</p> <ul style="list-style-type: none"> <li>• Comment deadlines. In compelling circumstances, the public comment period may be less than 60 days, but must be at least 30 days.</li> <li>• Extension of comment deadlines.</li> <li>• Public meeting dates.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Other dates the public may need to know.</li> </ul>	<p><b>PROPOSED RULE</b> <b>DATES:</b> Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before <b>[Insert 60 days after publication in the FEDERAL REGISTER]</b> to be considered in the formation of the final rule.</p>

REQUIREMENT	OPTIONS
<p><b>DATES (Continued):</b> The Federal Register publisher computes and inserts dates tied to Federal Register publication.</p> <p>Do not include information other than dates in the DATES caption. Place any discussion of meeting agenda, content of material available for inspection, etc., in the SUPPLEMENTARY INFORMATION section. Remember that DATES and ADDRESSES are separate captions.</p>	<p style="text-align: center;"><b>INTERIM RULE</b></p> <p><b>DATES:</b> <u>Effective Date:</u> [Insert date of publication in the FEDERAL REGISTER.]</p> <p><u>Comment Date:</u> Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before [Insert 60 days after publication in the FEDERAL REGISTER] to be considered in the formation of the final rule.</p>
<p>An applicability date is sometimes also used, for example if Contracting Officers will have to apply the rule other than as specified in FAR 1.108(d) (e.g., to amend existing solicitations or contracts).</p>	<p style="text-align: center;"><b>INTERIM TO FINAL RULE NO CHANGES</b></p> <p><b>EFFECTIVE DATE:</b> [Insert date of publication in the FEDERAL REGISTER.]</p> <hr/> <p style="text-align: center;"><b>OTHER FINAL RULES</b></p> <p><b>EFFECTIVE DATE:</b> [Insert date 30 days after publication in the FEDERAL REGISTER.]</p>

<p><b>ADDRESSES:</b> The ADDRESSES caption contains the "where" of the document. Include any address that the public needs to know. You may include addresses for:</p> <ul style="list-style-type: none"> <li>• Mailing public comments.</li> <li>• Hand-delivering public comments.</li> <li>• Attending a public hearing (or meeting).</li> <li>• Examining any material available for public inspection.</li> </ul> <p><b>ADDRESSES are not used for final rules.</b></p> <p>Do not include information other than addresses in the ADDRESSES caption. Place any discussion of how to register for a meeting, meeting agenda, content of material available for inspection, etc., in the SUPPLEMENTARY INFORMATION section. Place the electronic addresses in the ADDRESSES section.</p>	<p style="text-align: center;"><b>PROPOSED RULE</b></p> <p><b>ADDRESSES:</b> Submit comments in response to FAR Case 201X-XXX by any of the following methods:</p> <ul style="list-style-type: none"> <li>• Regulations.gov: <a href="http://www.regulations.gov">http://www.regulations.gov</a>. Submit comments via the Federal eRulemaking portal by entering "FAR Case 201X-XXX" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 201X-XXX." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 201X-XXX" on your attached document.</li> <li>• Fax: 202-501-4067.</li> <li>• Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th floor, Washington, DC 20417</li> </ul> <p><b>Instructions:</b> Please submit comments only and cite FAR Case 201X-XXX, in all correspondence related to this case. All comments received will be posted without change to <a href="http://www.regulations.gov">http://www.regulations.gov</a>, including any personal and/or business confidential information provided.</p>
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**Addresses (Continued)*****INTERIM RULE***

**ADDRESSES:** Submit comments identified by FAC 2005-XX, FAR Case 201X-XXX by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "FAR Case 201X-XXX" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 201X-XXX." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 201X-XXX" on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th floor, Washington, DC 20417

Instructions: Please submit comments only and cite FAC 2005-XX, FAR Case 201X-XXX, 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.

REQUIREMENT	FOR ALL RULES
<p><b>FOR FURTHER INFORMATION CONTACT:</b> Under the FOR FURTHER INFORMATION CONTACT caption, you must include the name and telephone number of the FAR Staff Analyst who can answer questions about the document. For proposed rules, delete the FAC number).</p>	<p><b>FOR FURTHER INFORMATION CONTACT:</b> Mr./Ms. XX, Procurement Analyst, at 202-XXX-XXXX for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-XX (do not include on Proposed Rule), FAR Case 201X-XXX.</p>
REQUIREMENT	FOR ALL RULES
<p><b>SUPPLEMENTARY INFORMATION</b></p> <p><b>BACKGROUND:</b> In this section, include the regulatory history, including statutory references and regulation citations, of this rulemaking proceeding. Present the background information and, for proposed and interim rules, the detail necessary to give adequate notice of the issues to be commented on. Present this information in language that the reader can easily understand.</p> <p><b>DISCUSSION/ANALYSIS:</b> This is where the Government can ask any questions for the public to respond to. If public comments were solicited prior to issuing the rule (i.e., proposed or interim to final rule or proposed rule to interim rule), also include a summary</p>	<p><b>I. Background. Examples:</b> Proposed rule: DoD, GSA, and NASA are proposing to revise the FAR to implement a policy that... Interim rule: This interim rule revises the FAR to implement section XXX of the XXX Act (Pub. L.111-XX)...</p> <p>Final rule: DoD, GSA, and NASA published a proposed/an interim rule at XX FR XXX on XXXX, to (implement section XXXX of the (popular name of Act) (Pub. L. XXX-XXX)) or (whatever else the rule was intended to accomplish). (Number of respondents) submitted comments on the proposed/interim rule.</p> <hr/> <p><b>II. Discussion and Analysis.</b> Proposed or interim: Discuss proposed or interim changes and rationale. Final: The Civilian Agency Acquisition Council</p>

<p>of any public comments (by general category) and the Councils' disposition for the public comments. If no comments were received, indicate such in the final rule.</p> <p>The numbering of the sections may be modified if necessary, for example if there were no public comments section II is not needed.</p>	<p>and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:</p> <p><b>A. Summary of significant changes</b>  <b>Summarize changes</b> either from FAR baseline for an interim rule, or from the proposed rule (but note that we are not changing the proposed rule, we are changing the FAR in a way that is different than was proposed)</p> <p><b>B. Analysis of public comments</b>  <b>1. (1<sup>st</sup> comment category)</b>  <b>Comment:</b>  <b>Response:</b>  <b>2. (2<sup>nd</sup> comment category)</b>  Etc. (categories can be further subdivided)  If changes are based on other than public comments, add:  <b>C. Other changes.</b></p>
REQUIREMENT	OPTIONS
<p><b>EXECUTIVE ORDERS</b></p> <p>Each FRN must include language addressing E.O. 12866 and 13563, and whether or not the rule is considered significant and subject to formal review under Executive Order 12866. Choose the appropriate language.</p>	<p><b>III. Executive Orders 12866 and 13563</b></p> <p><b>NOT SIGNIFICANT AND NOT MAJOR</b></p> <p>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</p>

<p><b>Rules are only significant and/or major if declared so by OIRA.</b> The first paragraph will always be used unless OIRA determines that the case is significant. Through notification from OIRA or a request for the case to be uploaded into ROCIS, the FAR Analyst will revise the rule wording to <i>significant</i> prior to having the RegSec upload the case into ROCIS.</p> <p><b>Executive Orders (continued)</b></p>	<p>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.</p> <p><b>SIGNIFICANT AND NOT MAJOR</b></p> <p><b>- Change last 2 sentences to read as follows:</b></p> <p>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.</p>
REQUIREMENT	EXAMPLE
<p><b>REGULATORY FLEXIBILITY ACT:</b></p> <p>Provide statements and reasoning as to whether the rule will have a significant economic impact on a substantial number of small entities. Generally, a rule will have a significant economic impact on a substantial number of small entities if</p>	<p><b>IV. REGULATORY FLEXIBILITY ACT</b></p> <p><b>IMPACT OR POSSIBLE IMPACT</b></p> <p><b>PROPOSED OR INTERIM RULE</b></p> <p>The change may 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</p>

<p>the rule-</p> <ol style="list-style-type: none"> <li>1) Impacts 20 percent or more of small businesses contracting with the Government in the major supply, service, or construction field to which the rule relates, or</li> <li>2) Imposes a severe hardship on even a few small businesses.</li> </ol> <p>If there is a possibility of a significant impact, it is better to do the IRFA, even if no significant impact is expected. We cannot later do a FRFA unless we did an IRFA.</p> <p>If there is an IRFA or a FRFA, the Regulatory Flexibility Act requires either publication of the full IRFA/FRFA in FRN or a summary. Make sure the IRFA/FRFA or the summary specifically address the effect on small business.</p> <hr/> <p>If the rule will definitely not have a significant impact, provide a credible rationale for that conclusion.</p>	<p>summarized as follows:_____</p> <p>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.</p> <p>DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-XX, FAR Case 201X-XXX) in correspondence.</p> <p style="text-align: center;"><b>NO IMPACT PROPOSED OR INTERIM RULE</b></p> <p>DoD, GSA, and NASA do not expect this rule 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., because _____. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.</p>
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	<p>DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 200X-XX (if an interim rule), FAR Case 201X-XXX), in correspondence.</p>
REQUIREMENT	EXAMPLE
<p>As a matter of policy, if an IRFA was prepared, prepare the FRFA, even if the FRFA concludes that there is no significant economic impact.</p>	<p><b>IMPACT FINAL RULE, OR IRFA WAS PREPARED</b></p> <p>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:_____</p> <p>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.</p> <p><b>NO IMPACT FINAL RULE AND NO IRFA</b></p> <p>The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify</p>

	that this final rule will not 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., because_____
REQUIREMENT	EXAMPLE
<p><b>Regulatory Flexibility Act (Continued)</b></p> <p>If a rule does not have a significant effect beyond the internal operating procedures of the agency issuing the rule, the rule is not a significant change to the FAR and does not require publication for public comment. If the rule does not require publication for public comment, the Regulatory Flexibility Act does not apply.</p>	<p><b><i>FINAL RULE with NO Prior Proposed or Interim Rule</i></b></p> <p>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 and does not require publication for public comment.</p>
REQUIREMENT	EXAMPLE
<p><b>Paperwork Reduction Act</b></p> <p>Provide a statement as to whether the rule contains any information collection requirements that require OMB approval under the Paperwork Reduction Act.</p> <p><b>If the rule contains a new information collection requirement, data regarding</b></p>	<p><b>V. Paperwork Reduction Act</b></p> <p><b><i>PROPOSED, INTERIM, OR FINAL RULE - NO INFORMATION COLLECTION REQUIREMENT</i></b></p> <p>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).</p>

the information collection must be included in the notice and submitted to OMB for approval.

