

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

Agency/Sub-agency	RIN/OMB Control Number	Title of Initiative/Rule /ICR	Brief Description	Actual or Target Completion Date	Anticipated savings in costs and/or information collection burdens, together with any anticipated changes in benefits	Progress updates and anticipated accomplishments	Notes
1. FAR Council	N/A	Application of new regulatory requirements to commercial item acquisitions & small (simplified) purchases	Review approach taken by FAR Council to identifying whether new laws should be applied to acquisitions for commercial items, including commercially available off-the-shelf (COTS) items and acquisitions valued below the SAT.	End of second quarter of FY 2012	Improved economy and efficiency Reduced barriers to entering the federal marketplace Increased small business participation	The FAR Council has been considering ways to better evaluate the burden of new laws and will pilot a process in connection with the implementation of Section 865 of the Ike Skeleton National Defense Authorization Act for fiscal year 2011, Public Law 111-383 to ensure the FAR includes appropriate guidance for service acquisitions. The public will be invited to offer comment on newly opened FAR cases for consideration by the regulatory drafting teams before a rule is formally developed. Input regarding potential burden will be expressly welcome, especially for sellers of	

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						commercial items, COTS, and small purchases, and ways to minimize such burden if laws were to be applied to them.	
2. FAR Council	N/A	Quick pay to small businesses	Explore opportunities to accelerate payments to small businesses	Fall 2011	Reduced barriers to entry Increased small business participation	OMB issued government-wide guidance to agencies on September 14, 2011, establishing that, to the full extent permitted by law, agencies shall make their payments to small business contractors as soon as practicable, with the goal of making payments within 15 days of such receipt. In addition, opportunities are being explored with respect to accelerating payments to small business subcontractors that might build on SBA's implementation of section 1334 of the Small Business Jobs Act addressing payment of subcontractors.	SBA issued a proposed rule on October 5, 2011 to implement section 1334 of the Jobs Act.
3. FAR Council	N/A	Improved communications with vendors	Review regulatory requirements governing exchanges with industry before contract award to determine if misunderstanding or unclear	Fall 2012	Improved economy and efficiency Reduced barriers to entry	The FAR Council, in coordination with OFPP's "mythbusting campaign," is reviewing coverage in FAR 15.201 and 15.306 to assess if there are opportunities to clarify guidance so that agencies	

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			understanding of FAR authorities is contributing to reluctance to communicate with industry.			take full advantage of flexibilities for enhanced vendor communications.	
4. FAR Council	N/A	Reduce number of competitions that result in only one offer	Consider whether tailored regulatory changes might assist agencies in their efforts to increase contractor interest in competitions that have received only one offer.	Fall 2012	Reduced exposure to high risk Better pricing and terms and conditions through improved use of competition	The FAR Council is exploring options for reducing the number of competitions resulting in only one offer, which could include clarifying the role of the competition advocate and/or the use of elevated review and approvals, improved up front analysis of the factors that influence industry bid/no-bid decisions, and improved government outreach and vendor engagement. The Council is also reviewing DoD's proposed supplement to the FAR addressing one-bid competitions and public comment on its rule.	
5. FAR Council	N/A	Revisit process for reviewing past performance information	Consider benefits and drawbacks of eliminating appeals process from past performance policies that currently provide for review of	Fall 2012	Improved economy and efficiency	The FAR Council intends to issue a proposed rule to provide additional guidance on past performance and seek public input on this policy question in June 2012.	

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			evaluations at a level above the contracting officer.				
6. FAR Council	FAR rule: RIN 9000-AM12 SBA rule: RIN 3245-AG22	Work with SBA to modernize rules of using contract set-asides and small business subcontracting plans			Reduced barriers to entry Increased small business participation	FAR Council issued an interim rule (FAR Case 2011-024, Socioeconomic Program Parity) on November 2, 2011 to provide agencies with initial guidance to take advantage of set-aside and reserve authorities provided in section 1331 of the Small Business Jobs Act of 2010 while SBA completes drafting and coordination of its proposed rule setting forth more complete guidance. FAR Council issued a final rule to clarify that there is no order of precedence among the small business socioeconomic contracting programs (FAR Case 2011-004). FAR Council issued a final rule implementing section 1335 of the Small Business Jobs Act of 2010, effective on January 2011, to remove the Small Business	SBA issued a proposed rule on October 5, 2011 to implement section 1322 of the Jobs Act addressing requirements for subcontracting plans. The public comments period closed on Dec 5, 2011.

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						Competitiveness Demonstration Program from the FAR. This program <i>prohibited</i> 10 major agencies (such as the DoD and HHS) from setting aside acquisitions for construction, non-nuclear ship repair, architectural and engineering services, refuse systems and related services, and landscaping and pest control services (FAR Case 2011-005).	
7. FAR Council	OCI: RIN 9000–AL82 PCI: RIN 9000–AL46	Restructure rules addressing conflicts of interest – Organizational Conflicts of Interest (OCIs) and Personal Conflicts of Interest (PCIs)	Rulemaking to update OCI coverage (unchanged since 1984) and to implement PCI coverage.	OCI Final Rule (FAR Case 2011-001): Fall 2012 PCI Final Rule (FAR Case 2008-025): Completed Nov. 2, 2012 (ahead of anticipated December publication date)	Updated OCI coverage and newly-implemented PCI coverage will enhance integrity and business ethics.	OCI: The FAR Council is considering public comments in the formulation of a final rule. PCI: Final rule published, comment period for additional outreach notice closed Jan. 3, 2012.	Review of whether additional PCI coverage is necessary was completed in March 2012. As a result of the review, we have concluded that no further action is needed at this point.

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8. FAR Council	RIN 9000–AL93	Use of competition for blanket purchase agreements	Strengthen the competition rules for placing orders under multiple award contracts, consistent with section 863 of National Defense Authorization Act for FY 2009.	Spring 2012	Improved economy and efficiency Reduced exposure to high risk	After careful consideration of public comments, FAR Case 2007-012 "Requirements for Acquisitions Pursuant to Multiple-Award Contracts" was published as a final rule in March 2012.	
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