

**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