***INFORMATION COLLECTION REQUIREMENT ALREADY  
COVERED BY EXISTING OMB CLEARANCE***

This rule affects the certification and information collection requirements in the provisions at FAR XX.XXX-X and XX.XXX-XX currently approved under OMB Control Numbers 9000-XXXX in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because\_\_\_\_\_.

***--or--***

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 9000-XXXX, titled:\_\_\_\_\_.

REQUIREMENT	EXAMPLE
<b>Paperwork Reduction Act (Continued)</b>	<p data-bbox="1115 532 1770 634"><b><i>PROPOSED, INTERIM, OR FINAL RULE - NEW OR REVISED INFORMATION COLLECTION REQUIREMENT</i></b></p> <p data-bbox="976 678 1131 704"><b>PROPOSED</b></p> <p data-bbox="976 751 1896 1032">The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a (new/revised) information collection requirement concerning (case title) to the Office of Management and Budget.</p> <p data-bbox="976 1076 1896 1321">A. Public reporting burden for this collection of information is estimated to average xx 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.</p>

**Paperwork Reduction Act (Continued)**

The annual reporting burden is estimated as follows:

Respondents: xx  
Responses per respondent: xx  
Total annual responses: xx  
Preparation hours per response: xx  
Total response burden hours: xx

B. Request for Comments Regarding Paperwork Burden.

Submit comments, including suggestions for reducing this burden, not later than **[insert date 60 days after publication in the FEDERAL REGISTER]** to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7<sup>th</sup> Floor, Washington, DC 20417.

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,

<b>Paperwork Reduction Act (Continued)</b>	<p>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.</p> <p>Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7th floor, Washington, DC 20417. Please cite OMB Control Number 9000-00XX, Title, in all correspondence.</p> <p><u>INTERIM RULE</u>- same as proposed rule, but must obtain emergency approval and OMB control number prior to publication. Therefore, substitute the following template for the first paragraph of the above template.</p>
	<p><b><i>NEW/REVISED INFORMATION COLLECTION REQUIREMENT INTERIM OR FINAL RULE</i></b></p> <p>The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000-XXXX, titled:</p> <p>_____.</p>

REQUIREMENT	EXAMPLE
<p><b>Determination to Issue an Interim Rule:</b></p> <p>Required for all interim rules.</p> <p>Explains the urgency that justifies issuance of an interim rule prior to affording the public an opportunity to comment.</p>	<p><b>INTERIM RULE</b></p> <p><b>VI. Determination to Issue an Interim Rule</b></p> <p>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 _____ (enter sufficient information to explain why an interim rule is necessary, such as the date the statute was effective. This may require several sentences). 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.</p>
REQUIREMENT	EXAMPLE
<p><b>LIST OF SUBJECTS:</b></p>	<p><b>List of Subjects in 48 CFR Part(s) xx</b></p> <p>Government procurement.</p>

**FAC Intro**

A FAC Intro is required for all interim and final rules. The FAC Intro contains the case number and title, and addresses the following-

- 1) What the rule does;
- 2) Why a change is required (for example if required by law); and
- 3) A brief summary of the impact on the Government and contractors (small businesses in particular, because the FAC Intro doubles as the Small Entity Compliance Guide).

The FAC Intro should be short. The best FAC Intros are 3 to 4 sentences long. They should be easily understandable by a contracting officer/specialist in the field. Examples:

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from \$50,000,000 to \$75,000,000. This change implements section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108-375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to \$75 million.

This final rule amends FAR to add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This case is based on extensive market research by the Defense Logistics Agency. Unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality, the Buy American Act does not apply to acquisition of these items as end products, and the contracting officer may treat foreign components of the same class or kind as domestic components.

## FAR Operating Guide

## FAR Case Training Form

**Purpose of this form:** To identify to DAU and FAI the FAR cases that may require Federal contracting training curricula and additional communication and outreach to train or inform the acquisition workforce of the regulatory change.

**I. To be completed by FAR Team Chair:**

**Date:** \_\_\_\_\_ **Case No./Title:** \_\_\_\_\_

**FAR Team Name:** \_\_\_\_\_

**Team Chair:** (Name/email/phone number) \_\_\_\_\_

**Case Managers:** (Name/email/phone number) \_\_\_\_\_

**Subject matter expert(s):**  
(Name/email/phone number) \_\_\_\_\_

**Description of Case:** *(Include summary from the FAR notice, as well as brief additional background information to include scope and impact.)*

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**Send the form with the completed FAR team report to the following:**

[leslie.deneault@dau.mil](mailto:leslie.deneault@dau.mil)  
[harold.mcalduff@dau.mil](mailto:harold.mcalduff@dau.mil)

[molly.parker@gsa.gov](mailto:molly.parker@gsa.gov)  
[anthony.grayson@gsa.gov](mailto:anthony.grayson@gsa.gov)

**II. To be completed by DAU****Is training required for Federal Contracting Workforce:**

No \_\_\_\_\_  
 Yes \_\_\_\_\_ (complete the matrix below)

Continuous Learning Module (CLM #) \_\_\_\_\_  
 Change to CON course curriculum (Course(s) #) \_\_\_\_\_  
 Community of Practice, BLOG, or other (please specify): \_\_\_\_\_  
 Rapid Deployment Training (conferences, etc.) \_\_\_\_\_

**DAU Distribution:****DAU emails form to the following:**

Molly Parker (FAI) at [molly.parker@gsa.gov](mailto:molly.parker@gsa.gov);  
 Tony Grayson (FAI) at [anthony.grayson@gsa.gov](mailto:anthony.grayson@gsa.gov);

**III. To be completed by FAI**

Is additional training required for Federal Contracting Workforce?

No \_\_\_\_\_  
 Yes \_\_\_\_\_ (In collaboration with OFPP, FAI will complete the following actions as appropriate:

Check all that Apply	Activity	Date Discussed with OFPP
	Develop new continuous learning module (CLM #)	
	Revise existing continuous learning module (CLM #)	
	Schedule/host Acquisition Seminar (Name)	
	Prepare article for FAI Newsletter (Date)	
	Send email blast	
	Develop FAI.gov slider	
	Other (Please Specify)	

**FAI Distribution:**

FAI uploads the form to the FAR Case Training Workspace

Date posted in workspace: \_\_\_\_\_

## FAR DATA COLLECTION/REPORTING NEEDS PROCEDURES

When FAR Cases are established it is not always apparent, from the case management record (CMR) and the business case, that data collection and/or a system changes may be required. Therefore, it is important to inform representatives from the General Services Administration (GSA), Integrated Acquisition Environment (IAE) Office (Patricia Brooks – [pat.brooks@gsa.gov](mailto:pat.brooks@gsa.gov)) and the Department of Defense (DoD), Defense Procurement & Acquisition Policy Program Development and Implementation (DPAP PDI) Office (Lisa Romney- [Janice.l.romney.civ@mail.mil](mailto:Janice.l.romney.civ@mail.mil)) of FAR cases when they are opened to—

- 1) Obtain their input and recommendations regarding whether a potential data collection and/or system change exists with this FAR change;
- 2) Keep them aware of potential data collection and/or system changes, so they can budget, plan, and schedule the change; and
- 3) Assist them with prioritizing FAR changes that require a data collection and/or system change with other competing requirements from other agencies or sources.

The DARC Director, CAAC Chair, and NASA Policy Representatives (the FAR principals) are responsible for making certain that the IAE and DPAP PDI representatives are aware of the FAR Case openings and should provide a copy of the CMR and the business case to the representatives via their emails. The DARC Director, CAAC Chair, and NASA representatives should also make certain that their members should keep their key systems staff aware of the potential data collection and/or system change.

If it is determined that the FAR change will impact the data collection and/or require a system change, the Team Chair and FAR Case Manager should ensure the IAE and DPAP PDI representative receive a copy of the FAR text and Federal Register documents and should obtain input from the IAE and DPAP PDI representatives and keep them abreast of the FAR rule's progress during the various stages:

- 1) Committee phase.
- 2) DARC/CAAC review.
- 3) OFPP's review. OFPP will coordinate to make certain the IAE and DPAP PDI representatives still agree with DARC/CAAC approved FAR case).
- 4) OIRA's review. Note: It is important to make certain the IAE and DPAP PDI representatives are involved during this stage because of the following:
  - a. During OIRA's interagency consultation, so if changes result from OIRA's review, they can make certain the changes do not impact the potential data collection or system change.
  - b. When OIRA approves the rule, so they can schedule the system change or plan for the data collection requirement.
- 5) After the FAC is signed by DoD, NASA, and GSA, so the IAE and DPAP PDI representatives know when the FAR rule is going to the Federal Register. When a publication date is known, it is also important to make the IAE and DPAP PDI representatives aware of this date.
- 6) Review of public comments, so the IAE and DPAP PDI representatives can participate with the FAR Team to address comments related to data collection and/or system changes.

