

## **GENERAL SERVICES ADMINISTRATION**

### **Preliminary Plan for Retrospective Analysis of Existing Rules**

**May 18, 2011**

#### **I. Executive Summary of Preliminary Plan and Compliance with Executive Order 13563**

Executive Order (E.O.) 13563 recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. The U. S. General Services Administration (GSA) plan is designed to ensure a defined method for identifying rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. The review processes are intended to facilitate the identification of rules that warrant repeal, amendment, or revision as needed.

GSA establishes acquisition, asset and transportation policies for the Federal government's 1.9 million Federal civilian employees, and administers a variety of programs for Federal employees, their families and the contracting community. GSA is not fundamentally a public regulatory agency. Nevertheless, GSA's regulations directly govern the activities of other Federal agencies and their employees, and others such as the acquisition community. Accordingly, GSA's regulations frequently have at least an indirect affect on the general public and the national economy.

GSA's regulations appear in Title 41 of the Code of Federal Regulations (CFR). They cover a host of topics relevant to the operation of the executive agencies and their employees. The General Services Administration Acquisition Regulation (GSAR) appears in Title 48 CFR parts 501 thru 570. The GSAR is GSA's contracting regulations for procuring everything from goods and services to information technology, and construction. The policy contains the framework that describes how GSA acquires goods and services, how contractors respond to solicitations for offers, and how GSA and the winning contractor administer the awarded work.

## II. Scope of Plan

The GSA plan is agency-wide including the Office of Governmentwide Policy, Public Building Service, and the Federal Acquisition Service, and applies to all significant GSA regulations.

The types of documents covered under this plan include:

- Existing regulations
- Existing information collections
- Unfinished proposed rules

## III. Public Access and Participation

GSA established a blog, *Improving Regulations*, to capture comments and ideas from the public regarding the methodology to use to accommodate the provisions of E.O. 13563. The blog and the solicitation of public comment were announced in a Federal Register notice published on March 22, 2011 (76 FR 15859) at: <http://frwebgate3.access.gpo.gov/cgi-bin/GPOgate.cgi?WALSdocID=SJ2dVo/3/3/0&WALSaction=retrieve>

Comments regarding how to best implement E.O. 13563 were solicited through April 15. GSA received four comments. One comment was a positive reaction directed to GSA for its efforts to seek public comment. The following comment was specific relating to per diem policy in the Federal Travel Regulation (FTR): *Amend the 3/4 day per diem for the first or last day of travel. When I am in a working travel status for 22 hours, how is 3/4 per diem correct? I would submit that if travel is over 10 hours a full day per diem is authorize.*

The other two comments were misdirected to GSA and forwarded on to the Fish and Wildlife Service.

GSA historically reaches out to other agencies and the public to develop government-wide policy. For example, in 2008 GSA developed a *Wheels and Wings* blog at <http://gsablogs.gsa.gov/wheelsandwings/> to share information, suggestions, recommendations, process improvement ideas, etc., among the aviation, motor vehicle, and boat communities. GSA also solicits policy ideas, suggestions and recommendations using technology maintained by the Office of Governmentwide Policy, such as the *Wheels and Wings* blog, and the following e-mail addresses:

[vehicle.policy@gsa.gov](mailto:vehicle.policy@gsa.gov); [travelpolicy@gsa.gov](mailto:travelpolicy@gsa.gov), [federal.mail@gsa.gov](mailto:federal.mail@gsa.gov), [real.property@gsa.gov](mailto:real.property@gsa.gov); and, through the use of the following policy URLs:

[gsa.gov/aviationpolicy](http://gsa.gov/aviationpolicy), [gsa.gov/mailpolicy](http://gsa.gov/mailpolicy), [gsa.gov/vehiclepolicy](http://gsa.gov/vehiclepolicy), [gsa.gov/personalpropertypolicy](http://gsa.gov/personalpropertypolicy), [gsa.gov/relopolicy](http://gsa.gov/relopolicy), [gsa.gov/transportationpolicy](http://gsa.gov/transportationpolicy), and [gsa.gov/travelpolicy](http://gsa.gov/travelpolicy).

In addition, GSA annually hosts a training forum that consolidates a comprehensive collection of fleet management, automotive procurement, aviation, and marine policy educational sessions into a single venue. This event is open to the public. The event website is located at [www.FedFleet.org](http://www.FedFleet.org). This year, we added listening sessions devoted to hearing from our customers about aligning the agency operational needs and goals with government-wide asset management policies. The content and presentations from this event are posted on-line for access by participants of the training event.

