Dear DOECAA community:

The DOECAA Board and I are delighted to welcome you to the Fall 2025 DOECAA conference, which coincides with DOECAA's 25th Anniversary! Click here to see a video to mark the occasion and learn more about DOECAA's history.

This conference would not have been possible without the hard work of our chairs from Savannah River Nuclear Solutions, Savannah River National Laboratory, and Savannah River Mission Completion. We are also grateful for all the volunteers who have supported DOECAA leading up to this event, including all of our knowledgeable speakers and panelists, Matt Williams and Devon Mobley-Ritter (for organizing CLEs, with invaluable support from colleagues at Morgan Lewis). Thanks as always to Erica Trout, our wonderful event planner, and the day-to-day hard work of the DOECAA Board and Officers, without whom DOECAA would not function.

We invite you to join a reception to celebrate DOECAA's 25th Anniversary on Thursday evening with an opportunity for all of you to share your stories about DOECAA and our special community. We will also have several special guests, including past DOECAA leaders in attendance! We will serve appetizers and refreshments, and as is tradition, we hope many of you will self-assemble for dinner outings afterward.

Please do not hesitate to reach out to me or any of the DOECAA Board members should you have any feedback. We are excited to see that over 100 of you have registered to attend and can't wait to see you.

Sincerely,

Saurabh Anand, DOECAA President

Sanand3@stanford.edu

2025 FALL CONFERENCE AGENDA

AUGUST 7 & AUGUST 8, 2025

Hampton Ballroom

Omni Shoreham Hotel
2500 Calvert Street NW,
Washington, D.C., 20008

Thursday, August 7, 2025

Time (Eastern)	Topic/Event	Speakers
9:00 am – 9:30 am	Registration and Continental Breakfast	Location: Hampton Ballroom
9:30 am – 9:45 am	Welcome and Opening Remarks	Saurabh Anand, DOECAA President; Chief Laboratory Counsel, SLAC National Accelerator Laboratory
9:45 am – 10:30 am	Introduction of Savannah River Site (SRS) and Missions: Savannah River Nuclear Solutions (SRNS) Savannah River National Laboratory (SRNL) Savannah River Mission Completion (SRMC)	Andrea Reagan, Senior Vice President and General Counsel, Savannah River Nuclear Solutions, LLC Joseph Campbell, General Counsel, Battelle Savannah River Alliance, LLC James Xiao, Senior Counsel, Savannah River Mission Completion
10:30 am – 11:00 am	Keynote: Lisa Daley Mangi, Acting General Counsel, National Nuclear Security Administration	
11:00 am – 11:15 am	Networking Break	

11:15 am – 12:15 pm	Panel: Tariffs and International Strategy (SRNL Moderated)	Jake Bolinger, Associate, Haynes Boone Robert "Butch" Bracknell, Senior Counsel, Jefferson Lab Katelyn Hilferty, Partner, Morgan Lewis Lizbeth R. Levinson, Partner, Fox Rothschild
12:15 pm – 1:45 pm	Conference Lunch Break Keynote Lunch (12:30 to 1:00 pm): Juston Fontaine, Deputy Director for Operations, Office of Science, Department of Energy Breakout Dessert (1:00 to 1:45 pm): Attorneys New to DOE/NNSA Complex	Lunch in Hampton Ballroom Breakout in Capitol Room
1:45 pm – 2:45 pm	Legal Ethics: Real World Risks Facing In-house and Outside Counsel Across the DOE Complex	Robert K. Kelner, Partner, Chairman of Professional Responsibility Committee, Covington & Burling LLP Moderator, Mark J. Meagher, Member, Meagher GC Law, LLC
2:45 pm – 3:45 pm	Panel: Federal Simplification/Deregulation Efforts for the DOE Complex (SRMC Moderated)	Jordan Gerken, Assistant General Counsel, Honeywell FM&T at Kansas City NSC Reggie Jones, Partner, Fox Rothschild John Kluge, Attorney Advisor, National Nuclear Security Administration Sarah Bell, Partner, Farella Braun + Martel
3:45 pm – 4:00 pm	Networking Break	
4:00 pm – 5:00 pm	Panel: Supreme Court and Executive Order Updates (SRNS Moderated)	Matt Ennis, Senior Counsel, Fluor Corporation

		Andrew Mathias, Shareholder, Maynard Nexsen Jody Smitherman, Senior Counsel, Ethics Officer, SRNS Charles (Chuck)Young, Associate General Counsel, Consolidated Nuclear Security, LLC
5:00 pm – 5:30 pm	DOECAA Business Meeting	
5:30 pm – 7:00 pm	DOECAA 25th Anniversary - Networking Reception - No ticket required. Open to all attendees.	

Friday, August 8, 2025

Time (Eastern)	Topic/Event	Speakers
8:30 am – 9:00 am	Continental Breakfast	Location: Hampton Ballroom
9:00 am – 9:30 am	Keynote: Jeffrey Novak, Acting General Counsel and Principal Deputy General Counsel, Department of Energy	
9:30 am – 10:30 am	Panel: Workforce Restructuring in the DOE Complex (SRNL Moderated)	Kristen Merrick, Assistant General Counsel, National Renewable Energy Laboratory Dan Raker, Chief Human Resources Officer, Argonne National Laboratory Rebecca Springer, Partner, Crowell & Moring LLP John Sullivan, Associate General Counsel, Department of Energy

10:30 am – 10:45 am	Networking Break	
10:45 am – 11:45 am	Panel: False Claims Act - Updates and Litigation Trends (SRNS Moderated)	Jackson Cooper, Senior Counsel and Chief Compliance Officer, SRNS Scott Fitzsimmons, Senior Partner, Watt, Tieder, Hoffer & Fitzgerald, LLP Brandon Regan, Partner, Watt, Tieder, Hoffer & Fitzgerald, LLP
11:45 am – 12:00 pm	Closing Remarks and Adjournment	Saurabh Anand, DOECAA President; Chief Laboratory Counsel, SLAC National Accelerator Laboratory

Conference Co-Chair Team:

Savannah River Nuclear Solutions

Savannah River National Laboratory

Savannah River Mission Completion

CLE accreditation being sought in:

California
Colorado
Illinois
Louisiana
Missouri
New Mexico
New York
North Carolina
Ohio
Pennsylvania
South Carolina
Tennessee
Texas
Virginia
Washington

2025 DOECAA Fall Conference

Keynote Address: Lisa Daley Mangi, NNSA Acting General Counsel

Lisa Daley Mangi

Lisa Daley Mangi is the Acting General Counsel for the National Nuclear Security Administration (NNSA), a position she has held since June 2025.

As the chief legal officer for the NNSA, Ms. Mangi advises the Administrator and senior NNSA leadership on all legal matters. She also oversees and provides strategic guidance to the 32 attorneys and professional staff who represent the agency in administrative litigation and provides counsel to NNSA programs on procurement, intellectual property, national security, environmental and other legal matters.

Ms. Mangi served as the NNSA Deputy Counsel for Procurement, Intellectual Property, and Technology Transfer for NNSA from 2021 to 2025. Before she joined the Department of Energy, she was a trial attorney for the National Labor Relations Board.

Lisa Daley Mangi

Ms. Mangi is a graduate of the University of Wisconsin and the University of Maryland School of Law.

U.S. DEPARTMENT of ENERGY

Committed to Restoring America's Energy Dominance.

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2025 DOECAA Fall Conference

PANEL 1: Tariffs And International Strategy

We put science to work.™

SRNL®

Tariffs and International Strategy

U.S. DEPARTMENT OF ENERGY
BSRA Battelle Savannah River Alliance, LLC
SRNL is managed and operated by Battelle Savannah River Alliance LLC for the U.S. Department of Energy

Panelists

Katelyn M. Hilferty
Partner
Morgan Lewis

Katelyn M. Hilferty advises clients on a wide range of international compliance and enforcement issues, including import matters before US Customs and Border Protection (CBP), export controls under the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR), economic sanctions and embargoes by the Office of Foreign Assets Control (OFAC), and foreign investment reviews before the Committee on Foreign Investment in the United States (CFIUS). Katelyn provides counseling to a diverse client base, including companies in the nuclear, technology, life sciences, and financial industries.

katelyn.hilferty@morganlewis.com

Butch Bracknell
Senior Counsel
Jefferson Lab

Butch Bracknell is Senior Counsel at Jefferson Lab. Previously he was counsel at Crenshaw Ware & Martin, an Assistant Legal Advisor (General Counsel) for NATO, and an active-duty Marine lieutenant colonel, serving as a lawyer and armor officer on 5 continents. He's a graduate of the University of Oxford (MSc), Harvard Law School (LLM), the University of Maryland (JD), and UNC (BA).

robertb@jlab.org

Panelists

Lizbeth R. Levinson
Partner
Fox Rothschild

Co-Chair of the firm's International Trade Practice Group, Lizbeth has more than 25 years of experience in a wide range of complex international and business matters, including anti-dumping and countervailing duty investigations, safeguard measures, and cross-border patent and trademark infringement disputes under Section 337. She often handles anti-dumping matters on behalf of clients from Argentina, China, Ecuador, France, India and Mexico.

llevinson@foxrothschild.com

Jake Bollinger
Associate
HAYNES BOONE

Jake Bolinger focuses his practice in the areas of government contracts and construction law. Prior to law school, Jake worked as a project management consultant assisting some of the largest global aerospace and defense contractors with project controls, including project schedule creation and analysis, risk, management, business process management, and Earned Value Management practice and compliance. He utilizes this experience in advising contractors on delay disputes, changes, Requests for Equitable Adjustment and changes, contract drafting and administration, regulatory compliance, due diligence for mergers and acquisitions, and general litigation matters. Jake is also an active participant in the firm's Nuclear Energy Practice Group.

jake.bollinger@haynesboone.com

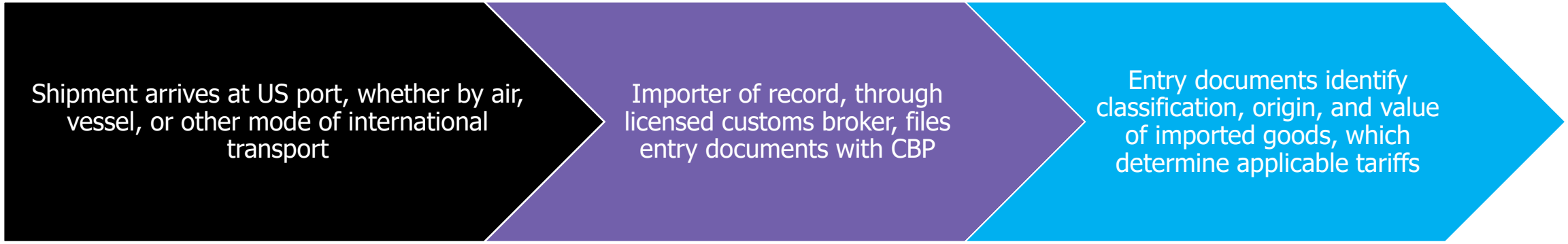
What are Tariffs?

- A tariff is a duty or a tax imposed on imported goods
- Tariffs are typically charged as a percentage of the declared value of the goods

- In the US, tariffs apply only to goods and not to services or intangible transfers
- How a tariff affects a good is based on that item's classification, country of origin, and value

- Tariffs are paid by the importer of record
- Tariffs are used for revenue generation and as a tool for economic and trade policy

How are Tariffs Imposed?