**NOTE:** IAE and DPAP representatives have agreed to provide demonstrations of the various systems for all the FAR Teams and other members associated with the rulemaking process to make them aware of data the systems collect and how the system operates.

**FAR Data Collection/Reporting Needs Checklist****Date:** \_\_\_\_\_ **Case No/Title:** \_\_\_\_\_**Case Managers (Name/e-mail/phone number):** \_\_\_\_\_

*Please provide responses to the following questions. Changes in information technology at both the Acquisition Award Environment (AAE) level and in agency contract writing systems may need to be effected before the rule can be implemented.*

*If any of the questions are answered "yes", please provide this form to the contacts listed below immediately. If the initial analysis confirms information technology changes will be needed, the team lead will need to provide continuous updates to the IAE to ensure system changes are available when the rule is implemented.*

**1. Does this case or the underlying statute require collection of data or include any reporting requirements?**

Yes                      No

**2. Will there be any changes in definitions, certification, or thresholds?**

Yes                      No

**3. Will this case establish any new clauses or provisions, or will it change the text of any existing clauses or provisions?**

Yes                      No

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**4. Will this case affect anything in Part 4 (i.e., line item structure, contractual instrument identification, contract reporting requirements, etc.)?**

Yes                      No

**5. Will this case require a new Standard Form, or change an existing Standard Form?**

Yes                      No

## **FAR Data Collection/Reporting Needs Checklist**

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For **FAR Cases** send completed document by E-mail to:

- Federal eGov Integrated Acquisition Environment (IAE) initiative –  
[Pat.Brooks@gsa.gov](mailto:Pat.Brooks@gsa.gov)
- Defense Procurement & Acquisition Policy (DPAP) / Policy –  
[Janice.I.romney.civ@mail.mil](mailto:Janice.I.romney.civ@mail.mil)
- NASA Integrated Acquisition Environment (IAE) Point of Contact --  
[ronald.e.crider@nasa.gov](mailto:ronald.e.crider@nasa.gov)

# FAR Operating Guide

Version 5

April 30, 2011

## FAR PROVISION AND CLAUSE MATRIX UPDATE FORM

### KEY

P or C	Provision or Clause
IBR	Is incorporation by Reference authorized? (See FAR 52.102)
UCF	Uniform Contract Format Section, When Applicable
<b>CONTRACT TYPE OR PURPOSE</b>	
FP SUP	Fixed-Price Supply
CR SUP	Cost-Reimbursement Supply
FP R&D	Fixed-Price Research & Development
CR R&D	Cost- Reimbursement Research & Development
FP SVC	Cost-Reimbursement Service
FP CON	Fixed-Price Construction
CR CON	Cost-Reimbursement Construction
T&M LH	Time & Material/Labor Hour
LMV	Leasing of Motor Vehicle
COM SVC	Communication Services
DDR	Dismantling, Demolition, or Removal of Improvements
A&E	Architect-Engineering
FAC	Facilities
IND DEL	Indefinite Delivery
TRN	Transportation
SAP	Simplified Acquisition Procedures (excluding micro-purchase)
UTL SVC	Utility Services
CI	Commercial Items
<b>USE OF PROVISION OR CLAUSE</b>	
R	Required
A	Required When Applicable
O	Optional
v	Revision

# FAR Operating Guide

Version 5

April 30, 2011

Provision/clause	Prescribed in	p/c	ibr	ucf	Fp sup	Cr sup	Fp r&d	Cr R&d	Fp svc	Cr svc	Fp con	Cr con	t& m lh	Lm v	com svc	ddr	a& e	fac	ID	trn	sap	us	ci

Case Number \_\_\_\_\_

Case Title \_\_\_\_\_

Case managers: \_\_\_\_\_

\_\_\_\_\_

Check: \_\_\_ Addition \_\_\_ Deletion \_\_\_ Revision \_\_\_ Check if prescription requires use in letter contracts. (See Note 1 at end of Matrix)

\_\_\_ Check if prescription requires use in SBA 8(a) contracts. (See Note 2 at end of Matrix)

# Regulatory Flexibility Act Guide

## Introduction

The Regulatory Flexibility Act (RFA)(5 U.S.C. 601-612) requires Federal agencies to—

- Consider the impact of regulatory changes on small business concerns;
- Analyze alternatives that may minimize the impact on small business concerns; and
- Make the analyses available for public comment.

Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires each agency to establish procedures and policies to promote compliance with the RFA.

## Regulatory Flexibility Analysis.

The FAR Teams must assess each FAR rule that is required to be ***published for public comment*** to determine if the rule will have a ***significant economic impact*** on a ***substantial number of small entities***.

**1. Publication for public comment.** A Regulatory Flexibility Analysis or Regulatory Flexibility Act certification is not required if the rule does not require publication for public comment. 41 U.S.C. 1707 (the OFPP Act) requires publication for public comment only if the rule—

- Has 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.

**2. Significant economic impact.**

Examples of a significant economic impact follow below:

### Preference Status

Diminishment of any preference status provided to small businesses in the FAR, including those in Part 19 (Small Business Programs) and Part 13 (Simplified Acquisition Procedures).

**Solicitation Procedures**

Revision of competitive solicitation procedures, or methods of providing notice of proposed acquisitions, in a manner likely to result in a reduction in small business participation.

**Simplified Acquisition Procedures**

Substantive revision of simplified acquisition procedures.

**Costs to Unsuccessful Offerors**

Imposition of additional costs on unsuccessful offerors who might, for example, be required to purchase special equipment in order to enter the Government marketplace and qualify for award.

**Competitive Posture**

Imposition of compliance costs that are disproportionately higher for small businesses than for large businesses, such that the competitive posture of small businesses in obtaining the award of Government contracts will be adversely affected.

**Professional Skill Requirements**

Requiring recurring application of professional or expert skills (e.g., legal, accounting) that are not normally available in-house to small businesses, the costs of which are not subject to being passed along to the Government as part of the contract price.

**Nonreimbursed Administrative Costs**

Imposition of significant administrative costs (e.g., recordkeeping or reporting costs) that are not subject to being passed along to the Government as part of the contract price.

**Business Systems**

Imposition of requirements that vary significantly from generally accepted business practices, thereby requiring revision of bookkeeping, accounting, or other information collection systems.

**Capital Investment**

Requiring investment, or similar costs, exceeding approximately 1% of annual gross receipts.

**Significant Positive Impact**

Providing a significant benefit to small entities.

**Defining “Substantial Number” of Small Entities**

As a general rule, a FAR change is considered to affect a substantial number of small entities if the change will—

- Impact approximately 20 percent or more of small businesses contracting with the Government in the major supply, service, or construction field to which the rule relates; or
- Impose a severe hardship on even a few small businesses.

**Rules Meeting the Requirement**

If the rule will have a significant economic impact on a substantial number of small entities, the FAR Team will prepare an **initial regulatory flexibility analysis(IRFA)** before issuing the proposed or interim rule; and a **final regulatory flexibility analysis(FRFA)** before issuing the final rule. If an IRFA was prepared with the proposed or interim rule, as a matter of policy a FRFA should also be prepared for the final rule, even if a certification could be done.

A summary of the analysis shall be included in the corresponding Federal Register notice.

**Rules Not Meeting the Requirement**

If the proposed or interim rule is not expected to have a significant economic impact on a substantial number of small entities, the Federal Register notice will include a statement to that effect, with factual supporting rationale for proposed or interim rules, and a statement certifying this belief with factual supporting rationale for final rules. If an IRFA was not prepared, then at publication of the final rule the FAR Signatories will be required to certify that the rule does not have a significant economic impact on a substantial number of small entities and state the reasons. These certifications are prepared by the Regulatory Secretariat in accordance with the draft Federal Register notice, and signed as part of the FAC signature process.

SBA Office of Advocacy advises that we should not do a FRFA without an IRFA. That is why it is important to do an IRFA if there is any chance that the rule may have significant impact on small entities. Furthermore, it is preferable that the FAR Signatories not be called on to sign an RFA certification unless there is a very solid basis for the conclusion that there is no significant impact.

**Therefore, if there is any doubt as to impact, an IRFA should always be prepared for proposed or interim rules.**

**Initial Regulatory Flexibility Analysis Contents (template at page 6)**

An Initial Regulatory Flexibility Analysis (IRFA) will discuss the impact on small business entities and will include the following:

- A description of the reasons why the action is being considered
- A statement of the objectives of, and the legal basis for, the rule
- A description of and, where feasible, an estimate of the number of small entities to which the rule will apply.
- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record
- Identify, to the extent practicable, all relevant Federal rules that may duplicate, overlap, or conflict with the rule

A description of any significant alternatives to the rule that would accomplish the stated objectives of applicable statutes and that would minimize any significant economic impact of the rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the rule, or any part thereof, for such small entities.

**Final Regulatory Flexibility Analysis – Contents (template at page 7)**

A Final Regulatory Flexibility Analysis will include:

- A statement of the need for, and the objectives of, the rule
- A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis.
- The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule, and a detailed statement of any change made in the final rule as a result of the comments;
- A summary of the assessment of such issues, and a statement of any changes made to the proposed/interim rule as a result of such comments.
- A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available
- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities

that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

- An account of the steps taken to minimize the significant economic impact of the rule on small entities consistent with the stated objectives of applicable statutes, including:
  - A statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule; and
  - Why each one of the other considered significant alternatives, that affect the impact on small entities, was rejected.

## **Team Responsibilities.**

**1. Drafting the rule.** In drafting the rule, the Team should consider the potential economic impact on small entities, and consider alternatives that would minimize any significant economic impact on small entities. For example, the Team may recommend-

- A tiered approach (i.e., one regulation for large businesses and a less burdensome version for small businesses); or
- An approach that would tailor contractor requirements based upon contract dollar value (i.e., requirements increase as contract dollar value increases). This is based on the assumption that small businesses participate predominantly in smaller-dollar value Government contracts.