The continued use of technology and public training forums will enable GSA to continually seek recommendations and input from the public on its retrospective policy analysis and rulemaking process.

#### **IV Current Agency Efforts Already Underway Independent of E.O. 13563**

GSA leads several interagency committees, such as the Travel Executive Steering Committee, the Motor Vehicle Executive Council, and the Interagency Committee for Aviation Policy to provide agencies an opportunity to participate in the creation of policies before they are published in the Federal Register as proposed rules that formally solicit public comments. These interagency committees are vital to GSA's FTR and Federal Management Regulation (FMR) rule-making process, as they continuously review existing policies, and make recommendations to add, change or remove ineffective policies. These collaborative efforts help GSA and Federal agencies develop and implement government-wide policies. The GSA web site provides on-demand listings of its current regulations, proposed rules, bulletins, and notices.

The FTR contains policies that govern the travel of Federal employees and others authorized to travel at Government expense. This policy assures that travel is accomplished in a responsible manner while minimizing administrative costs.

The FMR contains government-wide policies for real and personal property, transportation, mail, and other administrative programs. This policy provides agencies a framework to manage government-wide administrative programs in a cost-effective and efficient manner.

The General Services Acquisition Regulation (GSAR) contains GSA's acquisition policies, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors. The GSAR is GSA's contracting regulations for procuring everything from goods and services to information technology, and construction. The policy contains the framework that describes how GSA acquires goods and services, how contractors respond to solicitations for offers, and how GSA and the winning contractor administer the awarded work. In addition, the GSAR is nearing completion of an overall rewrite project begun in 2006 that included full and open opportunity for public comment on the proposed changes. Each Part of the GSAR is assigned to a team that drafts an updated version (including the elimination of any regulatory material that is no longer necessary). The drafts are then reviewed within the agency, and then are moved through the Federal Register process as a means of gaining public comments.

In February 2011, GSA hosted a Federal Acquisition Regulation (FAR) rule-making "tune-up" SLAM event involving key players in the rule-making process across the Federal Government. This event brought together participants from the Office of Federal Procurement Policy and the Office of Information and Regulatory Affairs from OMB, the Department of Defense, and the National Aeronautics and Space Administration, to accelerate the issuance of government-wide acquisition regulations. The team has begun its work to improve the FAR rulemaking process that will provide benefits to the government and business-partner organizations by expediting policies that help improve government acquisitions, while providing business partners maximum visibility and transparency into acquisition policy.

GSA also hosts open meetings for the public, industry and Federal agencies to identify the impact and barriers of policies it issues. For example, GSA recently hosted a meeting to engage industry representatives and agency policymakers in the development of the Federal fleet strategy for electric vehicles and to identify barriers to achieving successful deployment of electric vehicles. Industry representatives attending this forum were selected based on expertise in the areas of sustainability, electric vehicles, charging stations, and batteries. Briefing documents from this forum will be posted on the *Wheels and Wings* blog at <http://gsablogs.gsa.gov/wheelsandwings/>.

Also, in Fiscal Year 2011, GSA held numerous meetings and three webinars with travel industry groups to discuss the methodology to

establish government-wide per diem rates. These public meetings led to the development of frequently ask questions regarding per diem methodology, which are located at:

<http://www.gsa.gov/portal/content/104208>.

## **V Elements of Preliminary Plan/Compliance with E.O. 13563**

GSA prioritizes the review of existing regulations annually as part of our strategic planning, and includes regulations that are published jointly with other agencies. These plans may be modified to respond to congressional acts, Executive Orders, or an emerging need or requirement. The following elements address GSA's plan to comply with and to promote the goals of E.O. 13563:

Triennial Review. GSA's plan to improve our retrospective analysis includes the requirement to conduct a triennial review of existing regulations. The triennial review will continue to be conducted every three years on a rotating basis, mandating that the policy office review their regulations in total and identify policies that should be added, amended or removed. The triennial review has been successful in simplifying policies, reducing the number of policies, and removing obsolete regulations and guidance. For example, as a result of several cycles of the triennial review, the Office of Travel, Transportation and Asset Management was able to dismiss the triennial review in 2010 because the process helped set priorities in selecting rules that needed to be updated, and identified policy areas that needed to be modernized and/or streamlined to reduce agency burdens.