Foundational Data Elements

Classification:

- Items are classified according to their product characteristics and/or composition
- Specific rate of duty applies according to the HTSUS classification

Valuation:

- All imported goods are subject to appraisement
- Generally, will be the transaction value of the goods
- Serves as the basis for assessment of duties, taxes, and fees

Country of Origin:

- Determines the good's eligibility for trade programs or duty-free treatment
- Generally considered the country of manufacture, production, or growth

Current US Tariff Regimes

Trade Investigations

Section 201

Solar Cells and Modules (expires February 2026)

Section 301

- China Tech Transfer (in effect)
- China Maritime (proposed action)
- China Semiconductor (initiated)
- Nicaragua Labor Rights (initiated)
- Brazil Unfair Trading Practices (initated)

Section 232

- Steel, Aluminum & Derivatives (50%)
- Automobiles & Parts (25%)
- Copper (50%)
- Timber/Lumber, Pharmaceuticals, Semiconductors, Medium- and Heavy-Duty Trucks, Critical Minerals, Commercial Aircraft and Jet Engines, Polysilicon, Unmanned Aircraft Systems (initiated)

IEEPA Tariffs

Fentanyl/Trafficking Based Tariffs

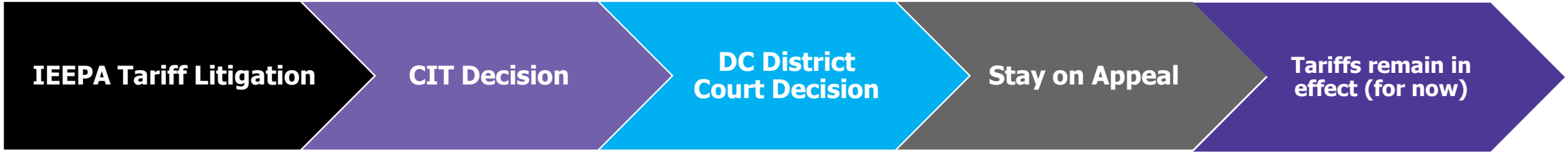
- Canada – 25% other than USMCA (35% threatened)
- Mexico – 25% other than USMCA (30% threatened)
- China – 20%

Reciprocal Tariffs

- 10% baseline on almost all countries
- Increased reciprocal rates paused until August 1; negotiated and non-negotiated increases to take effect August 7
- China at 125% until 5/14; paused at 10% until August 12

Secondary Tariffs on Venezuelan Oil

Impact of Tariff Litigation



- Multiple lawsuits challenge the President's imposition of IEEPA tariffs.
- Primarily filed by states and small businesses.
- Three lawsuits were brought in the Court of International Trade (CIT); four were brought in US district courts.

- On May 28, 2025, the CIT struck down the IEEPA tariffs, finding that the President exceeded his authority.
- Ruling applies only to IEEPA tariffs- reciprocal tariffs and trafficking/ fentanyl-based tariffs.
- Ruling ordered Trump administration to cease collection of tariffs by June 7.

- In a second decision, the DC District Court also struck down the IEEPA tariffs, finding that IEEPA does not authorize tariffs.
- Decision is limited to the two named plaintiffs and does not apply more broadly.

- The appeals courts (Federal Circuit and US Court of Appeals for the DC Circuit) have issued stays while on appeal, meaning tariffs remain in effect.
- SCOTUS declined to expedite review of the DC Circuit appeal.
- Federal Circuit oral arguments July 31; DC Appeals September 30

- Tariffs remain in place for now under the stays.
- If invalidated, the tariffs will be refunded, though the procedure is unclear.
- Importers may have to request a refund, or the court may order CBP to issue refunds based on entry documentation.

Potential Tariff Relief – Chapter 98 Provisions

Articles for NRC or DOE – HTSUS 9808.00.50	• Limited to "source materials" necessary for common defense and security
Scientific Instruments and Apparatus – HTSUS 9810.00.60	• Requires submission of Form ITA-338P and proof that item is not available domestically
Repair Components – HTSUS 9810.00.65	• For previously admitted instruments
Specially Designed Tools – HTSUS 9810.00.67	• For previously admitted instruments

How are Tariffs on Imports Imposed?

- The U.S. Constitution vests Congress with the authority to impose tariffs (often referred to as "duties.")
- Historically, Congress set tariff rates through legislation.
- In the past 70 years, however, Congress has delegated authority to the President, under certain conditions, to adjust tariffs through specific federal statues, including:
  - Section 232 of the Trade Expansion Act of 1962
  - Section 301 of the Trade Act of 1974
  - The antidumping and countervailing duty statutes (Section 731 and Section 701 of the Tariff Act of 1930)
  - Most recently, President Trump has relied on the International Emergency and Economic Power Act ("IEPPA").

Antidumping ("AD") Litigation

- 700+ antidumping cases and countervailing duty matters are currently pending before the U.S. Department of Commerce that either have already resulted in duties on products or will result in such duties.
- What is dumping?
  - A foreign exporter is dumping if it sell merchandise at a price in the United States that is lower than its selling prices in its own domestic market

  AND
  - The low prices are causing material injury to a domestic industry.
- Dumping is NOT selling goods in the U.S. below prices charged by U.S. producers.

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Antidumping ("AD") Litigation

- An AD case is lodged against a country, not an individual exporter, and is filed with two agencies in the United States.
  - **U.S. Department of Commerce** ("DOC")
  - **U.S. International Trade Commission** ("ITC")
- The two agencies have different responsibilities.
  - The **ITC** makes the determination of whether the low-priced imports are causing material injury to the domestic industry (which is a very high macro-economic analysis).
  - The **DOC's** analysis is very micro--it compares the prices at which the two largest exporters of the merchandise from the country under investigation are selling in the U.S. to the price at which they are selling in their domestic market.

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Countervailing duty ("CVD") Litigation

- CVD cases are lodged against subsidies allegedly being provided to foreign exporters by foreign governments that provide a benefit to a specific industry or business or is contingent on export performance.
- DOC determines company-specific CVD duty rates based on the total ratio of benefits received to sales value.
- The DOC typically investigates the top two exporters of the merchandise to determine if they are receiving subsidies. Exporters that are not individually examined are assigned the weighted average of the rates assigned to the top two exporters

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AD and CVD Process

- AD and CVD cases take approximating one year to complete with preliminary duties usually going into effect in about 6 months from the filing of the petition.
- If duties are imposed upon completion of the year-long investigation, they theoretically could be in effect forever.
- Each company assigned a duty has the right to ask for an annual review to modify the amount of the duty originally assigned/
- The AD and CVD orders remain in effect unless they are “sunsetted.” “Sunset Reviews" occur every five years, but very few AD or CVD cases are actually "sunsetted".

Fox Rothschild

Example of Unfavorable Climate Importers Face Today—AD, CVD and other Trump tariffs

- CSN (Companhia Siderurgica Nacional) , one of the largest steel producers in Brazil, is presently a respondent in the antidumping and countervailing duty investigations of corrosion-resident steel products from Brazil.
- Initial results in the CVD investigation were favorable. A duty of 1.72% was assigned.
- Initial results in the AD investigation have been disastrous—a preliminary rate of 137% was assigned. We are vigorously challenging these rates.
- The AD and CVD rates are in **addition to** all other duties being imposed by the Trump Administration..”

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What Other Tariffs Are "Stacked" with AD and CVD Duties

CSN is presently paying a 50% tariff imposed by Trump under Section 232 on steel and aluminum tariffs. These are in addition to the AD/CVD.

Also lurking in the background are the reciprocal tariffs. The President has imposed a flat rate of an additional 50% on exports from Brazil under IEEPA (known as reciprocal tariffs). At least at present, companies responsible for paying Section 232 duties are not also responsible for paying the IEEPA duties

Nevertheless, the accumulation of these tariffs have made it impossible for CSN to continue to export profitably.

Fox Rothschild

Constitutionality of IEEPA

As previously mentioned, the imposition of duties under IEEPA has been found to be unconstitutional. Issue is now on appeal.

On July 31, 2025, judges of the United States Court of Appeals for the Federal Circuit heard oral argument on the issues. Judges expressed skepticism on both sides. Decision is expected to be made by end of September.

Principal question from importers: "how do we get our money back if IEEPA duties are ultimately found to be unconstitutional?"

It is expected that the courts and Customs and Border Protection will establish procedures. In the meantime, important to track amount of duties you are paying.

Fox Rothschild

TARIFF IMPACTS

Jefferson Lab

August 8, 2025

Robert Gray Bracknell

Senior Counsel

Jefferson Lab

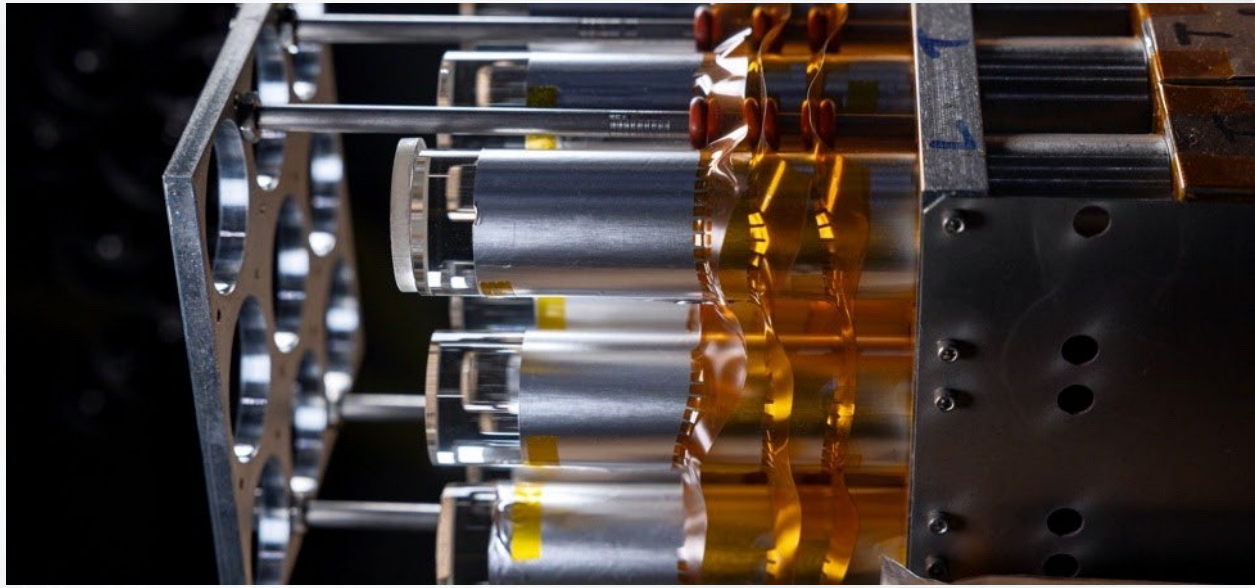
U.S. DEPARTMENT of ENERGY

Tariffs = Unplanned Financial Risk to Programs

- Jefferson Lab imports materials, assemblies, and specialized scientific gear routinely from EU states, China, Japan, Canada, and UK

- Tariffs range from 10-30% on products sourced in states from which JLab most often imports

- Additional costs not factored into budget planning
  - Particularly for mid-stream projects in execution.
  - Impacts on project reserve funds removing flexibility to respond to contingencies



