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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

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

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 "Regulatory Planning and Review." This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing.

Published proposed rules may be reviewed in their entirety at the Government's rulemaking website at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, Division Director, Regulatory Secretariat Division, 1800 F Street, NW., Washington, DC 20405, 202-501-4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities,

jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs). The electronic version of the FAR, including changes, can be accessed on the FAR website at <http://www.acquisition.gov/far>.

DATED: August 29, 2013.

NAME: William Clark,

*Acting Director, Office of Government-wide
Acquisition Policy
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DOD/GSA/NASA (FAR)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
420	Federal Acquisition Regulation (FAR); FAR Case 2012-028; Contractor Comment Period-Past Performance Evaluations	9000-AM40
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DOD/GSA/NASA (FAR)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
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423	Federal Acquisition Regulation (FAR); FAR Case 2011-001; Organizational Conflicts of Interest	9000-AL82
424	Federal Acquisition Regulation (FAR); FAR Case 2010-013, Privacy Training	9000-AM02
425	Federal Acquisition Regulation (FAR); FAR Case 2010-010; Service Contracts Reporting Requirements	9000-AM06
426	Federal Acquisition Regulation (FAR); FAR Case 2011-024, Set- Asides for Small Business	9000-AM12
427	Federal Acquisition Regulation (FAR); FAR Case 2011-020; Basic Safeguarding of Contractor Information Systems	9000-AM19
428	Federal Acquisition Regulation (FAR); FAR Case 2012-031; Accelerated Payments to Small Business Subcontractors	9000-AM37
429	Federal Acquisition Regulation (FAR); FAR Case 2013-005, Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations	9000-AM45
430	Federal Acquisition Regulation (FAR); FAR Case 2012-014; Small Business Protests and Appeals	9000-AM46
431	Federal Acquisition Regulation (FAR); FAR Case 2012-024; Commercial and Government Entity Code	9000-AM49
432	Federal Acquisition Regulation (FAR); FAR Case 2012-016; Defense Base Act	9000-AM50
433	Federal Acquisition Regulation (FAR); FAR Case 2011-023, Irrevocable Letters of Credit	9000-AM53
434	Federal Acquisition Regulation; FAR Case 2012-023, Uniform Procurement Identification	9000-AM60
435	Federal Acquisition Regulation: Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013-017)	9000-AM64

DOD/GSA/NASA (FAR)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
436	Federal Acquisition Regulation (FAR); FAR Case 2011-029; Contractors Performing Private Security Functions Outside the United States	9000-AM20
437	Federal Acquisition Regulation (FAR); FAR Case 2013-003; Definition of Contingency Operation	9000-AM48

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)	Proposed Rule Stage

420. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012-028; CONTRACTOR COMMENT PERIOD—PAST PERFORMANCE EVALUATIONS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are proposing to revise the Federal Acquisition Regulation (FAR) to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) and section 806 of the NDAA for FY 2012 (Pub. L. 112-81, enacted December 31, 2011, 10 U.S.C. 2302 Note). Section 853, entitled “Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions,” and section 806, entitled “Inclusion of Data on Contractor Performance in Past Performance Databases for Source Selection Decisions,” require revisions to the acquisition regulations on past performance

evaluations so that contractors are provided “up to 14 calendar days ... from the date of delivery” of past performance evaluations “to submit comments, rebuttals, or additional information pertaining to past performance” for inclusion in the database. In addition, paragraph (c) of both sections 853 and 806 requires that agency evaluations of contractor performance, including any information submitted by contractors, be “included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information” (section 853(c)) to the contractor. The Governmentwide application of the statute will ensure that the Government has current performance information about contractors to help source selection officials make better award decisions. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2013), available at: <https://www.acquisition.gov/>.

Timetable:

Action	Date	FR Cite
NPRM	08/07/13	78 FR 48123
NPRM Comment Period End	10/07/13	
Final Rule	02/00/14	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Curtis Glover, DOD/GSA/NASA (FAR), 1800 F Street, NW., Washington, DC 20405

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RIN: 9000-AM40

421. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012-001; PERFORMANCE OF INHERENTLY GOVERNMENTAL FUNCTIONS AND CRITICAL FUNCTIONS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are proposing to revise the Federal Acquisition Regulation to implement acquisition-related requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, entitled “Performance of Inherently Governmental and Critical Functions,” published September 12, 2011

(65 FR 56227), with a correction published February 13, 2012 (77 FR 7609). OFPP Policy Letter 11-01 was issued in response to (1) the Presidential Memorandum on Government Contracting, signed March 4, 2009, and published March 6, 2009 (74 FR 9755), and (2) section 321 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-417).