## **2. Preparing the IRFA and the FRFA or the RFA Certification.**

The Team will prepare the IRFA/FRFA or RFA certification as part of the Team report.

The RFA permits agencies to use general descriptive statement of the effects of a proposed rule whenever numerical analysis is not practical or reliable. To the extent that the Federal Procurement Data System cannot provide sufficient data, descriptive statements or best estimates may be used.

If the FAR is implementing the regulations of a specific agency (e.g., DOL or SBA), and is not adding to the economic impact of the agency rule, then the Team may refer to the IRFA and FRFA or RFA certification prepared by the lead agency.

## **Liaison with the Small Business Administration.**

Teams should consult with representatives of the Office of Advocacy when drafting a rule that may impact small businesses and in preparation of the IRFA and FRFA or RFA certification.

The Regulatory Secretariat transmits copies of initial RFA analyses and certification statements to the Chief Counsel for Advocacy, Small Business Administration.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Case Title

Case Number

This initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603.

1. **Reasons for the action.**
2. **Objectives of, and legal basis for, the rule.**
3. **Description of and estimate of the number of small entities to which the rule will apply.**
4. **Description of projected reporting, recordkeeping, and other compliance requirements of the rule. *Include an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.***
5. **Relevant Federal rules which may duplicate, overlap, or conflict with the rule.**

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

6. **Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.** Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the rule, or any part thereof, for such small entities.

**FINAL REGULATORY FLEXIBILITY ANALYSIS****Title****Case number**

This final regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 604.

1. Statement of the need for, and the objectives of, the rule.
2. Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rule as a result of such comments.
3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule, and a detailed statement of any change made in the final rule as a result of the comments;
4. Description of and an estimate of the number of small entities to which the rule will apply.
5. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule.

*Include an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

6. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

*Include a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

Paperwork Reduction Act

5 CFR PART 1320— CONTROLLING PAPERWORK BURDENS  
ON THE PUBLIC p. 2

Instructions for Completing OMB Form 83-I p. 21

Guidelines for Preparing the Supporting  
Statement p. 27

5 CFR PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC**§ 1320.1 Purpose.**

The purpose of this part is to implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35)(the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter." It is designed to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal Government.

**§ 1320.2 Effect.**

(a) Except as provided in paragraph (b) of this section, this part takes effect on October 1, 1995.

(b)(1) In the case of a collection of information for which there is in effect on September 30, 1995, a control number issued by the Office of Management and Budget under 44 U.S.C. Chapter 35, the provisions of this Part shall take effect beginning on the earlier of:

(i) The date of the first extension of approval for or modification of that collection of information after September 30, 1995; or

(ii) The date of the expiration of the OMB control number after September 30, 1995.

(2) Prior to such extension of approval, modification, or expiration, the collection of information shall be subject to 5 CFR part 1320, as in effect on September 30, 1995.

**1320.3 Definitions.**

For purposes of implementing the Act and this Part, the following terms are defined as follows:

(a) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, or any independent regulatory agency, but does not include:

(1) The General Accounting Office;

(2) Federal Election Commission;

(3) The Governments of the District of Columbia and the territories and possessions of the United States, and their various subdivisions; or

(4) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b)(1) *Burden* means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including:

(i) Reviewing instructions;

(ii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;

(iii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;

- (iv) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;
- (v) Adjusting the existing ways to comply with any previously applicable instructions and requirements;
- (vi) Training personnel to be able to respond to a collection of information;
- (vii) Searching data sources;
- (viii) Completing and reviewing the collection of information; and
- (ix) Transmitting, or otherwise disclosing the information.

(2) The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

(3) A collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of State, local, or tribal Government is presumed to impose a Federal burden except to the extent that the agency shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement.

(c) *Collection of information* means, except as provided in §1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. "Collection of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, "collection of information" refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

(1) A "collection of information" may be in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements. A "collection of information" may implicitly or explicitly include related collection of information requirements.

(2) Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or the public at large, through posting, notification, labeling or similar disclosure requirements constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) "Collection of information" includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes, that is, if the results are to be used for statistical compilations of general public interest, including compilations showing the status or implementation of Federal activities and programs.

(4) As used in paragraph (c) of this section, "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, tribal or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition of "ten or more persons," "persons" does not include employees of the respondent acting

within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal Government (including military reservists and members of the National Guard while on active duty) when acting within the scope of their employment, but it does include retired and other former Federal employees.

(i) Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(ii) Any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

(d) *Conduct or Sponsor.* A Federal agency is considered to "conduct or sponsor" a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency. A collection of information undertaken by a recipient of a Federal grant is considered to be "conducted or sponsored" by an agency only if:

(1) The recipient of a grant is conducting the collection of information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or collection procedures.

(e) *Director* means the Director of OMB, or his or her designee.

(f) *Display* means:

(1) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), to place the currently valid OMB control number on the front page of the collection of information;

(2) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, to place the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(3) In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, to publish the currently valid OMB control number in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing the OMB control number in the preamble or the regulatory text for the final rule, in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of the currently valid control number in the Code of Federal Regulations constitutes an alternative means of "display." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already "displayed" the OMB control number by publishing it in the Federal Register as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also place the currently valid control number in a table or codified section to be included in the Code of Federal Regulations. For placement of OMB control numbers in the Code of Federal Regulations, see 1 CFR 21.35.

(4) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means to inform potential respondents of the OMB control number.

(g) *Independent regulatory agency* means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing

Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(h) *Information* means any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (by contrast, a certification would likely involve the collection of "information" if an agency conducted or sponsored it as a substitute for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards, because such a certification would generally entail burden in addition to that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument);

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the Federal Register or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information; and

(10) Like items so designated by OMB.

(i) *OMB* refers to the Office of Management and Budget.

(j) *Penalty* includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(k) *Person* means an individual, partnership, association, corporation (including operations of Government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local Government or branch thereof, or a political subdivision of a State, territory, tribal, or local Government or a branch of a political subdivision;

(l) *Practical utility* means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of recordkeeping requirements or general purpose statistics (see §1320.3(c)(3)), "practical utility" means that actual uses can be demonstrated.

(m) *Recordkeeping requirement* means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to:

- (1) Retain such records;
- (2) Notify third parties, the Federal Government, or the public of the existence of such records;
- (3) Disclose such records to third parties, the Federal Government, or the public; or
- (4) Report to third parties, the Federal Government, or the public regarding such records.

#### **§ 1320.4 Coverage.**

(a) The requirements of this part apply to all agencies as defined in §1320.3(a) and to all collections of information conducted or sponsored by those agencies, as defined in §1320.3 (c) and (d), wherever conducted or sponsored, but, except as provided in paragraph (b) of this section, shall not apply to collections of information:

- (1) During the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;
- (2) During the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities;
- (3) By compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or
- (4) During the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(b) The requirements of this Part apply to the collection of information during the conduct of general investigations or audits (other than information collected in an antitrust investigation to the extent provided in paragraph (a)(3) of this section) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(c) The exception in paragraph (a)(2) of this section applies during the entire course of the investigation, audit, or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or equivalent is opened with respect to a particular party. In accordance with paragraph (b) of this section, collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

#### **§ 1320.5 General requirements.**

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information—

(1) The agency has—

(i) Conducted the review required in §1320.8;

(ii) Evaluated the public comments received under §1320.8(d) and §1320.11;

(iii) Submitted to the Director, in accordance with such procedures and in such form as OMB may specify,

(A) The certification required under §1320.9,

(B) The proposed collection of information in accordance with §1320.10, §1320.11, or §1320.12, as appropriate,

(C) An explanation for the decision that it would not be appropriate, under §1320.8(b)(1), for a proposed collection of information to display an expiration date;

(D) An explanation for a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees;

(E) A statement indicating whether (and if so, to what extent) the proposed collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) A summary of the public comments received under §1320.8(d), including actions taken by the agency in response to the comments, and the date and page of the publication in the Federal Register of the notice therefor; and

(G) Copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) Published, except as provided in §1320.13(d), a notice in the Federal Register—

(A) Stating that the agency has made such submission; and

(B) Setting forth—

( 1 ) A title for the collection of information;

( 2 ) A summary of the collection of information;

( 3 ) A brief description of the need for the information and proposed use of the information;

( 4 ) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

( 5 ) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

( 6 ) Notice that comments may be submitted to OMB; and

( 7 ) The time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under §1320.10, §1320.11 or §1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under §1320.13; and

(2) OMB has approved the proposed collection of information, OMB's approval has been inferred under §1320.10(c), §1320.11(i), or §1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under §1320.15; and

(3) The agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:

(1) The collection of information displays a currently valid OMB control number; and

(2)(i) The agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.

(C) In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency publishes such information in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it "in a manner that is reasonably calculated to inform the public." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided such information "in a manner that is reasonably calculated to inform the public" by publishing it in the Federal Register as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see §1320.3(f)(3)).

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the Federal Register or in current regulations that were published as final rules in the Federal Register, in accordance with the requirements in §1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of §1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the requirements in §1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the Federal Register in accordance with the requirements in §1320.12.

(4) Special rules for emergency processing of collections of information are set forth in §1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) Is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) Is not duplicative of information otherwise accessible to the agency; and

(iii) Has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) Requiring respondents to report information to the agency more often than quarterly;

(ii) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) Requiring respondents to submit more than an original and two copies of any document;

(iv) Requiring respondents to retain records, other than health, medical, Government contract, grant-in-aid, or tax records, for more than three years;

(v) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under §1320.11 or §1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in §1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).