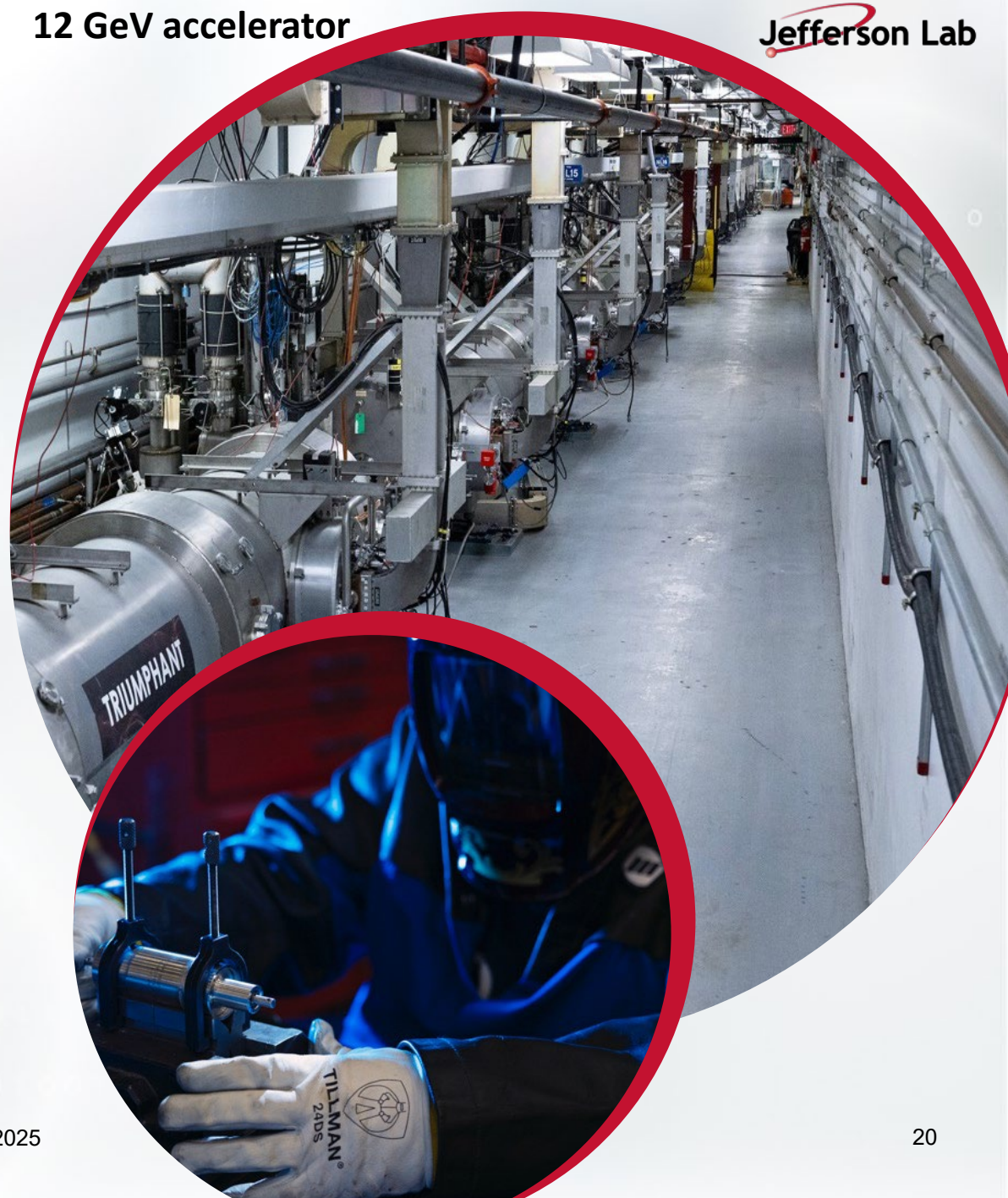
Physics Detector Assembly – Imported from Japan

Management of Tariffs

- Pay the Tariff
  - Causes fiscal pain
  - Cannot allow finance impacts to dictate pace of projects and experiments
- Seek exemptions

  - Best exemption: 19 CFR §10.102 and HTSUS 9808.00.50 – “Materials Certified to the Commissioner of Customs to be source materials the entry of which is necessary in the interest of the common defense and security.”
    - Contracting Officer Self-Certification
    - KO generates certificate USCBP accepts without fail
    - Local, fast, predictable

  - Constrained use for Office of Science Labs by DOE Legal Memo
    - DOE memo focuses on “source materials”
    - Term undefined in 19 CFR
    - Imports definition from 40 CFR
    - Does not address the applicability of FAR 52.225-8, which is in JLab’s M&O contract



Exemptions -- Continued

- Second best exemption: HTSUS 9810.00.60 and 15 CFR 301.8 -- Instruments and apparatus, if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States
- Requires payment of tariff to release import, application post-hoc and request for refund if exemption approved
- Requires application to USCBP via ITA-338P form
- Paper copy, via courier – no electronic submission, no portal
- Extensive documentation to prove up claims in the exemption form – most recent submission was 300 pages
- Long lead times – advised approval timeline is 4-12+ months. Publication in Fed Reg to ensure no domestic sources would have been available
- Application process is a black hole – mailed to an address, no POC, no ability to correspond with a reviewer to check status or supplement application

SRF Cavity – CEBAF – Niobium from China

Jefferson Lab

TESLA Superconducting Cavity/LCLS-II, SLAC

Other mitigation

Domestic Sourcing

- Preferable regardless of tariffs *if* price and quality are equal to foreign source
  - Easier to reach domestic suppliers for warranty, dispute resolution
  - Shorter supply chain distances, lead times
- BUT policy determination – science should not sacrifice quality to domestic sourcing
  - Seems intuitive
  - Has anyone actually made that decision?

CEBAF (Continuous Electron Beam Accelerator Facility) Upgrade Cryomodule

FAR 52.225-8 “Duty Free Entry”

- Provides procedures for exceptions
- Allows contracting officer to provide duty-free entry certificates for certain items
- If items aren’t listed in the solicitation, Contractor must provide 20d advance written notice prior to purchase of foreign supplies in excess of $15,000. CO then makes determination
- DFARS 252.225-7013 Provides similar exceptions for DoD contracts, but incorporates reciprocal defense procurement agreements and eligible WTO Government Procurement/other free trade items
- Products must be delivered to the gov’t

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FAR 52.229-3 Federal, State, and Local Taxes

- Provides relief from “any after imposed federal tax”
  - Defined to include “any new or increased Federal excise tax or duty…”
  - EOs use word “duty” interchangeably with tariff, hard to argue tariffs are not covered
- Requires contractor to “promptly notify” the contracting officer about “all matters relating to any” tariff “that reasonably may be expected to result in” an increase to the contract price.
- Contractor also must warrant in writing the new tax amount was not included in the contract price, as a contingency or otherwise.

FAR 52.229-3 Federal, State, and Local Taxes

- Note: applies to taxes imposed after the contract date so doesn't allow for adjustment to proposal
- Double-edged sword: "The contract price shall be decreased by the amount of any after-relieved Federal tax."
- May allow prime contractors to recover for taxes imposed on subcontractors because it states contract price may increase where contractor "bears" burden.
- See *Hegeman-Harris & Co. v. United States*, 440 F.2d 1009 (Ct. Cl. 1971) where prime received relieve under similarly worded clause when state of New Mexico increased taxes affecting subcontractors. Court held "bear the burden" was expansive language entitling prime to relief

FAR 52.229-3 Federal, State, and Local Taxes

- BUT… likely only provides relief for direct tariff costs, not broader market impacts
- *Pangea, Inc.*, ASBCA No. 62561, 22-1 BCA ¶ 38,026
- Contractor sought relief under 52.229-3 for cost increases of domestic steel following tariffs imposed on steel imports during Trump I. ASBCA held contractor "does not persuade us that an increase in the price of domestic steel resulting from a tariff on foreign steel is a "Federal tax" within the meaning of FAR 52.229-3."
- Note: FAR 52.229-6 "Taxes—Foreign Fixed–Price Contracts" is counterpart for service/supply contracts being performed outside the US. Contractor must "take all reasonable action to obtain exemption or refund…" *See Triple Canopy, Inc. v. Sec'y of Air Force*, 14 F.4th 1332, 1338 (Fed. Cir. 2021) (claim accrued when Afghan govt. appeal process completed)

Economic Price Adjustment Clauses

- Not likely to be included in contract (See FAR 16.203-4 limitations)
  - Protect both gov't and contractor against fluctuation
  - Cannot be used where it would duplicate contingencies (FAR 16.203-2)
- Standard clauses limited to upward adjustments limited to 10%, no downward limitation
- Available where unit or labor prices are set in the contract, units must be shown on the schedule
- Requires notice to Contracting Officer

Economic Price Adjustment Clauses

- 3 categories (FAR 16.203-1)
- (1) Adjustments based on established prices. These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items. (FAR 52.216-2, 52.216-3)
- (2) Adjustments based on actual costs of labor or material. These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance. (FAR 52.216-4)
- (3) Adjustments based on cost indexes of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

Economic Price Adjustment Clauses

- Type 3 is more flexible, gov't and contractor agree on an independently verifiable index, such as CPI. Choosing the right index can be pivotal
- *Aluminum Co. of America v. Essex Group, Inc.*, 499 F. Supp. 53 (W.D. Pa. 1980) Index was Wholesale Price Index, which electricity had historical tracked. The oil embargo causes a rapid increase on price w/o corresponding index rise. Court found mutual mistake in selecting the index and reformed with a new index.
- *Beta Sys., Inc. v. United States*, 838 F.2d 1179 (Fed. Cir. 1988) Chose BLS specific index, price of aluminum shot up while index decreased. Mutual mistake – intention of the parties controls

Extraordinary Contractual Actions – Public Law 85-804 (50 USC 1431 et seq.)

- "The President may authorize any department or agency of the Government which exercises functions in connection with the national defense, … to enter into contracts or into amendments or modifications of contracts … without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense."
- Temporarily modified by FY 2023 NDAA to allow DOD contracts to be amended when cost of performing contract becomes greater than the contract price "due solely to economic inflation."
- Window subsequently extended to December 31, 2025

Extraordinary Contractual Actions – Public Law 85-804 (50 USC 1431 et seq.)

- "The authority conferred by Pub. L. 85-804 may not . . . [b]e relied upon when other adequate legal authority exists within the agency." FAR 50.101-2(b)(2)
- Not intended to satisfy claims
- EO 10789 (11/14/1958) (and subsequent EOs) delegating this power to the DoD and several agencies including **Atomic Energy Commission**, NASA, **TVA**, **DOI**, DHS
- DOE for functions transferred to that department from other authorized agencies

Public Law 85-804 (50 USC 1431 et seq.)

- The categories (FAR 50.103-2)
- Contract Amendments without consideration
- Correcting Mistakes
- Formalizing Informal Commitments
- Also
- Advance payments
- Indemnification Requests
  - DOE has used this many times on nuclear work abroad, and for antiterrorism work
- Residual powers

Public Law 85-804 (50 USC 1431 et seq.)

- Contractors must submit written request to contracting officer or authorized representative with (at minimum):
- Precise amount of contract adjustment requested;
- Essential facts summarized chronologically in narrative form;
- Contractor's conclusions based on facts;
- When contractor considers itself entitled to adjustment; and
- Whether: (i) all obligations under contracts involved have been discharged; (ii) final payment under contracts involved has been made; (iii) any proceeds from request will be subject to assignment or other transfer, and to whom; and (iv) the contractor has sought the same, or similar or related, adjustment from Government Accountability Office or any other part of Government, or anticipates doing so (FAR 50.103-3)


Questions?

Department of Energy
Office of Science
Chicago Office
9800 South Cass Avenue
Argonne, Illinois 60439

June 3, 2016

Roberta Ahlberg, Director
Office of Acquisition and Assistance
M&O Policy Division

SUBJECT: LABORATORIES' USE OF DUTY-FREE EXEMPTIONS FOR SCIENTIFIC EQUIPMENT

You have asked whether certain laboratories are correctly relying on duty-free exemptions under the Harmonized Tariff Schedule of the United States (HTSUS) when making purchases of equipment. Specifically, you have asked whether laboratories can continue to rely on HTSUS 9808.00.50 for a broad range of purchases.

FAR 52.225-8, which is included in the relevant M&O contracts, provides that the Government will execute any required duty-free entry certificates for supplies and will assist the Contractor in obtaining the duty-free entry.

HTSUS 9808.00.50 provides an exemption from tariffs for foreign articles purchased by the Nuclear Regulatory Commission (NRC) or the Department of Energy, provided the articles constitute materials certified to the Commissioner of Customs to be "source materials the entry of which is necessary in the interest of the common defense and security." Brookhaven National Laboratory used this code for the purchase of a spherical aberration lens correction system that is needed for the Center for Functional Nanomaterials. SLAC also cited this code for the purchase of electrical circuits and processors. In both instances, the Site Office Contracting Officer cited HTSUS 9808.00.50 in its correspondence with the United States Custom Service.

