

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket No. FAR 2018–0001, Sequence No. 4]****Federal Acquisition Regulation:
Federal Acquisition Circular 2005–100;
Introduction****AGENCY:** Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of final
rules.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council (Councils) in this Federal
Acquisition Circular (FAC) 2005–100. A
companion document, the *Small Entity
Compliance Guide* (SECG), follows this
FAC. The FAC, including the SECG, is
available via the internet at [http://
www.regulations.gov](http://www.regulations.gov).**DATES:** For effective dates see the
separate documents, which follow.**FOR FURTHER INFORMATION CONTACT:** The
analyst whose name appears in the table
below in relation to the FAR case.
Please cite FAC 2005–100 and the
specific FAR case number. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat Division at 202–
501–4755.**RULES LISTED IN FAC 2005–100**

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

SUPPLEMENTARY INFORMATION:

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

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

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

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

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

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

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

Item III—Technical Amendments

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

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

Dated: July 31, 2018.

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

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

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

Dated: August 1, 2018.

Shay D. Assad,

*Director, Defense Pricing/Defense
Procurement and Acquisition Policy.*

Dated: August 14, 2018.

Jeffrey A. Koses,

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

Dated: August 2, 2018.

William G. Roets, II,

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

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 11, 22, and 52

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

RIN 9000-AN27

Federal Acquisition Regulation; Paid Sick Leave for Federal Contractors

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

ACTION: Final rule.

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

DATES: *Effective:* August 22, 2018.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

II. Discussion and Analysis

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

A. Summary of Significant Changes

There are no changes to the interim
rule.

B. Analysis of Public Comments

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

Response: Noted.

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

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

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and
13563 direct agencies to assess all costs
and benefits of available regulatory
alternatives and, if regulation is
necessary, to select regulatory
approaches that maximize net benefits
(including potential economic,
environmental, public health and safety
effects, distributive impacts, and
equity). E.O. 13563, Improving
Regulation and Regulatory Review,
emphasizes the importance of
quantifying both costs and benefits, of
reducing costs, of harmonizing rules,
and of promoting flexibility. This is not
a significant regulatory action and,
therefore, was not subject to review
under section 6(b) of E.O. 12866,
Regulatory Planning and Review, dated
September 30, 1993. This rule is not a
major rule under 5 U.S.C. 804.

IV. Executive Order 13771

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

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared
a Final Regulatory Flexibility Analysis
(FRFA) consistent with the Regulatory
Flexibility Act, 5 U.S.C. 601 *et seq.* The
FRFA is summarized as follows:

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

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

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

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