### **§ 1320.6 Public protection.**

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this part if:

(1) The collection of information does not display, in accordance with §1320.3(f) and §1320.5(b)(1), a currently valid OMB control number assigned by the Director in accordance with the Act; or

(2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with §1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

(b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto.

(c) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, as prescribed in §1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under §1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under §1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through administrative or judicial process.

(e) The protection provided by paragraph (a) of this section does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute—e.g., 26 U.S.C. §6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. §6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).

### **1320.7 Agency head and Senior Official responsibilities.**

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act and this part. The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this part.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) The Senior Official shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under the Act, including the reduction of information collection burdens on the public.

(d) With respect to the collection of information and the control of paperwork, the Senior Official shall establish a process within such office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this Part.

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under §1320.9, may be made only by the agency head or the Senior Official, or their designee.

### **1320.8 Agency collection of information responsibilities.**

The office established under §1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(1) An evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) A functional description of the information to be collected;

(3) A plan for the collection of information;

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(6) A test of the collection of information through a pilot program, if appropriate; and

(7) A plan for the efficient and effective management and use of the information to be collected, including necessary resources.

(b) Such office shall ensure that each collection of information:

(1) Is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date;

(2) Is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. §3507; and

(3) Informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of—

- (i) The reasons the information is planned to be and/or has been collected;
  - (ii) The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;
  - (iii) An estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);
  - (iv) Whether responses to the collection of information are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority);
  - (v) The nature and extent of confidentiality to be provided, if any (citing authority); and
  - (vi) The fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.
- (c)(1) An agency shall provide the information described in paragraphs (b)(3)(i) through (v) of this section as follows:
- (i) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (except in an electronic format), such information can be included either on the form, questionnaire or other collection of information, as part of the instructions for such collection, or in a cover letter or memorandum that accompanies the collection of information.
  - (ii) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, such information can be included either in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;
  - (iii) In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, such information can be published in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text to the final rule, or in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information).
  - (iv) In other cases, and where OMB determines in advance in writing that special circumstances exist, agencies may use other means to inform potential respondents.
- (2) An agency shall provide the information described in paragraph (b)(3)(vi) of this section in a manner that is reasonably calculated to inform the public (see §1320.5(b)(2)(ii)).
- (d)(1) Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to:
- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
  - (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - (iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the Federal Register notice, the agency should—

(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

(3) The agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under §1320.11, if the agency provides notice and comment through the notice of proposed rulemaking for the proposed rule and such notice specifically includes the solicitation of comments for the same purposes as are listed under paragraph (d)(1) of this section.

(4) The agency need not seek or may shorten the time allowed for such public comment if OMB grants an exemption from such requirement for emergency processing under §1320.13.

### **1320.9 Agency certifications for proposed collections of information.**

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) Is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) Reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) An exemption from coverage of the collection of information, or any part thereof;

(d) Is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) Is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) Indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) Informs potential respondents of the information called for under §1320.8(b)(3);

(h) Has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

**§ 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.**

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the Federal Register(which are submitted under §1320.11) or in current rules that were published as final rules in the Federal Register(which are submitted under §1320.12), in accordance with the following requirements:

(a) On or before the date of submission to OMB, the agency shall, in accordance with the requirements in §1320.5(a)(1)(iv), forward a notice to the Federal Register stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under §1320.13. Upon approval of a collection of information, OMB shall assign an OMB control number and, if appropriate, an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(d) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(e)(1) In the case of a collection of information not contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(i) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

(f) Prior to the expiration of OMB's approval of a collection of information, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this part.

(g) For good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule; in such case, the agency shall cease conducting or sponsoring such collection of information while the submission is pending, and shall publish a notice in the Federal Register to that effect.

#### **§ 1320.11 Clearance of collections of information in proposed rules.**

Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements in §1320.5(a)(1)(iv) and §1320.8(d)(1) and (3), in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the Act. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the Federal Register, in such form and in accordance with such procedures as OMB may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, but subject to paragraph (e) of this section, OMB may file public comments on collection of information provisions. The OMB comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may, subject to paragraph (e) of this section, disapprove the collection of information in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information subject to this section, OMB may, subject to paragraph (e) of this section, disapprove it at any time.

(e) OMB shall provide at least 30 days after receipt of the proposed collection of information before submitting its comments or making its decision, except as provided under §1320.13.

(f) When the final rule is published in the Federal Register, the agency shall explain how any collection of information contained in the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(g) If OMB has not filed public comments under paragraph (c) of this section, or has approved without conditions the collection of information contained in a rule before the final rule is published in the Federal Register, OMB may assign an OMB control number prior to publication of the final rule.

(h) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved under paragraph (g) of this section (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication, but subject to paragraph (e) of this section, OMB shall approve, instruct the agency to make a substantive or material change to, or disapprove, the collection of information contained in the final rule. Any such instruction to change or disapprove may be based on one or more of the following reasons, as determined by OMB:

(1) The agency has failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information contained in the final rule from that contained in the proposed rule without providing OMB with notice of the change and sufficient information to make a determination concerning the modified collection of information at least 60 days before publication of the final rule; or

(3) In cases in which OMB had filed public comments under paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(i) After making such decision to approve, to instruct the agency to make a substantive or material change to, or disapprove, the collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not acted upon the submission within the time limits of this section, the agency may request, and OMB shall assign an OMB control number. If OMB disapproves or instructs the agency to make substantive or material change to the collection of information, it shall make the reasons for its decision publicly available.

(j) OMB shall not approve any collection of information under this section for a period longer than three years. Approval of such collection of information will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(k) After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the Federal Register to inform the public of OMB's decision.

(l) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### **1320.12 Clearance of collections of information in current rules.**

Agencies shall submit collections of information contained in current rules that were published as final rules in the Federal Register in accordance with the following procedures:

(a) In the case of a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(1) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(2) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(b)(1) In the case of a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Act and this part, the agency shall:

(i) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB. In the case of a collection of information not previously approved, approval shall be granted for such period, which shall not exceed 60 days, unless extended by the Director for an additional 60 days, and an OMB control number assigned. Upon assignment of the OMB control number, and in accordance with §1320.3(f) and §1320.5(b), the agency shall display the number and inform the potential persons who are to respond to the collection of

information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(c) On or before the day of submission to OMB under paragraphs (a) or (b) of this section, the agency shall, in accordance with the requirements set forth in §1320.5(a)(1)(iv), forward a notice to the Federal Register stating that OMB review is being sought. The notice shall direct requests for copies of the collection of information and supporting documentation to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(d) Within 60 days after receipt of the collection of information or publication of the notice under paragraph (c) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under §1320.13.

(e)(1) Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(2) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(3) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(f)(1) If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, OMB shall:

(i) Publish an explanation thereof in the Federal Register; and

(ii) Instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under §1320.10 or §1320.11, as appropriate; and

(iii) Extend the existing approval of the collection of information (including an interim approval granted under paragraph (b) of this section) for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under §1320.10 or §1320.11, as appropriate.

(2) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the Federal Register. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the Federal Register and submission to OMB shall initiate OMB clearance procedures under section 3507(d) of the Act and §1320.11. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(g) OMB may disapprove, in whole or in part, any collection of information subject to the procedures of this section, if the agency:

(1) Has refused within a reasonable time to comply with an OMB instruction to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(h)(1) Upon disapproval by OMB of a collection of information subject to this section, except as provided in paragraph (f)(1)(iii) of this section, the OMB control number assigned to such collection of information shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

(2) The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(i) Prior to the expiration of OMB's approval of a collection of information in a current rule, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this Part.

### **§ 1320.13 Emergency processing.**

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the Federal Register notice prescribed by §1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period stated under paragraph (b) of this section.

(e) OMB shall approve or disapprove each such submission within the time period stated under paragraph (b) of this section, provided that such time period is consistent with the purposes of this Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

#### **1320.14 Public access.**

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this Part, and to the extent permitted by law, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that such public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) Any person may request OMB to review any collection of information conducted by or for an agency to determine, if, under this Act and this part, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, OMB shall, in coordination with the agency responsible for the collection of information:

(1) Respond to the request within 60 days after receiving the request, unless such period is extended by OMB to a specified date and the person making the request is given notice of such extension; and

(2) Take appropriate remedial action, if necessary.

#### **§ 1320.15 Independent regulatory agency override authority.**

(a) An independent regulatory agency which is administered by two or more members of a commission, board, or similar body, may by majority vote void:

(1) Any disapproval, instruction to such agency to make material or substantive change to, or stay of the effectiveness of OMB approval of, any collection of information of such agency; or

(2) An exercise of authority under §1320.10(g) concerning such agency.

(b) The agency shall certify each vote to void such OMB action to OMB, and explain the reasons for such vote. OMB shall without further delay assign an OMB control number to such collection of information, valid for the length of time requested by the agency, up to three years, to any collection of information as to which this vote is exercised. No override shall become effective until the independent regulatory agency, as provided in §1320.5(b) and §1320.6(2), has displayed the OMB control number and informed the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### **§ 1320.16 Delegation of approval authority.**

(a) OMB may, after complying with the notice and comment procedures of the Administrative Procedure Act, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he or she has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegate:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved;

(2) Has sufficient resources to carry out this responsibility effectively; and

(3) Has established an agency review process that demonstrates the prompt, efficient, and effective performance of collection of information review responsibilities.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, conducted or sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accordance with the terms and conditions of each delegation as specified in appendix A to this part, OMB delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System; and

(2) Managing Director of the Federal Communications Commission.

#### **§ 1320.17 Information collection budget.**

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form, at such time, and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted in the succeeding twelve months. For good cause, OMB may exempt any agency from this requirement.

#### **1320.18 Other authority.**

(a) OMB shall determine whether any collection of information or other matter is within the scope of the Act, or this Part.