NRC regulations found at 10 CFR 40 define "source material" as: "(1) Uranium or thorium, or any combination thereof, in any physical or chemical form or (2) ores which contain by weight one-twentieth of one percent (0.05%) or more of: (i) Uranium, (ii) thorium or (iii) any combination thereof. Source material does not include special nuclear material." This specific definition does not lend itself to having HTSUS 9808.00.50 serve as an umbrella exception for imports. It also does not appear to be appropriate for the aberration lens correction system or electrical circuits/processors.

Laboratories (and approving Contracting Officers) should only rely on this code for source material purchases. Other codes should be relied upon for exemptions from

tariffs, such as HTSUS 9810.00.60, which applies to instruments and apparatus used by educational or scientific purposes. Admittedly, HTSUS 9810.00.60 has an additional requirement to certify to the Secretary of Treasury that no instrument or apparatus of equivalent scientific value is manufactured in the United States. (See Note 6(b) preceding HTSUS 9810). However, this additional requirement, along with a 13-year history of broad reliance on this code, should not translate into a shifted reliance on 9808.00.50 for laboratory purchases of items that are not source material.

It is recommended that Contracting Officers at laboratories broadly relying on HTSUS 9808.00.50 for all import purchases cite alternative codes, such as 9810.00.60 or other appropriate sections, for equipment or apparatus purchases that do not constitute source material.

Kimberly M. Donham
Deputy Chief Counsel
General Law Division
ISC Chicago Office

Wendy E. Bryant
Assistant Chief Counsel
Contracts and General Law
ISC Oak Ridge Office

2025 DOECAA Fall Conference

Keynote Lunch:

Juston Fontaine, Deputy Director for Operations,
Office of Science, Department of Energy

Juston Fontaine

Juston Fontaine is the Deputy Director for Operations in the Department of Energy's Office of Science. In this capacity, Mr. Fontaine is responsible for management and operational oversight of the Office of Science complex, including 10 national laboratories executing leading scientific research and development. In addition to his position as Deputy Director, Mr. Fontaine also serves as the Office of Science Head of Contracting Activity.

Mr. Fontaine has over 20 years of experience with the Department of Energy, serving in a variety of roles to provide leadership and coordination on a wide range of complex operational and technical issues, as well as oversight of agency programs and operations. Prior to joining the Office of Science, Mr. Fontaine was the Chief of Staff for the Office of the Under Secretary for Management and Performance. In this capacity, he led day-to-day operations of the Office of the Under Secretary, coordinating project management and the mission support functions of the Department. Mr. Fontaine also served as an Investigator for the Committee on Appropriations, Surveys and Investigations Division, where he was responsible for leading bipartisan investigations of specific current or emerging issues facing government agencies.

Separate from his role in the Office of Science, since December 2020, Mr. Fontaine has served as the Director of the Department's Laboratory Operations Board, which serves as the primary agency-wide forum to strengthen the partnership between DOE and its 17 National Laboratories.

Mr. Fontaine received a master's degree from Virginia Polytechnic Institute and State University. He is the recipient of numerous awards including the Presidential Meritorious Executive Rank Award.

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2025 DOECAA Fall Conference

PANEL 2: Legal Ethics: Real World Risks Facing In-house and Outside Counsel Across the DOE Complex

Legal Ethics: Real World Risks Facing Inhouse and Outside Counsel Across the DOE Complex

A Moderated Discussion

1:45 pm – 2:45 pm ET
Thursday, August 7, 2025 – Omni Shoreham Hotel, Washington, D.C.

Featuring: Robert K. Kelner, Partner and Chairman of Professional Responsibility Committee, Covington
Moderator: Mark J. Meagher, Member, Meagher GC Law, LLC

Topics for Discussion (annotated with relevant ABA Model Rules and other sources)

1. **Rob Kelner's background and intersection with legal ethics and professional responsibility issues in his roles at Covington**

2. **Limited Liability Companies as a Client**

    a. Virtually all the DOE/NNSA national laboratories and the DOE cleanup sites are run by LLCs comprised of multiple members.

    b. What are the general considerations when acting as a lawyer for a client that is a LLC?

        i. Model Rule 1.13, Organization as a Client, "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."

    c. How do law firms view LLC's for purposes of conflicts – i.e., when do you treat the LLC as a separate entity and "client" for determining adversity and when do you look past/through the LLC to its members for analyzing adversity?

    d. Inhouse LLC Counsel often find themselves communicating on LLC-related issues with LLC executive leadership, members of the LLC Board of Managers, the LLC's executive management team, and LLC employees

        i. What if the communications involves potential conflicting liability among the LLC, its executive leadership, and employees?

        ii. ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 514, *A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents* (Jan. 8, 2025)

        iii. Per Formal Opinion 514, consider the following Model Rules:

            A. 1.1, Competence (Minimal competence)
            B. 1.4, Communication (Necessary communication)
            C. 2.1 Advisor (Candid advice)
            D. 1.7 Conflicts: Current Clients

E. 4.1, Truthfulness in Statements to Others
F. 4.3, Dealing with Unrepresented Person
G. 1.13(f), Organization as Client (duty to explain identity of client when organization's interests may be adverse to the constituent); see also MR 1.13, comment [10] (when lawyer reasonably determines organization's and constituent's interests may be or will become adverse, the lawyer should advise the constituent of the adversity and advise them to get separate counsel).

e. LLC counsel often receive support, advice and sometimes oversight from <u>Member Company counsel</u>. How do those communications fit with duty of confidentiality between the LLC's counsel and the LLC?

f. What about the duty of confidentiality under Model Rule 1.6?

i. Rule 1.6 Confidentiality of Information --A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)

A. (b) [Recites 7 different instances permitting disclosure]

B. Rule 1.6, Comment [3] -- The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

ii. The scope of information covered by MR 1.6 is broader than the scope of the attorney-client privilege

iii. What risks are there for LLC inhouse counsel in such communications to be seen as having the member entity personnel as a "client"?

iv. Similar questions for outside counsel retained by the LLC to perform a legal matter, but in the course of representation there is substantial communication and interaction with member entity personnel. Any special steps to be taken (e.g., engagement letter provisions or specific advisements to provide during engagement)?

v. Are there steps that the LLC or its counsel could or should take to clarify how and to whom confidential LLC information may be communicated?

A. For example, should the Board of Managers offer specific written authority or direction?
B. Should that authority or direction as to communicating with LLC member employees be specific or general?

C. MR 1.13(a) – Organization acts through its "duly authorized constituents."

g. Conflicts between or among an LLC's members may be rare, but what happens when the member companies or entities of an LLC managing and operating a DOE/NNSA lab or cleanup site end up at odds with each other?

i. What does the LLC's inhouse counsel have to consider at that point?

ii. How do you navigate between ethical duty to the entity, the LLC, and the members?

D. The majority member?

E. A minority member?

iii. What about the instance where, in the reasonable view of LLC counsel, the interests of a majority member may in some way conflict with the institutional interests of the LLC?

A. Example: In a high-profile environmental enforcement action, the LLC's majority member moves aggressively to push for the Government to drop claims against the majority member, and pursue only the LLC and its minority members?

iv. Considerations:

A. MR 1.7 – Conflicts: Current Clients

B. MR 1.13 – Organization as Client

3. The Use of Artificial Intelligence in Modern Legal Practice.

a. How are large law firms like Covington handling the integration of AI tools from the standpoint of ethics and professional responsibility concerns?

b. Competence (Model Rule (MR) 1.1)?

i. What are firms doing to differentiate among the different AI solutions, adopt technology and train lawyers and staff?

c. Confidentiality (MR 1.6)

i. The different Generative AI platforms appear to each have different approaches to whether inputted data will remain confidential or will be incorporated into the GAI's large language models.

ii. How do you manage the client confidentiality concerns?

iii. Will confidentiality concerns evolve as they have over time with conveying client confidential information over mobile devices and the use of email?

A. What guidance do firms provide their lawyers regarding requests by border officials to open and inspect mobile devices (laptops, IPads and mobile phones) that may have confidential client data?

B. MR 1.6, Comment [18] (attorney must act reasonably to prevent disclosure of or access to client's confidential information).

C. ABA January 2018 Electronic Device Advisory for ABA Mid-Year Meeting Attendees. Electronic Communication and Data Storage, Portable Devices and Border Searches (Jan 2018). .(https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/scepr_electronic_device_advisory_exec_summary.pdf)

d. Supervision of Associates/Staff (MR 5.1)?

i. Younger lawyers often are more "tech savvy" and comfortable with new technologies such as AI. What steps are firms taking to ensure firm management understands how AI is being used in the delivery of legal services?

e. Communications with clients? (MR 1.4)

i. Different presentations today discuss the potential need for practitioners to affirmatively disclose to clients the use of AI in delivery of legal services.

ii. What are your thoughts on how Firms are handling this issue?

iii. Are there particular uses of AI that may require disclosure and others not?

f. Does AI intersect with how firms may price legal services going forward? (MR 1.5)

i. Market pressures to hold or lower rates for engagements using AI?

ii. AI and non-AI rates?

A. Virginia State Bar, Proposed Legal Ethics Opinion 1901, Reasonable Fees and the Use of Generative Artificial Intelligence (Legal Ethics Committee Draft Opinion)(March 20, 2025)

iii. Separate billing or inclusion of AI-related costs in rates?

4. Investigations: Handling Interactions with Employees

a. *Upjohn*/"Civil Miranda" advisements

b. Represented v. unrepresented parties

c. See discussion of interactions between LLC counsel and "authorized constituents" when there is a risk of adversity in Outline Section 2.d above.

i. ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 514, A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents (Jan. 8, 2025).

5. The Increasing Use of Disqualification Motions

a. What are the risks?

b. How should inhouse counsel anticipate and mitigate those risks?

c. Relevant rules to consider

- 1.7 – Conflicts of Interest: Current Clients
- 1.9 – Duties to Former clients
- 1.6 – Confidentiality of Information
- 3.7 – Lawyer as Witness

Presentation Resources

LLC's as a Client

ABA Model Rules

- 1.1 – Competence
- 1.6 – Confidentiality of Information
- 1.7 – Conflict of Interest
- 1.13 – Organization as a Client

Other Sources

- ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 514, A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents (Jan. 8, 2025)
- ABA Model Rule 1.13, Comment [10], Clarifying the Lawyer's Role
- ABA Model Rule 1.13, Comment [12] – [14], Dual Representation and Derivative Actions
- ABA Model Rule 1.13, Annotations, "Closely Held Corporations" (ABA, Annotated Model Rules of Professional Conduct (9th Ed.)(2019).
- State Bar of California, Standing Committee on Professional Responsibility and Conduct, Formal Opinion 199-153 (representing closely held corporation and a constituent).

Artificial Intelligence and the Practice of Law

ABA Model Rules

- 1.1 – Competence
- 1.4 – Communication
- 1.5 -- Fees
- 1.6 – Confidentiality of Information
- 5.1 – Responsibilities of Partners, Managers and Supervisory Lawyers
- 5.2 – Responsibilities of Subordinate Lawyer

Other Sources

- ABA January 2018 Electronic Device Advisory for Mid-Year Meeting Attendees (https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/scepr_electronic_device_advisory_exec_summary.pdf)
- State Bar of New Mexico, Ethics Advisory Committee, Formal Ethics Advisory Opinion 2024-004 (Sept. 24, 2024), Using Generative Artificial Intelligence in the Practice of Law.
- DC Bar, Ethics Opinion 388, Attorneys' Use of Generative Artificial Intelligence on Client Matters (April 2024).
- Virginia State Bar, *Proposed* Legal Ethics Opinion 1901, Reasonable Fees and the Use of Generative Artificial Intelligence (Legal Ethics Committee Draft Opinion)(March 20, 2025)

Investigations: Interactions with LLC Employees

ABA Model Rules

- 1.7 – Conflicts of Interest: Current Clients
- 1.13(f) – Organization as Client (dealings with organization's directors, officers, employees, members, shareholders or other constituents)
- 1.13(g) – Organization as a Client (dual representation of organization and individuals subject to conflicts rule in MR 1.7)
- 4.2 – Communication with Person Represented by Counsel
- 4.3 – Dealing with Unrepresented Person

Other Sources

- ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 514, A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents (Jan. 8, 2025)
- ABA Model Rule 4.2, Annotations, "When Represented Person is an Organization: Which Constituents are "Represented"? (ABA, Annotated Model Rules of Professional Conduct (9th ed.) (2019).
- ABA Model Rule 4.3, Annotations, "Employees and Former Employees of Represented Organizations" (ABA, Annotated Model Rules of Professional Conduct (9th ed.) (2019).

