

**Class Deviation from the Federal Acquisition Regulation (FAR)
Subpart 22.20 and Part 52 regarding Fair Pay and Safe Workplaces**

Determination and Findings

In accordance with Civilian Agency Acquisition Council (CAAC) Letter 2017-01, *Class Deviation from the Federal Acquisition Regulation (FAR) to remove the Fair Pay and Safe Workplaces final rule (FAR Case 2014-025*, the Department of Commerce (DOC) has authorized a class deviation from the FAR in order to implement Public Law 115-11 (Pub. L. 115-11) that disapproves the Fair Pay and Safe Workplaces final rule (FAR Case 2014-025).

Findings

1. Under the Congressional Review Act (5 U.S.C. Chapter 8), House Joint Resolution 37 (H.J.R. 37) was signed into law, Pub. L. 115-11, on March 27, 2017 to disapprove the FAR rule (81 FR 58562) which implements Executive Order (E.O.) 13673, Fair Pay and Safe Workplaces. This law states that the rule shall have no force or effect. On the same date, the President signed E.O. 13782, which revoked the E.O. underlying this rule.
2. Many sections of the FAR rule were already enjoined by the United States District Court for the Eastern District of Texas. However, the Court Order did not enjoin implementation of those sections of, or the clause in, the FAR rule addressing the paycheck transparency requirements in the E.O. (i.e., section 5 of E.O. 13673), including FAR 22.2005, 22.2007(d), and clause 52.222-60. This coverage, which became effective for new solicitations issued on or after January 1, 2017, is now null and void.
3. The FAR Council have undertaken rulemaking to formally remove the coverage addressing the implementation of E.O. 13673 from the FAR under FAR Case 2017-015, Removal of Fair Pay and Safe Workplaces Rule. However, the FAR Rule has not been finalized.
4. The Chairman of the Civilian Agency Acquisition Council issued a memorandum dated June 12, 2017, providing the effect of consultation for a class deviation to allow agencies to deviate from FAR sections 22.2005 and 22.2007(d), and FAR clause 52.222-60 addressing paycheck transparency requirements. The CAAC Letter also provides agencies with discretion to use a revised (cleaned) version of the FAR provision at 52.212-3 which removes the changes made by the disapproved FAR rule 2017-025.
5. Attachments 1 and 2 provide the full text of the following deviated FAR Parts: sections 52.2005 and 52.2007, clause 52.222-60, and provision 52.212-3.
6. This class deviation is necessary to comply with Pub. L. 115-11 as soon as possible. The deviation has the effect of reducing the number of contracts that will be awarded using the current FAR clause, which will then require modification, thus reducing the administrative burden on contracting officers.

Determination

In accordance with FAR 1.404, I hereby authorize this class deviation. Consultation and approval for this class deviation is granted under CAAC Letter 2017-01. Procurement offices shall use the revised version of FAR sections 22.2005 and 22.2007, FAR clause 52.222-60, and FAR provision 52.212-3 addressing paycheck transparency requirements.

This class deviation will remain in effect until the effective date of the pertinent FAR changes.

Signed

Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

8/10/17
Date