(b) In appropriate cases, after consultation with the agency, OMB may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with the informal rulemaking procedures of the Administrative Procedure Act.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by OMB under this Act.

(d) To the extent permitted by law, OMB may waive any requirements contained in this part.

(e) Nothing in this part shall be interpreted to limit the authority of OMB under this Act, or any other law. Nothing in this part or this Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

## PAPERWORK REDUCTION ACT SUBMISSION

**Instructions for Completing OMB Form 83-I**

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

**1. Agency originating request**

Provide the name of the agency originating the request.

**2. OMB control number**

a. If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.

b. Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

**3. Type of information collection (check one)**

a. Check "New collection" when the collection has not previously been used or sponsored by the agency.

b. Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.

c. Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.

d. Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.

e. Check "Reinstatement with change" when the collection previously had OMB approval, but the

approval has expired or was withdrawn before this submission was made, and there is change to the collection.

f. Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

**4. Type of review requested (check one)**

a. Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.

b. Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.

c. Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

**5. Small entities**

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small Government jurisdiction which is a Government of a city, county, town, township, school district, or special district with a population of less than 50,000.

**6. Requested expiration date**

a. Check "Three years" if the agency requests a three year approval for the collection.

b. Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

**7. Title**

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

**8. Agency form number(s) (if applicable)**

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

**9. Keywords**

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

**10. Abstract**

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

**11. Affected public**

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

**12. Obligation to respond**

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

a. Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.

b. Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.

c. Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

**13. Annual reporting and recordkeeping hour burden**

a. Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.

b. Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.

b1. Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.

c. Enter the total annual recordkeeping and reporting hour burden.

d. Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.

e. Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.

f. Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.

f.1. "Program change" is the result of deliberate Federal Government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal Government action. Changes resulting from new estimates or action not controllable by the Federal Government are recorded as adjustments.

**14. Annual reporting and recordkeeping cost burden (in thousands of dollars)**

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

a. Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.

b. Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.

c. Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.

d. Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.

e. Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.

f. Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.

f.1. "Program change" is the result of deliberate Federal Government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

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f.2. "Adjustment" is a change that is not the result of a deliberate Federal Government action. Changes resulting from new estimations or actions not controllable by the Federal Government are recorded as adjustments.

### **15. Purpose of information collection**

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general Government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

**16. Frequency of recordkeeping or reporting**

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent.

If the reporting is on "an event" basis, check "On occasion."

**17. Statistical methods**

Check "Yes" if the information collection uses statistical methods such as sampling or imputation.

Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

**18. Agency contact**

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

**19. Certification for Paperwork Reduction Act Submissions**

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

## **Guidelines for Preparing the Supporting Statement**

### **Process for Preparing an Information Collection Approval Package**

Every information collection approval request submission, whether for a new collection or to extend or revise an existing collection, must include two hard copies of the following.

#### **Order of IC Package**

\* Emergency ICP Request Memo

1. Completed OMB 83-I form
2. Supporting Statement and Burden Grid
3. Copy of any forms, surveys, scripts, screens, etc. used in the collection of information
4. Copy of the 60-day Federal Register notice
5. Copies of any pertinent statutes or regulations, which reference collection requirements or provide guidance on what or how information should be collected.
6. Copies of any pertinent handbooks, manuals or other program instructional materials.
7. Copies of reports
8. 30-day Federal Register Notice

Additionally an electronic copy of the supporting statement should be included or e-mailed. A more detailed explanation of each item in a standard information collection request package is provided below.

#### **Item 1**

Each information collection approval request package should include a completed OMB 83-I form (<http://www.whitehouse.gov/omb/inforeg/83i-fill.pdf>). All fields with the exception of field 9, Keywords, should be completed

#### **Item 2**

All eighteen questions of the supporting statement should be answered in whole. It is not acceptable to take the responses to questions from previous submissions and cut and paste them in the new submission. OMB expects the response to each question to

be well thought out and understandable by the average member of the public.

- If the agency is a partner in the Service Center Initiative a 19th question must be answered.
- If the collection involves statistical methods, Section B with an additional five questions must be answered.

**Item 3**

Copies of the forms used to collect information should be provided. The form must include the OMB approval number and a standard burden statement as follows.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 9000- nnnn. The time required to complete this information collection is estimated to average \_\_\_\_ minutes/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.*

**Item 4**

A copy of the 60-day Federal Register notice must be attached. Reference to the date of publication and page number should be included in the response to question 8 of the supporting statement.

**Item 5**

Any statutes or regulations discussing the Department's/Agency's authority to establish and/or collect information in conjunction with program operations must be provided. Any instructional, outreach or other materials relevant to the collection, its purpose, etc. would also be appropriate to include. If the collection is a result of a rulemaking action, the draft rule **must** be attached to the information collection.

**The Process**

The general chronology for preparing an information collection approval request submission varies from organization to organization depending on the number of reviews and other

factors. In general, the first step is to publish your Federal Register notice. While you can talk in some generality in the abstract section of the notice, the estimate of burden and respondents needs to be fairly accurate. This means you may need to do some research prior to finalizing the notice in order to justify and have confidence in your estimates. Once the notice is published, a 60 (calendar) day period must pass.

During the 60-day comment period, you may be preparing your supporting statement and assembling the back-up materials (items 3-5). When the comment period concludes, you will need to document whether comments were received in the response to question 8 of the supporting statement.

When the package has been prepared and the OMB 83-I has been signed, the information collection approval request package is forwarded to the Information Management Division (IMD) within the Office of the Chief Information Officer (OCIO). A minimum of two weeks should be allowed for the review and processing of a package. After someone in OCIO signs off on the package, two copies are forwarded to OMB who then has 60 days to review and approve or disapprove the submission.

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### **Guidelines for Preparing the Supporting Statement**

The supporting statement of an information collection package consists of responses to 18 (sometimes 23) standard questions established by the Office of Management and Budget (OMB). The supporting statement is the heart of the package and serves as the formal mechanism for justifying the need and practical utility for imposing reporting and recordkeeping burden on the public.

The supporting statement is a public document and should be written in a manner that provides the average person with an understanding of why information must be collected from them and what use the Government will make of the information. The entire information collection package is entered into a docket library at OMB when it is submitted and is available to the public upon request for their review.

The guidelines provided in this document are meant to assist the author of a package in developing the supporting statement. Some

general comments are offered as well as question by question guidelines. The standards that OMB is holding the Department to continually increase. By following the guidance below, an agency may minimize the delays in obtaining approval. However, as every information collection is unique in some way, there are no exact recipes or guarantees.

**General Guidelines**

- All supporting statement responses should be written in plain English with acronyms, programs, organizations, etc. fully spelled out. No level of program understanding should be assumed. Remember these documents are for the public.
- Please do not use N/A as a response to any question. If you feel a question does not apply, answer appropriately in a full sentence. For example, a good response to the question:

"Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees."

would be:

"There are no plans to provide any payments or gifts to respondents."

- While there are specific questions that must be answered, if it helps the reader understand the context around the information collection or, in the case of a revision, if regulatory or other program changes are the catalyst for the information collection package, an Introduction section may precede the actual questions and responses.

**Justification (Questions and Responses)**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The response to this question should cover the need for the information collection. Specific references to statutes, executive orders, regulations, notices, directives, or other relevant documents that the agency feels directs them to collect the information should be cited (and included as attachments to the package). After reading this response, the reader should

have a full understanding of why the Government must collect the information described.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The bulk of the narrative in the supporting statement should go into the responses for questions 1 and 2. Question 2 must address the many characteristics of the information collection including:

- What information will be collected - reported or recorded? (If there are pieces of information that are especially burdensome in the collection, a specific explanation should be provided.)
- From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.
- What will this information be used for - provide ALL uses?
- How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)?
- Does the respondent have multiple options for providing the information? If so, what are they?
- How frequently will the information be collected?
- Will the information be shared with any other organizations inside or outside the Government? If this is an ongoing collection, how have the collection requirements changed over time?

Ultimately, the justification for collecting information must provide an explanation of the practical utility. Just because there is a need (refer to question 1) doesn't mean the agency has a definite plan for using the information. Furthermore, it is not acceptable to speak in broad terms when describing the use. For example, to say the collection of information is necessary to "ensure compliance" or "for program evaluation" is too general. Specific examples of how certain information will be used to determine compliance or what area of a program is being evaluated and how the information collected will enable that evaluation to occur is required.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The response to this question should address any automated or electronic methods (i.e., telephonic ordering, web-based applications) that are used, or are planned for use in the near future, to collect information. (Note: Facsimile transmission of information does not count toward the use of automated, electronic, or mechanical collection techniques.)

Specifically, the agency should address plans to offer an electronic alternative for respondents in conjunction with the Government Paperwork Elimination Act (GPEA). The response for the transaction should be consistent with the agency's plans to comply with GPEA as documented in its most recent GPEA Progress Report. If an agency does not currently offer an electronic alternative, a description of plans to move in that direction, with a timeline, should be included. If the collection is not being considered for electronic delivery, a detailed justification of this decision must be provided. A reference to the specific ongoing or planned initiative documented in the agency's eGovernment Tactical Plan should also be provided to ensure program activities are properly integrated with GPEA and other eGovernment plans.

Please note that forms or other collection instruments, and instructions for their use, that will be offered electronically on the Internet must be approved by OMB before they are posted. Copies of both the forms and the instructions should be included as attachments to the supporting statement.