Trends in the Filing of Disqualification Motions

ABA Model Rules

- 1.7 – Conflicts of Interest: Current Clients
- 1.9 – Duties to Former clients
- 1.6 – Confidentiality of Information
- 3.7 – Lawyer as Witness

Robert Kelner
Partner

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Robert Kelner is the chair of Covington's nationally recognized Election and Political Law practice group. He counsels clients on the full range of political law compliance matters, and defends clients in civil and criminal law enforcement investigations concerning political activity. He also leads the firm's prominent Congressional Investigations practice.

Rob's political law compliance practice covers federal and state campaign finance, lobbying disclosure, pay to play, and government ethics laws. His expertise includes the Federal Election Campaign Act, Lobbying Disclosure Act, Ethics in Government Act, Foreign Agents Registration Act, and Foreign Corrupt Practices Act.

He is also a leading authority on the arcane rules governing political contributions and marketing activities by registered investment advisers and municipal securities dealers.

Rob's political law clients include numerous multinational corporations, many of which are household names. He counsels major banks, hedge funds, private equity funds, trade associations, PACs, political party committees, candidates, lobbying firms, and politically active high-net-worth individuals. He has represented the Republican National Committee, National Republican Congressional Committee, and National Republican Senatorial Committee. He also advises Presidential political appointees on the complex vetting and confirmation process.

As a partner in the firm's White Collar Defense & Investigations practice group, Rob regularly defends clients in congressional investigations before virtually every major congressional investigation committee. He also defends corporations and others in investigations by the Federal Election Commission, the Public Integrity Section of the U.S. Department of Justice, federal Offices of Inspector General, and the House & Senate Ethics Committees. He has prepared many CEOs and corporate executives for testimony before congressional investigation panels. He regularly leads the Practicing Law Institute's training program on congressional investigations for in-house lawyers. In addition, he is frequently retained to lead internal investigations and compliance reviews for major corporate clients concerning lobbying and campaign finance law issues.

Rob has appeared as a commentator on political law matters on *The PBS News Hour*, *CNBC*, *Fox News*, and *NPR*, and he has been quoted in the *New York Times*, *Washington Post*, *Wall Street Journal*, *Associated Press*, *Legal Times*, *Roll Call*, *The Hill*, *Politico*, *USA Today*, *Financial Times*, and other publications.

Rob is Chairman of Covington's Professional Responsibility Committee and a General Counsel of the firm. He also currently serves as Chairman of the District of Columbia Bar's Legislative Practice Committee, and he previously was appointed by the President of the American Bar Association to serve on the ABA's Standing Committee on Election Law.

Meagher GC Law, LLC
A Government Contracts Law Practice

Mark J. Meagher

Mark Meagher is a government contracts lawyer with over 35 years of experience efficiently and successfully solving complex contractual, regulatory, and statutory problems for clients contracting with the U.S. Government in the energy, defense, commercial and technology sectors.

LEGAL EXPERIENCE

April 2021 to Present	Founder and Member	Meagher GC Law, LLC (Boulder, CO)
July 2015 to April 2021	Partner	Dentons US LLP (Denver, CO)
September 1988 to July 2015	Partner and Associate	McKenna, Long & Aldridge LLP (Formerly McKenna & Cuneo LLP) (Denver, CO and Washington, D.C.)

PRACTICE SUMMARY

- Perform corporate counseling on technology, infrastructure, defense and energy related issues
- Counsel on cost allowability and Cost Accounting Standards compliance issues
- Provide support on response to Government-initiated audits on allowable costs
- Advise clients concerning Truth in Negotiations Act (TINA) issues
- Support contractors in contract closeout process, including resolving cost allowability issues and related liabilities
- Analyze complex contract and regulatory compliance and interpretation matters
- Develop requests for equitable adjustment and certified claims
- Perform internal investigations on matters intersecting with federal contracting obligations and commitments
- Assist clients responding to terminations and notices of suspension or debarment
- Represent clients facing subcontract and supply chain issues
- Advise on small business compliance matters
- Conduct business ethics training and compliance program counseling

DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION EXPERIENCE AND SERVICES

- Represent clients on complex cost recovery and liability issues under Management and Operating (M&O) Contracts
- Work with client teams providing effective response to DOE-initiated cost audits conducted by outside auditors and to DOE-IG audit requests
- Handle the investigation and resolution of contract and regulatory compliance problems at national laboratories and other DOE/NNSA sites and facilities
- Analyze and resolve subcontract and supply chain problems and disputes
- Investigate civil fraud problems
- Develop requests for equitable adjustment and claims at various DOE environmental cleanup sites on matters involving contract and fee issues
- Assist companies on contract close out and transition issues for both national laboratory and environmental cleanup contracts

DEFENSE AND TECHNOLOGY SECTORS EXPERIENCE – REPRESENTATIVE ENGAGEMENTS

- Counseled client on negotiation of subcontract terms and conditions for development of robotics used in commercial nuclear reactor facilities
- Assisted client in negotiating resolution of issues involving DOE-funded research on battery technology program
- Negotiated software licensing agreement for cyber security software for use in Army field systems
- Advised a multinational manufacturing concern regarding commercial terms in U.S. Navy contract
- Counseled client upon exit of DOE-funded cooperative agreement for participation in program retrofitting light duty trucks with electric drive systems
- Supported negotiations of data security software licensing agreement with major cell phone service provider
- Worked with client to obtain small business status for robotics company
- Assisted client in negotiating restructure of a major Army SaaS support contract
- Counseled AI advisory organization on standard terms and conditions for funding AI-related technologies

LITIGATION EXPERIENCE – REPRESENTATIVE ENGAGEMENTS

- *CH2M WG Idaho LLC v. Department of Energy*, CBCA No. 3876 (Sept. 7, 2017). Lead counsel in recovery, after two-week hearing and extensive post-hearing briefing, of contractor's claim for $33 million in incentive and related fees unilaterally denied by Department under large environmental cleanup contract.

- *Summit Technical Solutions, LLC v. Brillient Corp.* (E.D. Va. 2017). Government Contracts co-counsel representing STS in successfully obtaining temporary restraining order and preliminary injunction to invalidate termination for default of subcontract and enforce terms of teaming agreement under USCIS information services program.

- *Eagle Industries Unlimited, Inc. v. KDH Defense Systems, Inc.*, US District Court, E.D. Missouri (April 2013). Lead trial counsel in obtaining successful jury verdict for plaintiff subcontractor (Eagle) for breach of subcontract for production of body armor.

- *United States ex rel. Ritchie v. Lockheed Martin Corp.*, 558 F.3d 1161 (10th Cir. 2009). Lead counsel on successful summary judgment motion and Tenth Circuit appeal, including oral argument, convincing Tenth Circuit to adopt rule to enforce employee releases against *qui tam* claims under the False Claims Act.

- *Appeal of American Ordnance*, ASBCA 54718, 10-1 BCA 34,386. Lead counsel in successful appeal, involving two-week trial, for recovery of $3.5 million constructive change and delay claims on production line for M107 artillery shells.

- *Fluor Daniel, Inc. v. Regents of the University of California*, EBCA C-9909296, 02-2 BCA 32,107. Lead counsel in successful defense of Los Alamos National Laboratory prime contractor against $15 million breach of contract claims after two-week trial before DOE Board of Contract Appeals.

- *United States ex rel. Mock & Lebow v. Lockheed Martin et al.*, (Civ. 96-0061) (D. Idaho). Highly successful resolution of complex *qui tam* action under False Claims Act after successful dispositive motions practice.

RECENT PRESENTATIONS

- Presenter, "Contract Releases: Drafting and Enforcement," Desert Bar, Richland, WA, May 21, 2025

- Co-Presenter, “Allowability of Legal Costs: Understanding the Rules and Their Practical Applications,” ABA Public Contracts Law Section Fall Forum, Reston, VA, November 8, 2024
- Co-Presenter, “Legal Ethics,” Department of Energy Contractor Attorneys’ Association, Crystal City, VA, October 18, 2024
- Presenter, “Ethics and AI – Practical and Ethical Steps for Compliance,” Department of Energy Contractor Attorneys’ Association, Washington, DC, September 27, 2023
- Co-Presenter, “Legal Ethics for Inhouse Counsel: DOECAA 2022,” Department of Energy Contractor Attorneys’ Association, Washington, DC, October 7, 2022
- Co-Presenter, “Government Contracts Update: DOECAA 2021,” Department of Energy Contractor Attorneys’ Association, Washington, DC, October 21, 2021
- Presenter, “Three Key Legal Issues for a Post-COVID-19 DOE Complex,” Desert Bar, Richland, WA, May 26, 2021
- Panelist, "COVID-19: Key Issues Impacting the Government Contractor Community," Dentons US LLP webinar, March 19, 2020
- Panelist, “Contract Essentials: Now that the Contract Has Been Awarded, What’s Next?” ABA Public Contract Law Section, 2019 Public Procurement Symposium, San Diego, CA, October 25, 2019
- Panelist, “The False Claims Act and Government Investigations,” Rocky Mountain Government Contracts Briefing, Denver, CO, October 10, 2019
- Moderator, “Charting a Course in Uncertain Waters: Key Ethical Considerations Facing In House Counsel During Internal Investigations,” Department of Energy Contract Attorneys Association Annual Meeting, Washington, D.C., May 3, 2019
- Presenter, “Understanding Department of Energy Management and Operating Contracts,” All-day Annual Education Seminar, S.E. Idaho NCMA Chapter, April 15, 2019
- Presenter, “Workshop: Compliance Considerations for Gifts, Meals, Entertainment and Travel and Lodging Expenses When Dealing with Government Officials," The International Anti-Corruption Congress (IACC), San Jose, Costa Rica, May 2018
- Panelist, PCI Webinar: “Termination Cost Recovery,” February 2018
- Organizer, Dentons’ Silicon Valley Institute on Government and Technology, All-day Conference: “Continued Government Outreach to Tech Companies in the Moment of IoT and Cloud Computing,” Stanford Park Hotel, Menlo Park, CA, 2016

RECENT PUBLICATIONS

- Co-author, "PREP Act Coverage for COVID-19 Related Activities Provides Important Immunity Protections," Dentons client alert, March 30, 2020
- Co-author, "Voluntary vs. Involuntary Stop Work: What contractors should consider as the COVID-19 pandemic evolves," Dentons client alert, March 17, 2020
- Co-author, "COVID-19 - Addressing the Risks of Disease Delays and Disruptions Under Federal Contracts," Dentons client alert, March 10, 2020

MEMBERSHIPS

- American Bar Association (Public Contracts and Litigation Sections)
- Department of Energy Contractor Attorneys' Association
- Colorado Bar Association
- District of Columbia Bar Association

EDUCATION

- Albany Law School, 1988, J.D., cum laude, Editor-in-Chief, Albany Law Review
- Yale University, 1982, B.A., Political Science

ADMISSIONS AND QUALIFICATIONS

- Colorado
- District of Columbia
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeal for the Tenth Circuit
- U.S. Court of Federal Claims
- U.S. District Court for the District of Colorado

CONTACT INFORMATION

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July 2025

2025 DOECAA Fall Conference

PANEL 3: Federal Simplification/Deregulation Efforts for the DOE Complex

DOECCA Fall Conference | August 7-8, 2025

Deregulation and FAR Rewrite

Moderated by:

James Xiao, Senior Counsel & Ethics Program Manager, Savannah River Mission Completion

Presented by:

Jordan Clementi Gerken, Assistant General Counsel, Kansas City National Security Campus

Reggie Jones, Partner and Chair of the Federal Government Contracts Department, Fox Rothschild LLP

John C. Kluge, Attorney Advisor, National Nuclear Security Administration (NNSA)

Sarah Peterman Bell, Partner, Farella Braun & Martel LLP

SRMC SAVANNAH RIVER MISSION COMPLETION

Fox Rothschild

KANSAS CITY NSC National Security Campus

NNSA National Nuclear Security Administration

Farella Braun + Martel

The FAR Past to Present

IRVIN GRAY, ASSOCIATE GENERAL COUNSEL
JORDAN GERKEN, ASSISTANT GENERAL COUNSEL

KANSAS CITY NSC National Security Campus

The Department of Energy's Kansas City National Security Campus is managed and operated by Honeywell Federal Manufacturing & Technologies, LLC under contract number DE-NA0002839

What is the FAR

According to the U.S. General Services Administration: “The Federal Acquisition Regulation (FAR) is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds.”