Also, often a change in one policy area will trigger the need for amendment or revision in another area. Most recently, on June 2, 2010, President Obama signed a Presidential Memorandum directing agencies to immediately take actions consistent with existing law, to extend certain benefits, including travel and relocation benefits to same-sex domestic partners of Federal employees, and where applicable, to the children of same-sex domestic partners of Federal employees (<http://www.gpo.gov/fdsys/pkg/DCPD-201000450/pdf/DCPD-201000450.pdf>). GSA sought and received public comment on this policy, and modified the policy to incorporate comments received. This directive triggered several changes in the FTR. The FMR and the FTR are "living" regulations that require updating and revision often to ensure the policies

are current and in alignment with new directives, Executive Orders, statutes, and industry leading practices.

Policy Advisory Boards. To the maximum extent possible, GSA will solicit industry and public comment regarding the policy it issues or amends through open forums, industry days or by establishing formal policy advisory committees. Advisory committees are commonly comprised of both government and industry representatives, and open to the public. For example, GSA established the Government Relocation Advisory Board (GRAB), governed by the Federal Advisory Committee Act, to meet, discuss and make recommendations to current and proposed regulations and to propose new policy. The GRAB's mission was to review existing FTR policies for relocation and associated reimbursements and allowances for federal employees in the continental United States. The membership of the GRAB was comprised of subject matter experts from industry, Federal agencies and was open to the public. On September 21, 2005, the Office Governmentwide Policy received the GRAB's Findings and Recommendations report. This report heralds the Board's fourteen month foray into the federal government's relocation processes and contains a total of 111 policy recommendations, and provided the Government a unique opportunity to adopt many successful private sector practices in the FTR, and acquire systems and reporting tools to improve the management of the relocation function within Government.

GSA will continue its coordination with other federal agencies that have jurisdiction or similar interests through contacts and interagency groups, as well as our industry partners. Consistent with Executive Order 13563, GSA plans to focus particularly on reduction of unjustified costs and complexity.

Open Policy Resource Center (OPRC). GSA launched the OPRC, a web portal that focuses on providing positive support to our Customer Agencies through a transparent, participatory approach, which recognizes that limited resources require a collaborative effort. This is accomplished by creating an environment for innovating, sharing discussions about common challenges and making recommendations about policies that are relevant to the ongoing needs of our agencies. The OPRC provides public access of all of the electronic publications, and is accessible at: [www.oprc.gov](http://www.oprc.gov).

GSA's blog *Improving Regulations* at [gsa.gov/improvingregulations](http://gsa.gov/improvingregulations), will remain open for the public to comment on the FAR, FTR, FMR, and the

General Services Acquisition Regulation (GSAR). GSA plans to keep this blog open continuously to capture comments from the public and other agencies regarding GSA's regulatory process and to be used for other regulatory comments as needed. The public has the opportunity to comment on comments made by other visitors. GSA plans to use this process with particular reference to the goals of Executive Order 13563.

Also, GSA intends to add a five-day comment period directly following the initial mandatory 60-day comment period for proposed and interim rules. The five-day period will give interested parties an opportunity to make comment on comments received during the initial comment period.

Rules under Review. GSA is developing an aggressive plan to rewrite the FTR, with a proposed completion date of 2012. This plan includes collaboration in teams of subject matter experts, non-travel experts and travel policy managers from the agencies as well as private sector travel managers and industry. The goal is to write the regulations in a manner that will achieve flexibility for agency mission while allowing agencies' travel directors to implement internal policy to maximize efficiency. The rewrite of the FTR (41 CFR Chapters 300—304) will bring uniformity to the formatting of the entire regulation, and clarity to the travel policy. More importantly, it will rid the regulation of redundancies, allow for more accurate cross-references, and eliminate some guidance from the regulation that is available elsewhere.

In addition, GSA is also developing policy to implement Public Law 111-178, also known as the *Special Agent Samuel Hicks Families of Fallen Heroes Act* (<http://www.gpo.gov/fdsys/pkg/PLAW-111publ178/content-detail.html>), which gave agencies the authority to pay expenses to the immediate family members of certain Federal law enforcement, customs, and border patrol officers, as well as Federal Bureau of Investigation employees, when the officer or employee dies in the performance of his/her official duties.