**The response to this question should be consistent with the information provided in field 13(b)(1) of the OMB 83-I form.**

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The response to this question should address duplication of information collected from other sources within other Government sources, and from outside sources. If you think it might appear

to the reader that the collection is duplicative of another collection effort, explain the circumstances that make the collection unique and necessary. If you are aware that information is collected elsewhere in the Government (e.g., SSN) then the response should include a description of why it would be necessary to collect it from a member of the public again.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

The response to this question should be consistent with the information provided in field 5 of the OMB 83-I. If there are special provisions related to the information collection that affect small businesses, please describe those in this response.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The response to this question should address the impact on the agency's mission if the collection is not conducted or is conducted less frequently. This explanation may include justification such as an inability to deliver program benefits, an inability to measure agency progress against Government Performance and Results Act (GPRA) performance objectives (state the specific objectives), or the timely implementation of a new program.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, Government contract, grant-in-aid, or tax records for more than three years;

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The response to this question should include an answer for each of the eight subparts. Please do not indicate "N/A" for any response. Rather, answer appropriately in a full sentence. If the answer to any subpart is "yes", then a full explanation of the circumstances surrounding the collection should be provided.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The response to this question should include a full citation for the 60-day Federal Register notice and include a specific statement as to whether any comments were received. If comments

were received, they should be enumerated along with an explanation of what response the agency took to the comments. It is helpful to attach copies of the correspondence, or other mechanism of communication, received from the public.

The response should also include a reference to three individuals or organizations who are either respondents or interested parties in the collection that have been consulted about the burden estimate and other characteristics (i.e., frequency, clarity of instructions) of the collection. The reference should include a phone number for OMB to use in case contact with the public is desired. This requirement especially applies to collections which have been ongoing for more than three years.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

If the agency plans to provide a payment or gift to respondents a thorough explanation, including justification for this action, description and monetary value of the item, and basis for the decision to take such action must be provided.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

If the agency has unique confidentiality policies or other privacy policies apply, they should be cited and discussed in terms of what protections will be provided to respondents.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

This question pertains primarily to issues of race/ethnicity, disability, and other private issues such as social security number. It is not impossible to obtain OMB approval to collect this type of information, but the explanation for what it is needed for and how it will be used (reflecting back to the response to question 2) must be very sound. For information collections involving questions of race/ethnicity, the agency

should ensure that the OMB *Standards for the Classification of Federal Data on Race and Ethnicity* (<http://www.whitehouse.gov/omb/fedreg/ombdir15.html>) are followed. Furthermore, reflecting back to the response provided in question 4, an explanation of why the agency cannot obtain the desired information - such as SSN - from another source should be included.

**12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.**

This is a two part question and both parts must be addressed.

**A) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

This response must be detailed enough for the reader to understand how the agency developed the burden estimates - e.g., sources of data, changes in program requirements. It is not necessary to indicate collection instrument by collection instrument how the estimated response time was derived; however, a general statement on how those numbers were developed is necessary. Whenever there is more than one source of burden - i.e., multiple forms, surveys, recordkeeping requirements - the agency should use a burden table or grid to show the burden estimate for each collection requirement (forms or non-forms). At a minimum, the table or grid should include columns for:

- a) description of the collection activity,
- b) corresponding form number (if applicable),
- c) number of respondents,
- d) number of responses annually per respondent,
- e) total annual responses (columns c x d)
- f) estimated hours per response
- g) total annual burden hours (columns e x f)

Only the columns corresponding to the number of annual responses and the total annual burden hours should be totaled. **NOTE: The number of respondents affected by the collection (and recorded in field 13(a) of the OMB 83-I) does not equal the sum of the number of respondent's column. The number of respondents is the actual number of individuals the collection is estimated to impact in a given year.**

Recordkeeping burden should be addressed separately and should include columns for:

- a) description of recordkeeping activity,
- b) number of recordkeepers
- c) annual hours per recordkeeper
- d) total annual recordkeeping hours (columns b x c)

In calculating a total burden amount, the total annual burden hours should be summed with the total annual recordkeeping hours.

In developing burden estimates, there are several considerations which should also be taken into account.

1. In complex collections, the burden estimate may need to be calculated separately for different categories of respondents (e.g., loan applicant versus a bank versus an appraiser or the public and a contractor performing a survey for an agency). A single grid can still be used for this, but some narrative should be provided to describe the burden estimation approach used for each group of respondents.
2. The burden estimate may need to account for different methods of collecting the same information. For example, if a form previously (and currently) available in hard copy format is now available on the Internet and the capability also exist to submit the information to the agency electronically, then separate burden calculations for submission of the same information should be included to reflect the different time requirements associated with each method of collection. This can also be included, with proper notations in the description column, in the same table or grid, as long as detailed narrative explaining the duplication is provided in the response.
3. If the agency does not offer other methods for reporting required information other than physically visiting a field or headquarters office, then the agency must include round trip travel time in the burden estimate. If multiple collection options are offered, then travel time should be calculated for only the percentage of responses that the agency feels will result from a physical visit to an office.

**B) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

The estimate of annualized cost to respondents is a theoretical cost accounting for the idea that the respondent's time spent complying with the information collection request is worth something - i.e., time is money. The total burden hours should be multiplied against an average hourly wage rate for the respondent universe. Minimum wage may be used, but only if that wage is reasonable for the class of respondent affected. An explanation of the wage rate used should be provided and the source, if applicable, cited. If multiple respondent groups exist, then the burden hours for each group should be factored against an appropriate hourly wage rate and summed.

**13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.**

While the response to part two of question 12 dealt with a theoretical cost of the respondent's time, this question and its response should address the ACTUAL cost a respondent must bear as a result of the information collection. In most situations, this will be zero; however, the agency should consider all aspects of the information collection to determine if any equipment, software, or services must be procured by the respondent in order to provide the agency with the information requested.

If the agency does not feel there are any costs of this nature, the following response should be provided.

"There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection."

**14. Provide estimates of annualized cost to the Federal Government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.**

The response to this question covers the **actual** costs the agency will incur as a result of implementing the information collection. The estimate should cover the entire life cycle of the collection and include costs, if applicable, for:

- employee labor and materials for developing, printing, storing forms
- employee labor and materials for developing computer systems, screens, or reports to support the collection
- employee travel costs
- cost of contractor services or other reimbursements to individuals or organizations assisting in the collection of information
- employee labor and materials for collecting the information
- employee labor and materials for analyzing, evaluating, summarizing, and/or reporting on the collected information

This information is best summarized in a table or grid. When costs for employee time are being described, a separate table or grid entry should be noted for each different grade/step category involved in the collection activity. For example, if a GS-11 field employee spends 15 minutes processing an application and a GS-13 analyst at headquarters spends 30 minutes evaluating the application before approving or disapproving the request, these two separate activities and the associated time/costs should be calculated separately.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.**

This response should address any changes from the previous approval of the collection. If no changes have been made then the following statement would be appropriate.

"There are no changes to the information collection since the last OMB approval."

If there are changes, then either a summary of those changes or a table describing each change should be included. The response should be detailed enough for the reader to track the reason for changes from the previously approved burden amount to the current burden request. Changes must be described as either 1) program changes - changes that were implemented proactively by the agency (e.g., a regulatory change which eliminated or added reporting/recordkeeping requirements; a change in frequency of collection; a change in the method of collection) regardless of whether or not the changes were directed by legislation or 2) adjustments - changes due to things not necessarily in the agency's control (e.g., a change in the number of respondent, a change in program funding levels) or changes in the burden estimation approach (e.g., addition of a form currently in use,

but not previously approved; a change in a burden estimate, changes due to previous miscalculations in the burden estimate).

If the information collection approval request is a reinstatement, then the current approved burden will be zero. The change in burden reflected in field 13(e) of the OMB 83-I should represent the entire burden request (carried down from field 13(c) of the OMB 83-I). This amount represents a program change because the agency is reinstating the collection. The response, however, should also include additional narrative to explain the changes, if any, in the collection between the current burden request and the last approved burden amount. In preparing this portion of the response, the guidelines in the previous paragraphs should be followed.

**16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.**

If the agency plans on performing certain analyses and developing statistics, reports, or other items summarizing the results of the collection activity, the response should describe each of these plans including a timeframe for development and publication. The response should clearly state whether the information will be distributed internally or externally.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

Before responding to this question, the author should determine whether the agency plans to include an expiration date of the information collection approval on the form. This is not to be confused with other dates printed on the form such as the form creation date or the last revision date.

If the agency prefers not to print the expiration date of OMB approval, then a statement such as the one provided below should be included followed by an explanation of why the agency feels it would be inappropriate to display the expiration date.

"The agency is seeking approval to not display the OMB expiration date on the (forms/surveys/questionnaires) associated with this information collection."

If the agency does plan to print the expiration date of OMB approval on all forms/surveys/questionnaires, then a statement such as the one below would be appropriate.

"The agency plans to display the expiration date for OMB approval of the information collection on all instruments."

**18. Explain each exception to the certification statement identified in Item 19 "Certification for Paperwork Reduction Act."**

**A. Certification Statement**

The certification statement is provided on the second page of the OMB 83-I. The author of the information collection supporting statement and the signor of the OMB 83-I should read the statement provisions to ensure that there are no exceptions. If there are exceptions, a detail justification of each should be provided.

If there are not exceptions to the certification statement, the following response would apply:

"The agency is able to certify compliance with all provisions under Item 19 of OMB Form 83-I."

**B. Collections of Information Employing Statistical Methods (Not generally applicable to FAR information collection requirements)**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked "Yes", responses to the following questions should be included in the Supporting Statement to the extent that it applies to the methods proposed. If there are no statistical methods involved, a response stating this should be provided. NOTE: All information collections involving surveys or questionnaires, regardless of whether or not statistical methods are used, is subject to a review by the National Agricultural Statistics Service (NASS). NASS is viewed by OMB as an in-house source of expertise in survey development, sampling frame development, and survey methods. Their suggestions and comments should be strongly considered in preparing the information collection approval request. Please coordinate with Ginny McBride (720-5778) of that agency to arrange for this review to occur prior to submitting the information collection for agency and Departmental processing.