A BRIEF HISTORY OF U.S. GOVERNMENT PROCUREMENT AND THE FAR

KANSAS CITY NSC National Security Campus

Revolutionary War: Foundations of Procurement Reform

- **Origins trace back to the Revolutionary War**
- **Ad hoc purchasing, often corrupt or inefficient**
- **Need for transparency and accountability emerged early**

Source: https://www.pexels.com/

Civil War: Wartime Scandals and Congressional Oversight

Source: Grant Cavalry Statue - Cyanotype - Free Stock Photo by Nicolas Raymond on Stockvault.net

- **Massive spending exposed weaknesses in contracting**
- **Fraudulent contracts, unfulfilled deliveries, price gouging**
- **Congressional investigations led to push for procurement reform**

World Wars I & II: Birth of Formal Procurement Systems

- **WWI:** Emergency contracting and War Industries Board
- **WWII:** Scale and urgency led to increased regulation
- Foundations of Armed Services Procurement Regulation (ASPR)

Source: https://www.pexels.com/

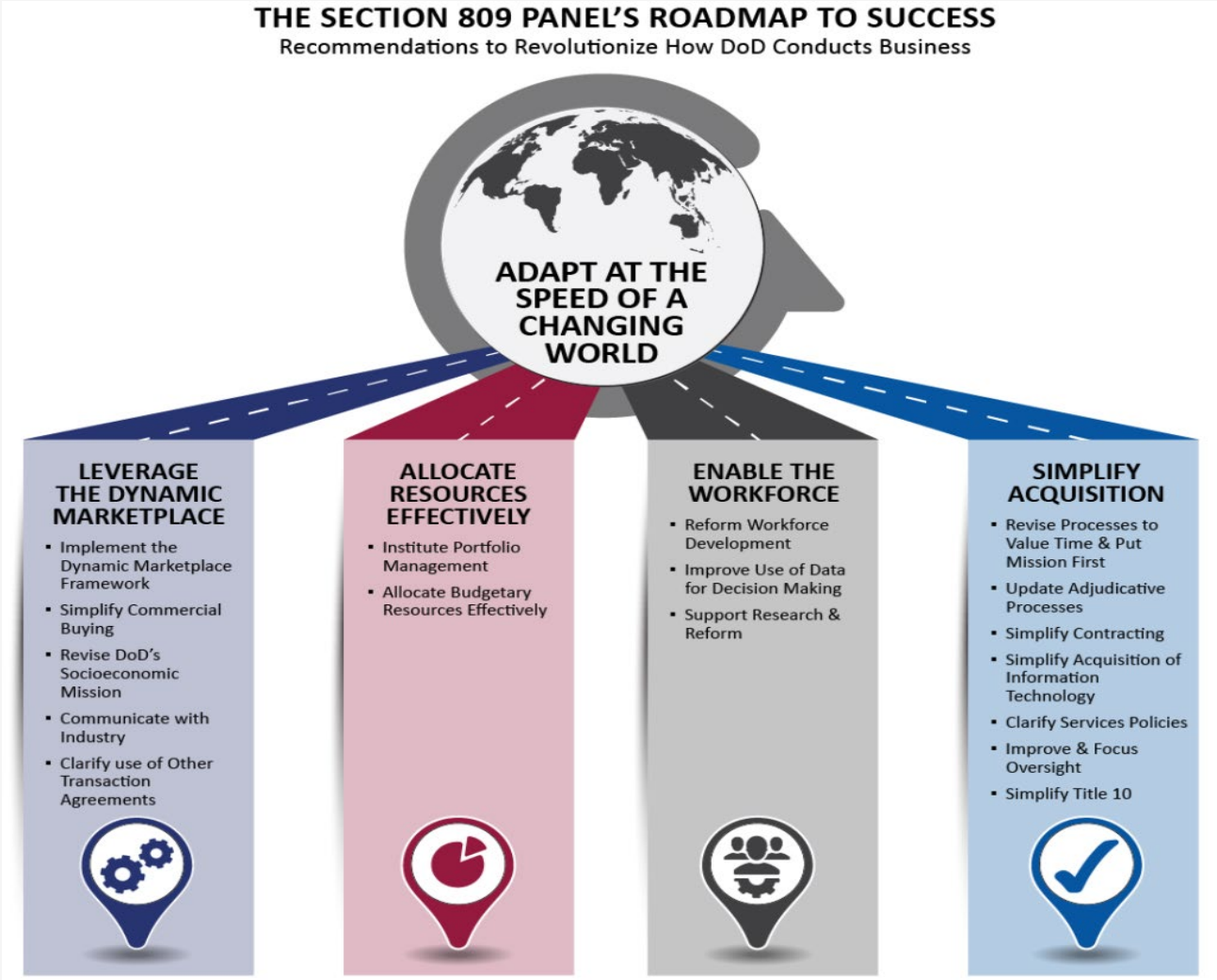
CICA & FASA: Modern Competitive Procurement

Source: https://www.pexels.com/

- **1984:** Competition in Contracting Act (CICA) – promoted full and open competition
- **1994:** Federal Acquisition Streamlining Act (FASA) – encouraged commercial item acquisition
- Both aimed to simplify, standardize, and open access

Section 809 Panel: A Modern Reform Blueprint

- **Established by FY 2016 National Defense Authorization Act**
- **Recommended Dynamic Marketplace Framework for DoD**
- **Proposed eliminating outdated statutes and improving acquisition agility**



Source: Defense Technical Information Center (DTIC), *Section 809 Panel,* Accessed at https://discover.dtic.mil/section-809-panel/ on July 17, 2025.

REVOLUTIONARY FAR OVERHAUL
FAR 2.0

KANSAS CITY NSC National Security Campus

Revolutionary FAR Overhaul: Executive Summary

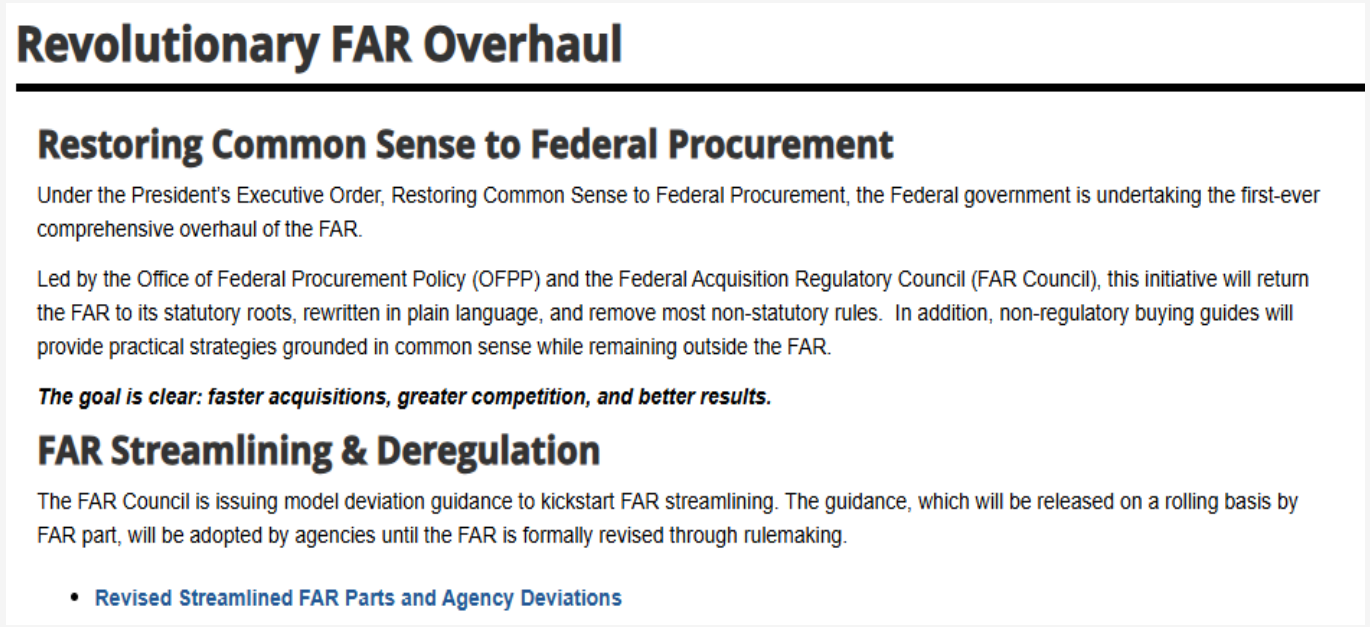
- **Executive Order 14275 (April 15, 2025)**
- **Simplify the FAR to statutory or essential provisions only**
- **Restore common sense and agility to federal procurement**

Source: Restoring Common Sense to Federal Procurement – The White House

Executive Order 14275 – Policy Objectives

- **Create agile, effective, and efficient procurement**
- **Remove unnecessary acquisition rules at all levels**
- **Improve access, especially for small and new businesses**

Launch of the RFO Website



Revolutionary FAR Overhaul

Restoring Common Sense to Federal Procurement

Under the President's Executive Order, Restoring Common Sense to Federal Procurement, the Federal government is undertaking the first-ever comprehensive overhaul of the FAR.

Led by the Office of Federal Procurement Policy (OFPP) and the Federal Acquisition Regulatory Council (FAR Council), this initiative will return the FAR to its statutory roots, rewritten in plain language, and remove most non-statutory rules. In addition, non-regulatory buying guides will provide practical strategies grounded in common sense while remaining outside the FAR.

The goal is clear: faster acquisitions, greater competition, and better results.

FAR Streamlining & Deregulation

The FAR Council is issuing model deviation guidance to kickstart FAR streamlining. The guidance, which will be released on a rolling basis by FAR part, will be adopted by agencies until the FAR is formally revised through rulemaking.