Timetable:

Action	Date	FR Cite
NPRM	03/00/14	

Regulatory Flexibility Analysis Required: Yes

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422. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012–029; CONTRACTOR ACCESS TO PROTECTED INFORMATION

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to address contractor access to protected information. On April 26, 2011, DoD, GSA, and NASA proposed amending the Federal Acquisition Regulation (FAR) to provide additional coverage regarding contractor access to nonpublic information (76 FR 23236), with an extension for public comment published June 29, 2011 (76 FR 38089). The first proposed rule was combined with proposed revised regulatory coverage on organizational conflicts of interest (FAR Case 2011-001). DoD, GSA, and NASA are proposing substantial changes to the proposed coverage based on the public comments received. Therefore, DoD, GSA, and NASA decided to separate this coverage from the organizational conflicts of interest rule in order to publish for additional public comments.

The coverage provided in this proposed rule differs from the coverage provided in the first proposed rule in a number of important respects. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2012), available at: <https://www.acquisition.gov>.

Timetable:

Action	Date	FR Cite
NPRM	02/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM42

<p>DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)</p>	<p>Final Rule Stage</p>

423. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2011-001; ORGANIZATIONAL

CONFLICTS OF INTEREST

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on organizational conflicts of interest (OCIs), and add related provisions and clauses. Coverage on contractor access to protected information has been moved to a new proposed rule, FAR Case 2012-029.

Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) required a review of the FAR coverage on OCIs. This proposed rule was developed as a result of a review conducted in accordance with section 841 by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council and the Office of Federal Procurement Policy, in consultation with the Office of Government Ethics. This proposed rule was preceded by an Advance Notice of Proposed Rulemaking, under FAR Case 2007-018 (73 FR 15962), to gather comments from the public with regard to whether and how to improve the FAR coverage on OCIs. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2013), available at: <https://www.acquisition.gov/>.

Timetable:

Action	Date	FR Cite
NPRM	04/26/11	76 FR 23236
NPRM Comment Period End	06/27/11	
NPRM Comment Period Extended	06/29/11	76 FR 38089
Comment Period End	07/27/11	
Final Rule	04/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000–AL82

424. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2010–013, PRIVACY TRAINING

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to ensure that all contractors are required to complete training in the protection of privacy and the handling and safeguarding of Personally Identifiable Information (PII). The proposed FAR language provides flexibility for agencies to conduct the privacy training or require the contractor to conduct the privacy training.

Timetable:

Action	Date	FR Cite
NPRM	10/14/11	76 FR 63896
NPRM Comment Period End	12/13/11	
Final Rule	03/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM02

425. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2010-010; SERVICE CONTRACTS REPORTING REQUIREMENTS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2010. This final rule amends the FAR to require service contractors for executive agencies, except where DoD has fully funded the contract or order, to submit information annually in support of agency-level inventories for service contracts.

Timetable:

Action	Date	FR Cite

Proposed Rule	04/20/11	76 FR 22070
NPRM Comment Period End	06/20/11	
Correction	05/02/11	76 FR 24443
Final Rule	12/00/13	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM06

426. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2011-024, SET-ASIDES FOR SMALL BUSINESS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued an interim rule amending the Federal Acquisition Regulation to implement section 1331 of the Small Business Jobs Act of 2010 (Jobs Act). Section 1331 addresses set-asides of task and delivery orders under multiple-award contracts, partial set-asides under multiple-award contracts, and the reserving of one or more multiple-award contracts that are awarded using full and open competition. Within this same context, section 1331 also addresses the Federal Supply Schedules Program managed by the General Services Administration. DoD, GSA, and NASA are coordinating with the Small Business Administration (SBA) on the development of an SBA rule that will provide greater detail regarding implementation of section 1331 authorities. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2013), available at: <https://www.acquisition.gov/>.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/02/11	76 FR 68032

Interim Final Rule Comment Period End	01/03/12	
Interim Final Rule Comment Period Extended	01/12/12	77 FR 1889
Interim Final Rule Comment Period Extended End	02/03/12	
Final Rule	03/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM12

427. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2011-020; BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to add a new subpart and contract clause for the safeguarding of contractor information systems that contain information provided by the Government (other than public information) or generated for the Government that will be resident on or transiting through contractor information systems.

Timetable:

Action	Date	FR Cite
NPRM	07/26/12	77 FR 51496
NPRM Comment Period End	10/23/12	
Final Rule	02/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000–AM19

428. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012–031; ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the temporary policy provided by Office of Management and Budget (OMB) Policy Memorandum M-12-16, dated July 11, 2012, by adding a new clause to provide for the accelerated payments to small business subcontractors. This temporary policy was extended another year by OMB Policy Memorandum M-13-15, dated July 11, 2013. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2013), available at: <https://www.acquisition.gov/>.