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local Government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.**

The response should describe the respondent universe and how that universe was or will be selected. The method of sampling should also be explained. With respect to the response rate, the narrative should cover the actual percentage response rate that is anticipated. **Collections anticipating a response rate less than 75% will not be forwarded to OMB.** Additionally, the agency should describe the efforts that will be undertaken to ensure a high response rate including pre-survey telephone calls or correspondence, post-mailing reminders, etc. If correspondence will be used to boost the response rate, copies of all letters, telephone scripts or other materials should be included in the package. If the collection has been conducted previously, then a summary of that activity should be provided including the response rate achieved.

**2. Describe the procedures for the collection of information including:**

- Statistical methodology for stratification and sample selection,
- Estimation procedure,
- Degree of accuracy needed for the purpose described in the justification,
- Unusual problems requiring specialized sampling procedures, and
- Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

The response should include an answer to each of the subparts of this question. Where the collection is considered ongoing - i.e., has been conducted previously and is continuing for the foreseeable future - a description of any changes that have been made in the procedures or statistical methodology of the collection since the last approval should be discussed.

**3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.**

This question is somewhat redundant to a portion of question B1. The response to B1 can be repeated for this question; however, a more thorough discussion of what the agency's plan of action for dealing with non-response must be provided. If the collection is categorized as qualitative and does not necessarily employ a sampling frame or other proven statistical methods, then an explanation of exactly what practical utility the collection will have for the agency must be discussed. This discussion should include a listing of the specific uses the agency will plans for the data collected.

**4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.**

The response should fully describe any planned tests of the collection including who is in the test sample, how they were chosen, what evaluation criteria for the test will be or were used, and specific comments from the participants of the test. If applicable, a summary of how the collection instrument or statistical methods were changed as a result of the test phase should be provided.

**5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Include all individuals who have contributed to or commented on the survey, sample frame, statistical methods or other aspects of the collection. Make sure that the representatives of NASS are referenced or the submission will be returned to the agency for this review to occur.

## **OIRA PROCESS**

### **I. CHECKLIST FOR SUBMISSION TO OIRA**

\_\_\_\_\_ A. GSA Legal has concurred with the rule.

Package includes:

\_\_\_\_\_ B. Line-in/Line-out version of the rule. No highlights, footnotes, underlining, or nested brackets.

\_\_\_\_\_ C. Federal Register preamble, including the reference to E.O. 12866 and E.O. 13565.

\_\_\_\_\_ D. Information Collection review complete.

\_\_\_\_\_ If new collection, the 83-I form and the supporting statement are included. Paperwork Reduction Act section of the FR notice is clear, and accurately reflects the FAR requirement.

\_\_\_\_\_ For an existing collection, the language in the rule is accurate and appropriate. Any changes in the existing burden are identified and explained.

\_\_\_\_\_ E. Regulatory Flexibility Act section of the FRN has been completed and rationale/certification provided if no IRFA or FRFA, respectively (see App 8).

\_\_\_\_\_ For proposed or interim rule, Initial Regulatory Flexibility Analysis summarized in FRN, or reason provided why the rule will not have significant economic impact on a substantial number of small entities.

\_\_\_\_\_ For final rule, Final Regulatory Flexibility Analysis summarized in FRN, or rationale provided why Regulatory Flexibility Act does not apply, or certification by DoD, GSA, and NASA in FRN that there will not be a significant cost or administrative impact on a substantial number of small entities.

### **II. AFTER SUBMISSION TO OIRA.**

A. If OIRA declares the rule significant, then the rule should be changed to reflect that designation before the rule is put into ROCIS.

B. Once a rule is declared significant, the rule should be put into ROCIS within one working day. OIRA will not start interagency review until the rule is in ROCIS.

C. OIRA circulates the rule for interagency comment for 7 to 14 days, depending on complexity.

D. When agency comments are provided to the CAAC case manager, the CAAC case manager and the DARS case manager work together to resolve the comments. OIRA requests comments within 7 to 14 days, depending on complexity. Case managers shall address all comments and provide appropriate rationale for responses.

E. If changes are made to the rule as a result of OIRA interagency consultation, once all changes have been accepted, revised documents must be put in ROCIS (if significant) or provided directly to OIRA (if not significant), so that OIRA can clear the rule. The Federal Register notice must be clean, and the FAR text should be in line-in/line out, without added colors, underlining, footnotes, or nested brackets.

## DAU Process To Incorporate Changes

Using a three step process, DAU incorporates FAR and DFARS changes from the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) into training assets. First is the communication between the case manager and DAU representative via the FAR or DFARS Case Training Forms (Appendix 5). Second is a decision made by DAU, if the case causes a change to current learning assets or develop of new learning assets. Lastly, DAU decides how the learning assets will be modified or communicated to the workforce

1. Case manager communication: The DARC case manager sends all case material, such as the proposed Federal Register wording, FAR/DFARS/PGI proposed text changes, and team report to the DAU DARC representative. Included in the documentation is a completed FAR or DFARS Case Training Form (Part 1 only) with a request for the DAU representative to complete Part 2 of the form. The DAU representative is responsible for discussing the case with the DAU contracting curriculum developers and deciding if the curriculum should or can be updated and providing that information back to the case manager. Many times, the changes to the FAR and DFARS are not significant enough to make a change to the curriculum. A change to clause wording, for example, often does not warrant a change to curriculum or instructor notes.

2. Competencies or not: A key element of the DAU review is whether the change is within the competencies approved by the DoD Contracting Functional Advisors (FIPT). Changes that are not within the FIPT competencies will not made to contracting curriculum unless the FIPT decides to add competencies and provides direction. In almost all cases, changes to the FAR and DFARS will be within scope of the competencies and can be incorporated into DAU's various learning assets. Per DoDI 5000.66, dated 21December 2005, 5.5 "The Functional Advisors shall establish, oversee and maintain the education, training, and experience requirements including competencies and certification standards; position category descriptions(s); and content of the DAU courses as current, technically accurate, and consistent with DoD acquisition policies. " Per DoDI 5000.66, dated 21December 2005, 5.6 "President, Defense Acquisition University shall....Deliver learning assets to implement the AT&L Performance Learning Model through certification courses, assignment specific training, performance support, rapid deployment training, knowledge sharing, continuous learning, acquisition policy research, and other means as appropriate."

3. After the decision is made that training of some sort is required, DAU will inform the case

Manager, via the FAR or DFAR Case Training Form, of the selected training mode(s) as defined below. For FAR changes, the DAU representative will also forward the Case Training Form to FAI.

CON course curriculum: New or modifications to resident course material or on-line courses that are either part of DAWIA certification, or Assignment-Specific, or Core-Plus.

Continuous Learning Module (CLM): New or modifications to on-line modules that are either part of DAWIA certification, or Assignment-Specific, or Core-Plus. These on-line modules are continuously available to the workforce.

Rapid Deployment Training: Training conducted as requested, generally by the FIPT, to update the contracting workforce on a particularly complex or important issue. Sometimes this is performed at large annual workforce training conferences.

Communities of Practice {COPS}, DAU Blogs, video's and other: Use of the LCIC, Director of Contracting Blog, use of the various contracting COPS, and use of other professional sites and media to provide informal, just-in-time training.

**FAI Process to Incorporate Changes**

FAI uses the following process to communicate training options proposed for final FAR changes.

Summary of the Roles and Responsibilities that occur during the training process are listed below:

1. **DAU Representative**. DAU develops and maintains the learning assets used by FAI for the FAC-C certification. After the decision is made that training of some sort is required, DAU will inform the FAI representative via a FAR Case Training Form of the DAU courses and continuous learning modules that will be updated and/or developed as a result of the FAR changes.
2. **FAI Representative**. DAU communicates with FAI Representatives via the FAR/DFARS Case Training Form (Appendix 5) in order to notify FAI of the impact of the FAR change on DAU training courses and continuous learning modules.
3. **FAR Case Manager/CAAC**. The FAR Case manager sends all case material, such as the Federal Register Notice, FAR text, and the team report to the FAI representative.
4. **OFPP**. After FAI receives DAU's decision concerning course updates and/or development of new learning assets, in collaboration with OFPP, FAI will determine the need for additional communication and outreach. FAI's final decision will be documented on the FAR Training Form. A copy will be posted online in an internal, private workspace that can be viewed by the OFPP/ GSA.

The potential communication, outreach, and training modes are defined below:

**Training Methods:**

1. **Changes to contracting course curriculum**: The determination to make changes to certification course material is made by DAU.
2. **Continuous Learning Module**: A continuous learning module is a module available to the workforce on-line. FAI develops and maintains continuous learning modules. In collaboration with OFPP, FAI will determine if a new module needs to be developed or an existing module needs to be changed. A change or new development will require FAI to establish a contract for that effort.
3. **Acquisition Seminar (AS)**: An Acquisition Seminar is a presentation hosted by subject matter experts (SMEs) that can be taped or in person allowing for audience question and answer sessions. These are used to quickly update the workforce on important or complex issues. FAI relies on SMEs to assist with the

development of the content for the AS. Contractor support is used by FAI to provide a limited number of ASs each year.

4. **FAI Newsletter**: FAI publishes a quarterly newsletter that is sent via their listserv to the acquisition community and posted on their website at FAI.gov. With assistance from SMEs, FAI may prepare a short article to be published in their newsletter to communicate a change.

**Communication and Outreach Methods:**

5. **Email Blasts, Sliders, Other**: These are quick methods of communication and outreach that FAI sends via their listserv. The SME prepares the content for these communication modes. Note: If a FAR change does not warrant a change to the curriculum but does warrant notification to the acquisition community, FAI will send an email blast or slider to communicate this change to the acquisition workforce.