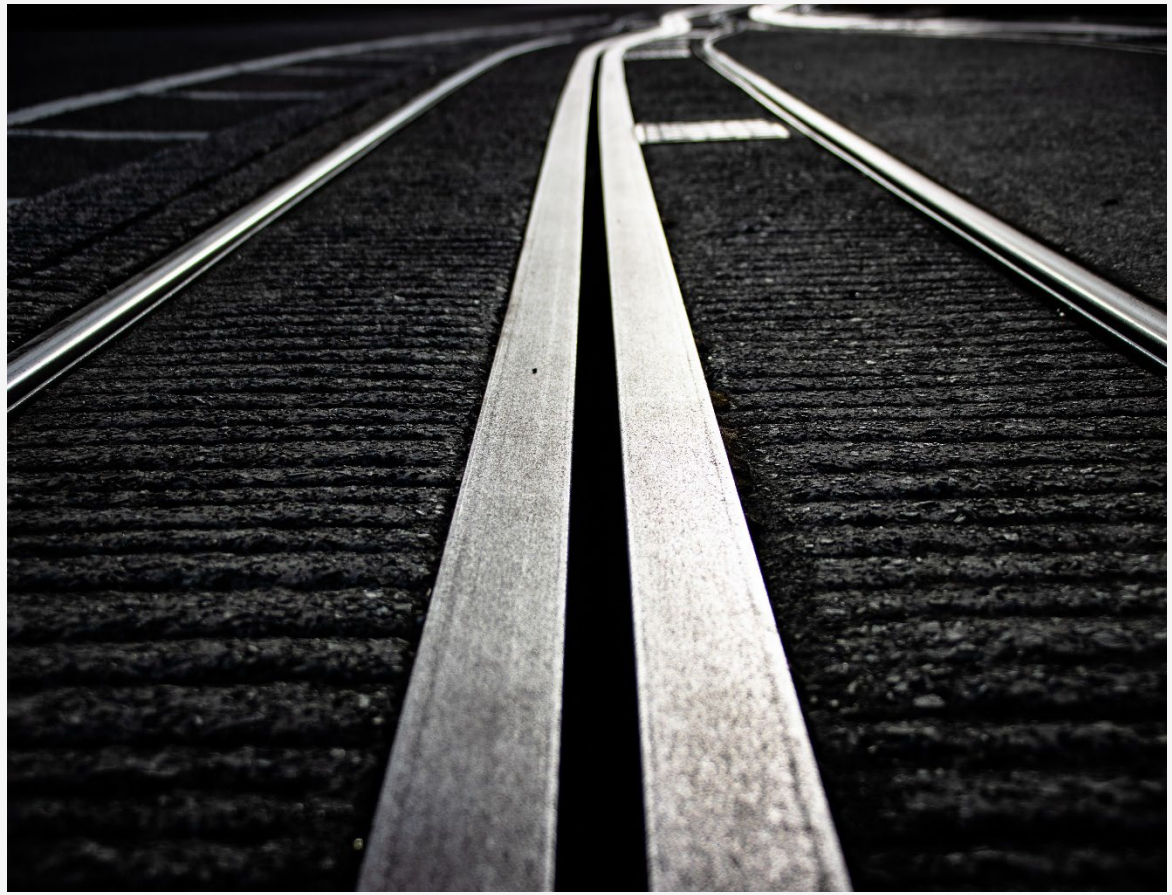
- **Revised Streamlined FAR Parts and Agency Deviations**

Source: Revolutionary FAR Overhaul | Acquisition.GOV

- **Acquisition.gov/far-overhaul**
- **Live as of May 6, 2025**
- **Central hub for deviations, guides, and feedback**

Two-Track Strategy for Reform

- **Track 1: Model deviation text rulemaking**
- **Track 2: Non-regulatory buying guides & innovation tools**
- **Potential Benefits:**
  - Faster buying, reduced barriers, more innovation
  - Clearer rules, better guidance
  - Aligns procurement with digital expectations



Is Your Site Ready for the Revolutionary FAR Overhaul?

- **Current contract language will govern until FAR revisions are incorporated**
- **How comfortable are you with:**
  - Your Prime Contract Modification Process?
  - How your lab, facility, or site will incorporate relevant agency directives (DOE Orders/NNSA Supplemental Directives)?
  - The Stakeholder Buy-In Process?

Unsure? Ask me about the Kansas City Oversight Model…

The “Revolutionary FAR Overhaul”: What to Know

Subtitle

Executive Order Origins – April 15, 2025

- **Executive Order 14271 "Ensuring Commercial, Cost-Effective Solutions in Federal Contracts"**
  - Calls to shift federal procurement to "suitable or superior" commercial solutions instead of "custom products and services"
  - Claims agencies spent too much procuring custom goods and services and evading the Federal Acquisition Streamlining Act (FASA) of 1994's preference for commercial goods and services.
- **Executive Order 14275 "Restoring Common Sense to Federal Procurement"**
  - Calls to remove any FAR provisions that are not required by statute or deemed by the Administration as "otherwise necessary"
  - Specifies "appropriate action to be taken within 180 days of signing (October 12, 2025).
    - The actual timeline of the FAR Council's release of overhauled FAR sections indicates the rollout will last beyond the October 12 target date.

OMB Memorandum M-25-26 “Overhauling the Federal Acquisition Regulation”

- Published May 2, 2025 in response to EO 14275.
- Calls to revamp the FAR into the “Strategic Acquisition Guide” (SAG) through a process called the (“Revolutionary FAR Overhaul” (RFO).
- Two-Phase Plan:
    1) FAR Council issues class deviation model guidance during the Notice & Comment Phase, and agencies will follow with individual or class deviations within 30 days of each published RFO FAR section.
    2) Formal rulemaking is issued subject to Notice and Comment Rulemaking procedures (41 U.S.C. § 1707) to formally change the FAR into the SAG.
- FAR language deemed “helpful non-regulatory content” will be implemented into “buying guide” (currently referred to as upcoming “FAR Companion Guides” for each revamped FAR section).

How Does This Differ from Prior Attempts?

- **Federal Acquisition Streamlining Act of 1994 (FASA) and Federal Acquisition Reform Act of 1996 (FARA)**
  - Attempts modernize the FAR (increase reliance on commercial off-the-shelf (COTS) technology, simplify acquisition procedures and alter procurement strategy from lowest bid to best value).
- RFO relies on deviations to "bypass" the administrative process to revise the FAR.
  - FAR 1.4 – Deviations from the FAR
    - "The issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR." FAR 1.401(a).
    - "When an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision, if appropriate." FAR 1.404.
  - Deviations previously used sparingly, when following the FAR would be impractical or not in government's best interest.
  - **NOTE**: Department of Defense has ***not*** issued any deviations. DFARS 201.402 requires any deviation request to include a "detailed rationale for the request," including "what problem or situation will be avoided, corrected, or improved if request is approved."

Current Updated FAR Parts

- Part 1 – Federal Acquisition Regulations System
- Part 6 – Competition Requirements
- Part 10 – Market Research
- Part 11 – Describing Agency Needs
- Part 18 – Emergency Acquisitions
- Part 29 – Taxes
- Part 31 – Contract Cost Principles and Procedures
- Part 34 – Major System Acquisition
- Part 39 – Acquisition of Information and Communication Technology
- Part 43 – Contract Modifications
- Part 52 – Solicitation Provisions and Contract Clauses*

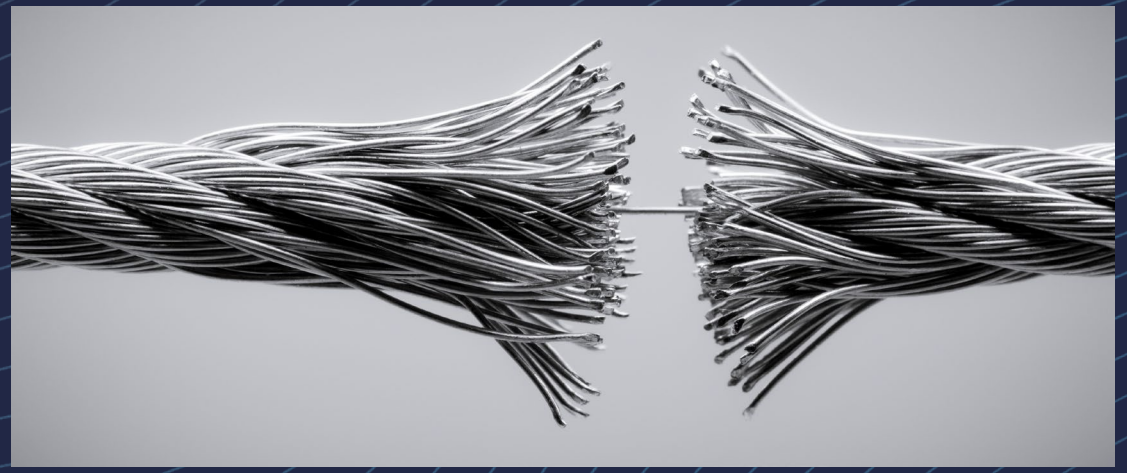
*Changes made as other updated FAR Parts are released

Notable RFO Sections

- **Part 6 – Competition Requirements**
  - Removes some non-statutory sole source justification requirements. Promotes “fusion procurements” (multiple tasks under one solicitation, but potential to award to different vendors). Could allow more vendors to participate in “fusion procurements.”
- **Part 31 – Contract Cost Principles and Procedures**
  - No major changes required to contractors’ existing compliant accounting systems. Some definitions removed but otherwise business as usual.
- **Part 34 – Major System Acquisition**
  - Streamlines Earned Value Management System (EVMS) (contractor plan to monitor project scope/schedule/cost and identify risks) and Integrated Baseline Review (IBR) (agency procedures to assess EVMS) requirements. Now different agencies can consider different IBR factors in assessing proposed EVMS.
- **Part 39 – Acquisition of Information and Communication Technology**
  - Increases education/experience requirement for proposed contact personnel and emphasizes “modular contracting” for acquiring major IT systems.
- **Part 43 – Contract Modifications**
  - Only modest revisions. Expands scope to Task and Delivery Order modifications.