Timetable:

Action	Date	FR Cite
NPRM	12/19/12	77 FR 75089
NPRM Comment Period End	02/19/13	
Final Rule	12/00/13	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000–AM37

429. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2013–005, TERMS OF SERVICE AND OPEN–ENDED INDEMNIFICATION, AND UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued an interim rule amending the Federal Acquisition Regulation to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel involving the use of unrestricted, open-ended indemnification clauses in acquisitions for social media applications. See March 27, 2012, Memorandum for Barbara S. Fredericks, Assistant General Counsel for Administration, United States Department of Commerce, available at <http://www.justice.gov/olc/2012/aag-ada-impls-of-consent-by-govt-empls.pdf>

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/21/13	78 FR 37686
Interim Final Rule Comment	08/20/13	
Period End		
Final Rule	02/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000–AM45

430. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012–014; SMALL BUSINESS PROTESTS AND APPEALS

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's revision of the small business size and small business status protest and appeal procedures.

Timetable:

Action	Date	FR Cite
NPRM	03/07/13	78 FR 14746
NPRM Comment Period End	05/06/13	
Final Rule	02/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM46

431. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012-024; COMMERCIAL AND GOVERNMENT ENTITY CODE

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to require the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold. The CAGE code is a five-character identification number used extensively within the Federal Government. The proposed rule will also require offerors, if owned or controlled by another business entity, to identify that entity during System For Award Management registration.

Timetable:

Action	Date	FR Cite
NPRM	04/18/13	78 FR 23194

NPRM Comment Period End	06/17/13	
Final Rule	02/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM49

432. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2012-016; DEFENSE BASE ACT

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act.

Timetable:

Action	Date	FR Cite
NPRM	03/20/13	78 FR 17176
NPRM Comment Period End	05/20/13	
Final Rule	12/00/13	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM50

433. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2011–023, IRREVOCABLE LETTERS OF CREDIT

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation to remove all references to Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit, and also provide updated sources of data required to verify the credit worthiness of a financial entity issuing or confirming an irrevocable letter of credit.

Timetable:

Action	Date	FR Cite
NPRM	05/07/13	78 FR 26573
NPRM Comment Period End	07/08/13	
Final Action	01/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000–AM53

434. FEDERAL ACQUISITION REGULATION; FAR CASE 2012–023, UNIFORM PROCUREMENT IDENTIFICATION

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a proposed rule to amend the Federal Acquisition Regulation (FAR) to implement a uniform Procurement Instrument Identification numbering system, which will require the use of Activity Address Codes as the unique identifier for contracting offices and other offices, in order to standardize procurement transactions across the Federal Government. This proposed rule continues and strengthens efforts at standardization accomplished under a previous FAR case.

Timetable:

Action	Date	FR Cite
NPRM	06/06/13	78 FR 34020
NPRM Comment Period End	08/05/13	
Final Rule	03/00/14	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM60

435. • FEDERAL ACQUISITION REGULATION: ALLOWABILITY OF LEGAL COSTS FOR WHISTLEBLOWER PROCEEDINGS (FAR CASE 2013-017)

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation to implement a section of the National Defense Authorization Act for Fiscal Year 2013 that addresses the allowability of legal costs incurred by a contractor or subcontractor related to a whistleblower proceeding commenced by the submission of a complaint of reprisal by the contractor or subcontractor employee.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/13	78 FR 60173
Interim Final Rule Comment Period End	11/29/13	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM64

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)	Completed Actions

**436. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2011-029; CONTRACTORS
PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES**

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20113

Abstract: DoD, GSA, and NASA issued a final rule amending the Federal Acquisition Regulation to implement Governmentwide requirements in National Defense Authorization Acts that establish minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions outside the United States.

Completed:

Reason	Date	FR Cite
Final Rule	06/21/13	78 FR 37670
Final Rule Effective	07/22/13	

Regulatory Flexibility Analysis Required: Yes

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RIN: 9000-AM20

437. FEDERAL ACQUISITION REGULATION (FAR); FAR CASE 2013-003; DEFINITION OF CONTINGENCY OPERATION

Legal Authority: 40 USC 121(c); 10 USC ch 137; 51 USC 20115

Abstract: DoD, GSA, and NASA issued a final rule amending the Federal Acquisition Regulation (FAR) to revise the definition of “contingency operation” to address the statutory change to the definition made by the National Defense Authorization Act for Fiscal Year 2012.

Completed:

Reason	Date	FR Cite
Interim Final Rule Comment Period End	04/29/13	
Final Rule	08/01/13	78 FR 46781
Final Rule Effective	08/01/13	

Regulatory Flexibility Analysis Required: Yes

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