Given the extensive rewrite effort, a retrospective review of the GSAR will not be needed in the near future. GSA included full and open opportunity for public comment on the proposed changes. The GSAR is GSA's contracting regulations, for procuring everything from goods and services to information technology, and construction. The document contains clauses and prescriptions that describe how GSA makes these purchases, how contractors respond to solicitations for offers, and how GSA and the winning contractor administer the awarded work. The GSAR remains a

living document that will require ongoing revision in light of statutory changes, Executive Orders, and activity by other Federal regulatory agencies. We will continue to monitor the rewrite of significant sections of the GSAR affecting Contracting by Negotiation, Construction and Architect/Engineer Contracts, and Federal Supply Schedule Contracting. All previous rewrites have been completed with an intention to simplify the GSAR's requirements on both Federal employees and contractors (public) and we will continue to do so. Overall, this effort is seeking to update or eliminate any regulatory coverage relating to this specialized and ever-changing marketplace arena, especially where the regulations may now create an unnecessary burden. Possible candidate rules for reassessment in accordance with Executive Order 13563 that will simplify and reduce the burden on Federal employees and contractors who access the GSAR are:

1. GSAR Case 2008-G506, Rewrite of GSAR Part 515, Contracting by Negotiation (RIN 3090-A176). A proposed rule published in the Federal Register at 73 FR 57580, October 3, 2008, and comments were collected until December 2, 2008, via the online source for Government regulations website, <http://regulations.gov>. This section of the GSAR addresses the negotiation and award of contracts, involving in many cases, a "best value" analysis. This analysis compares varying prices of offerors to their technical and quality capabilities. Contractors, subcontractors and suppliers, including their employees, are all affected by the manner in which an agency places contracts. The completion of this section of the GSAR is tied to the completion of the one listed next.
2. GSAR Case 2006-G507, Rewrite of GSAR Part 538, Federal Supply Schedule Contracting (RIN 3090-A177). A proposed rule published in the Federal Register at 74 FR 4596, January 26, 2009, and comments were collected until March 27, 2009, via the online source for Government regulations website, <http://regulations.gov>. This section of the GSAR addresses the Federal Supply Schedules, which are a universe of contracts for all types of goods and services, with many contractors on each Schedule. The Federal Supply Schedules are used by all Federal agencies (not just GSA), as an ordering vehicle. Contractors and Federal agencies are very much affected by the way in which GSA manages the Schedule Program.

Note: GSAR Cases 2008-G506 and 2006-G507 are related because regulatory information from Part 515, which affected only



the Federal Supply Schedules, was updated and transferred to Part 538 (below). This clarifies both sections for Government employees and contractors accessing the GSAR, so that Schedule information is not mixed in with general negotiation procedures.

3. GSAR Case 2008-G509, Rewrite of GSAR Part 536, Construction and A/E Contracting (RIN 3090-A181). A proposed rule published in the Federal Register at 73 FR 73199, December 2, 2008, and comments were collected until February 2, 2009, via the online source for Government regulations website, <http://regulations.gov>. This section of the GSAR contains specific requirements regarding the unique nature of the design and construction industry in regard to the Government-owned buildings that GSA maintains (courthouses, Federal Office Buildings, Border Stations). Once more, the manner in which these contracts are administered affects the contractors, subcontractor, suppliers and employees. Overall, all taxpayers are also affected, since the efficient design, construction and renovation of buildings is an investment in a building's future, and also creates a workable space not just for Government employees, but for citizens visiting Government offices.

GSA's current inventory exists of 33 information collections (3090 numbers) with a total of 3,210,418 annual responses.

Consistent with Executive Order 13563, GSA's initiative for 2011 is to review five information collections to identify the possibility of significantly reducing the number of annual hours. The reviewers will look for: (1) similarities in the type of information collected; (2) how often the public is required to complete the collection; and, (3) if the use of electronic communication, "fillable" forms, creates a reduction of burden hours to the public and the reuse of data already collected.

The five information collections identified for review are:

(1) Information Specific to a Contract. The collection is necessary because GSA has various mission responsibilities related to the acquisition and provision of supplies, transportation, IT, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting special program objectives. It also

includes collecting information that is central to contracting with up to 2,000 hotels that provide lodging for Federal travelers. (OMB Control No. 3090-0163.)

(2) GSAR Provision 552.237.70; Qualifications of Offerors. In accordance with GSAR 537.110, the GSA provision 552.237-70, Qualifications of Offerors, is inserted into solicitations to obtain information about offerors proposing to perform work under GSA contracts for building services. This provision is only inserted if the contract amount is expected to exceed the simplified acquisition threshold. (OMB Control No. 3090-0197.)

(3) GSAM, Part 514, Sealed Bidding, Clause 552.214-71. This information collection is necessary for efficient implementation of the GSA stock program. The GSA stock program requires contract coverage for certain basic items necessary for Government operations. For certain items, no single contractor is capable of supplying the quantities of supplies needed. Therefore, a method for making progressive awards is necessary. (OMB Control No. 3090-0200.)

(4) Price Reduction Clause (currently approved 72,000 annual hours). GSAR 538.273 (b)(2) prescribes a Price Reductions clause for use in all multiple award schedule (MAS) solicitations and contracts. The clause, which is at 552.238-75, is intended to ensure that the Government maintains its price/discount (and/or term and condition) advantage in relation to the contractor's commercial customer(s) upon which the MAS contract is predicated. The customer or category of customers upon which the award is predicated is identified at the conclusion of negotiations and reflected in the contract. The Price Reductions clause requires MAS contractors to notify the contracting officer of price decreases to the customer or category of customers, which served as the basis of award of the MAS contract. (OMB Control No. 3090-0235.)

(5) Identification of products with Environmental Attributes (currently approved 84,705 annual hours). The GSAR was amended to require contractors that submit offers under Multiple Award Schedule solicitations to identify products that they market commercially that have environmental attributes and to briefly describe the environmental benefits associated with those products. This information will be used to assist Federal Agencies in meeting their responsibilities under a number of statutes and executive orders, including the Energy Policy and Conservation Act (42, U.S.C. 6201 et seq.), the Energy Policy Act of 1992 (Public Law 102-486), the Clean Air Act Amendments of 1990 (Public Law

101-549), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and Executive Orders 12843, 12845, 12873 and 12902. (OMB Control No. 3090-0262.)

### Structure and Staffing.

The person in charge of GSA's retrospective review is:

Kathleen M. Turco  
Associate Administrator  
Office of Governmentwide Policy  
[Kathleen.turco@gsa.gov](mailto:Kathleen.turco@gsa.gov)

The oversight of retrospective reviews of GSA's policies and regulations are handled by the Directives Staff in the Office of Governmentwide Policy. This staff is responsible for ensuring that triennial reviews are completed of the FTR and FMR, and that internal agency Directives are reviewed and updated as necessary. The Directives Staff is assisted by personnel from offices that write the FMR, FTR, and GSAR. In addition, the Regulatory Secretariat, responsible for publishing GSA's regulations in the Federal Register but not for the actual content of the regulations, supports the team with information regarding the publication of those regulations, and to the extent possible, collects comments and provides them to the program offices for consideration and resolution.

To strengthen internal review expertise, GSA personnel attend training forums, such as the Regulatory Group, Inc., that specializes in regulation writing, policy development and management of regulatory systems. The Federal Register also provides our staff with training regarding the federal regulatory system and process. GSA recommends that OPM or OMB establish a government-wide training course that is available on-demand for all agencies.

There is a level of peer review within each office, communication with OMB, GSA's legal staff, and interagency contacts, including the interagency committees, such as the Interagency Committee for Aviation Policy, the Travel Executive Steering Committee, and the Motor Vehicle Executive Committee, as appropriate.

## **VI Components of Retrospective Cost-Benefit Analysis**

A large majority of the regulations GSA produces are not considered “significant” in regards to costs. As mentioned earlier in this document, many of our regulations are living documents and are amended, revised, removed, etc. as needed. The blog *Improving Regulations*, mentioned in Section III, and located at [gsa.gov/improvingregulations](http://gsa.gov/improvingregulations) will be one way to capture feedback. GSA will also continue to analyze the effectiveness of regulations through its Center for Policy Evaluation that assesses the implementation of government-wide policies and the effectiveness of those policies within the agencies. For example, in 2008-2010, GSA worked with the executive agencies to develop and measure agency implementation of policy mandates and performance criteria for aviation, mail, motor vehicles, relocation, transportation and travel policies, and produced Policy Evaluation Reports that are available at [www.gsa.gov/cpe](http://www.gsa.gov/cpe). The evaluation of existing policy serves various functions, including changing agency awareness and understanding of policies, changing behavior, and influencing program performance improvements. It also serves to ensure that the policies GSA issues achieve their intended purpose, are not meaningless and outdated, and do not hinder the operational effectiveness of executive agencies. In future evaluations, GSA will collect performance trend data to ensure our policies are effective and efficient.

## **VII Publishing the Agency’s Plan Online**

GSA will publish the Retrospective Review Plan on [www.gsa.gov/open](http://www.gsa.gov/open). GSA’s point of contact is: Hada Flowers, Regulatory Secretariat Division, [hada.flowers@gsa.gov](mailto:hada.flowers@gsa.gov) on (202) 208-7282