Break Slide Title

Subtitle



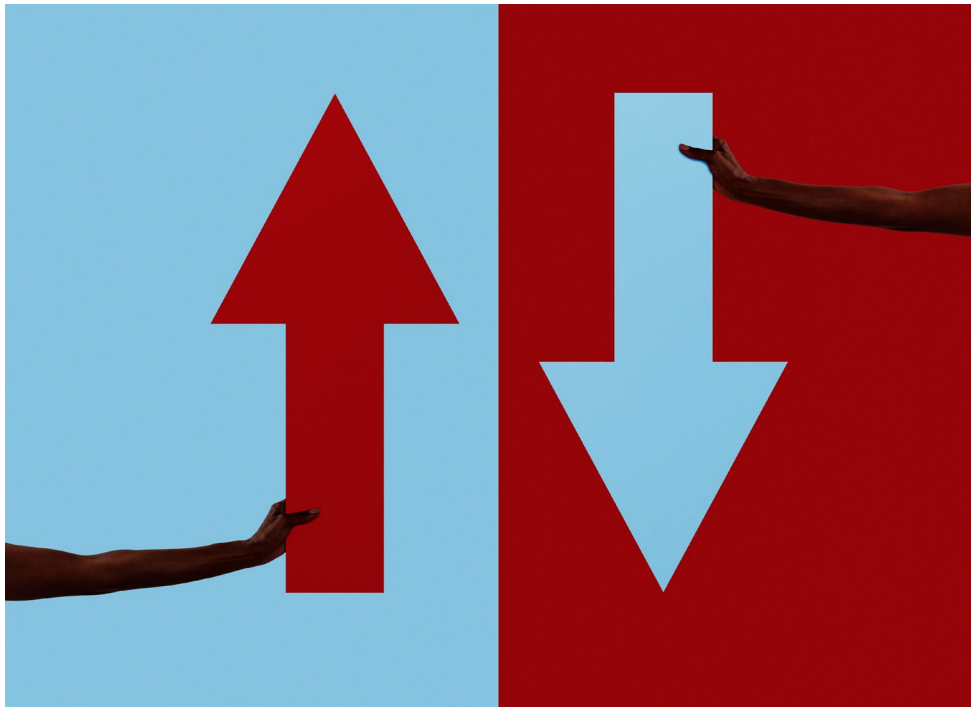
Environmental Deregulation

Sarah Peterman Bell, Partner

Farella Braun + Martel

Introduction to Environmental Deregulation

- Shrinking Federal Oversight
- Increasing State Action

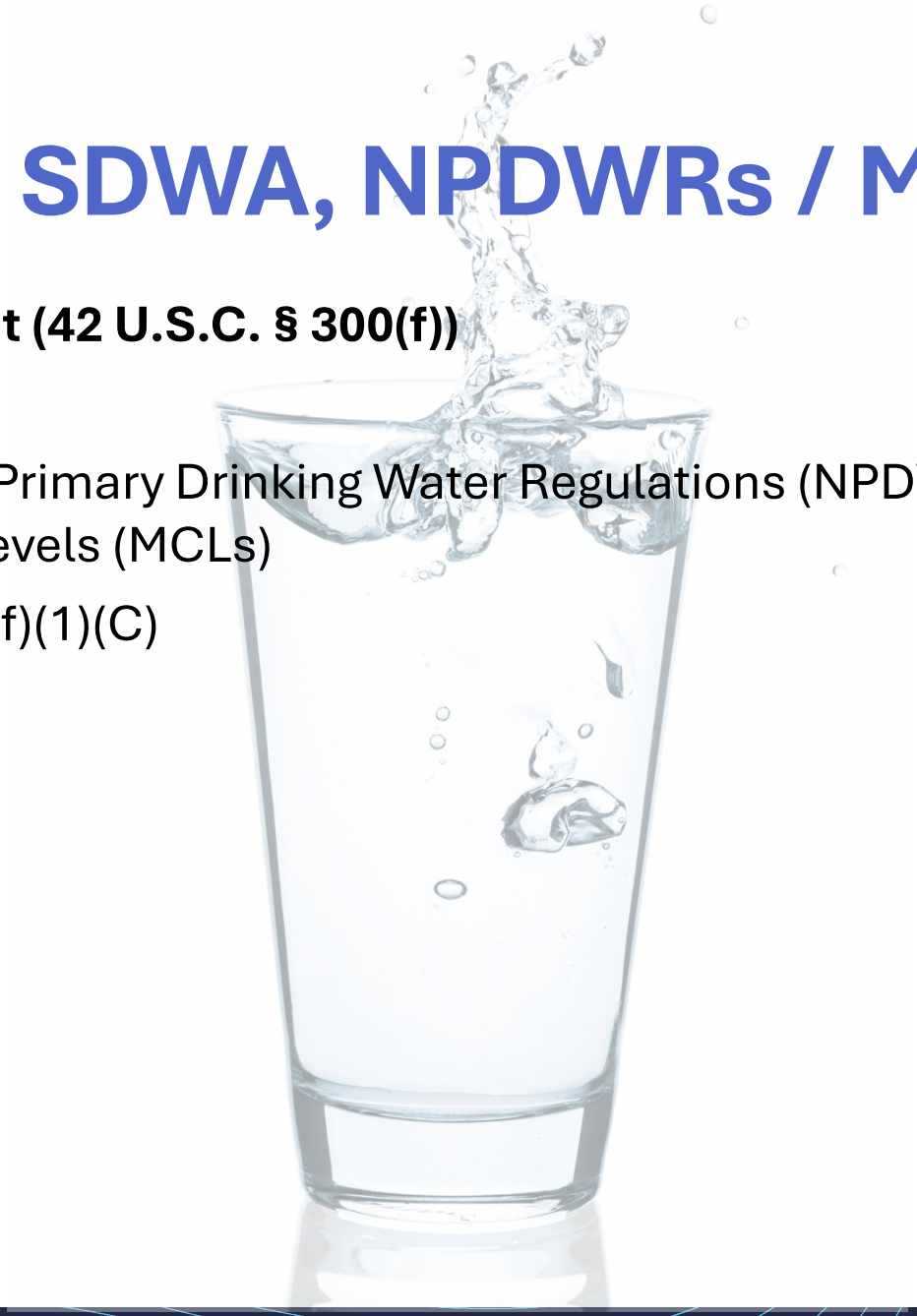


Case Study: PFAS

- **What are PFAS?**
  - Per- and polyfluoroalkyl substances
    - https://www.niehs.nih.gov/health/topics/agents/pfc
  - “Forever chemicals” – since the 1940s.
  - Health effects?
    - https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas

PFAS and the SDWA, NPDWRs / MCLs

- **Safe Water Drinking Act (42 U.S.C. § 300(f))**
  - Background
    - EPA > National Primary Drinking Water Regulations (NPDWRs) > Maximum Contaminant Levels (MCLs)
    - 42 U.S.C. § 300(f)(1)(C)



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PFAS and the SDWA, NPDWRs / MCLs

- **Biden Administration**
  - April 2024: EPA announced new MCLs for 6 PFAS chemicals
- **PFOA, PFOS, PFHxS, PFNA, HFPO-DA**
  - And PFAS mixtures using a Hazard Index MCL

Compound	Final MCLG	Final MCL (enforceable levels)[1]
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFHxS	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
HFPO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

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PFAS and the SDWA, NPDWRs / MCLs

- **Trump Administration**
  - May 14, 2025: MCLs remain in place for PFOA and PFOS
  - Intention to rescind others
    - https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos

Compound	Final MCLG	Final MCL (enforceable levels)[1]
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
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PFNA	10 ppt	10 ppt
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PFAS and TSCA

- **Toxic Substances Control Act (TSCA) (15 U.S.C. § 2601)**
- **> EPA "authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures."**
  - https://www.epa.gov/laws-regulations/summary-toxic-substances-control-act
- **Biden Administration**
  - Section 8(a)(7): one-time reporting, manufacturing or importing, 2011 - 2022. 15 U.S.C. § 2607(a)(7); https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping.
  - July 2025 compliance
- **Trump Administration**
  - May 2025: EPA interim rule extended reporting deadlines to October 2026.
    - Likely further amendments?
    - 40 CFR 705, 90 FR 20236

PFAS and RCRA

- **Resource Conservation and Recovery Act (RCRA)**
- **“Cradle to grave” – generation, transportation, treatment, storage, and disposal of hazardous waste**
- **Biden Administration**
  - February 2024: EPA proposed adding 9 PFAS to Hazardous List
  - https://www.epa.gov/hw/proposal-list-nine-and-polyfluoroalkyl-compounds-resource-conservation-and-recovery-act
- **Trump Administration**
  - Indefinite hold
  - “Regulatory Freeze Pending Review” memorandum on January 20, 2025.
  - https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/

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PFAS and CERCLA (PFOA and PFOS)

- **The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund)**
  - 42 U.S.C. § 9601
- **Biden Administration**
  - April 2024: PFOA and PFOS designated as “hazardous substances”
  - 40 CFR 302
  - https://www.epa.gov/superfund/designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-cercla#rule-history
  - See also Passive Receivers Memo
    - https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf
- **Trump Administration**
  - ????

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States Respond to Deregulation

- **State Regulation of PFAS**
  - 30 states have adopted PFAS regulations
  - Consumer Goods
  - Drinking Water
    - Eleven states (ME, MA, MI, NH, NJ, NY, PA, RI, VT, WA, and WI) have MCLs for PFAS in drinking water.
  - https://doh.wa.gov/community-and-environment/contaminants/pfas/consumer-products

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Class-based PFAS bans in key sectors with implementation dates																		
	All Products	Artifical Turf	Apparel	Carpets / Rugs	Cleaning Products	Cookware	Dental Floss	Fabric Treatments	Firefighting Foam	Food Packaging	Incontinence Products	Juvenile Products	Menstrual Products	Personal Care Products	Pesticides	Ski Wax	Textile Articles	Turnout Gear
Alaska									2025									
California			★ 2025	2021**				2022**	2022	2023		2023	2029	2025			★ 2025	
Colorado		2026	2028	2024	2026	2026	2026	2024	2023	2024		2024	2026	★ 2025		2026	2028	
Connecticut			2028	2028	2028	2028	2028	2028	2021	2023		2028	2028	2028		2028	2028	★2028
Hawaii									2024	2024								
Illinois									2025									
Maine	2032	★2029	2029	2023	2026	2026	2026	2023	2022	2022		2026	2026	2026	★ 2030	2026	2026	
Maryland				2024					2024	2024				2025*				
Massachusetts																		2027
Minnesota	2032			2025	★ 2025	★ 2025	★ 2025	2025	2024	2024		2025	★ 2025	2025		2025	2025	
New Hampshire									2020									
New Jersey									2026									
New York			2025	2024					2020	2022								
Oregon										2025		2023**		2027				
Rhode Island		2029	2027	2027		2027		2027	2025	2025		2027	2027	2027		2027	2027	2027
Vermont		2026	2028	★ 2023		2026		★ 2023	2023	2023	★ 2026	2026	2026	2026		★ 2023	2026	
Washington	★ 2023**			2023				2023	★ 2020	★ 2022				2025			2023	
Totals	**3**	**4**	**7**	**10**	**4**	**6**	**4**	**8**	**15**	**12**	**1**	**8**	**7**	**10**	**1**	**6**	**8**	**3**

https://www.saferstates.org/resource/state-action-on-pfas/

States Respond to Deregulation

- **State AG PFAS Lawsuits**
  - https://stateimpactcenter.org/ag-work/ag-actions?issue[0]=2780
  - May 2025: NJ settlement with 3M ~ $450 million PFAS contamination. https://dep.nj.gov/3m/
    - *See* Amended Complaint at 5-9, *New Jersey Dept. of Environmental Protection v. E.I. Du Pont De Nemours and Co., et. al,* No. 1:19-cv-14766 (D.N.J. 2019).
  - June 2025: Michigan AG settlement re PFAS
    - Consent Decree, *State of Michigan v. Domtar Industries, Inc.*, No. 22-002604-NZ (31st Cir. Ct. Mich. June 20, 2025), https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2025/June/Domtar-Consent-Decree.pdf?rev=e3bf53db0f7341c08c9fe6533fe18d95&hash=F6A071B01DC50A262CD6065E57194DDA

Don’t Forget . . .

- **Environmental Protection Agency**
  - On March 12, Administrator Zeldin announced “31 Historic Actions” – plans to deregulate within the EPA (https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history):
    - Power Plants
    - GHG Reporting
    - Endangerment Finding re GHG emissions
    - PM National Ambient Air Quality Standards (PM 2.5 NAAQS)
    - “Good Neighbor Plan”
  - Action?
    - *But see* Endangerment finding
  - EPA Reduction in Force – 22.94%

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Don’t Forget

- **Department of Energy**
  - May 16 deregulatory proposals: https://www.energy.gov/articles/energy-department-slashes-47-burdensome-and-costly-regulations-delivering-first-milestone
  - “47 deregulatory actions”:
    - Energy Conservation Standards
    - Energy Supply and Environmental Coordination Act of 1974
  - State AG Action?
  - Patchwork concerns?

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Thank You

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Senior Counsel & Ethics
Program Manager
Savannah River Mission Completion
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Reggie is Chair of the firm's Federal Government Contracts Department.

He has a well-established federal compliance and litigation practice with a focus on large, complex claims prosecution and defense, litigation and alternative dispute resolution, as well as significant internal investigations with potential civil and criminal False Claims Act implications. Reggie's clients include national and international corporations, including defense contractors and suppliers, design and engineering firms, and large national construction contractors. He has also represented the U.S. Department of Energy (DOE) and the National Nuclear Security Administration (NNSA), a semi-autonomous agency within the DOE, to provide litigation support for the agency's defense of numerous cases before the Civilian Board of Contract Appeals and the U.S. Court of Federal Claims.

Reggie litigates bid protests, claims and disputes before the Government Accountability Office (GAO), the various Boards of Contract Appeals, and the U.S. Court of Federal Claims. He represents clients in connection with claims and performance disputes, including terminations, past performance evaluation challenges, DCAA/DCMA audits and investigations, Organizational Conflicts of Interest (OCI), Rights in Data challenges, and suspension and debarment proceedings. Reggie regularly works to resolve complex and sensitive matters with the counsel with the Department of Justice (DoJ), the Department of Defense (DoD), the U.S. Army Corps of Engineers (USACE), the Naval Facilities Engineering Command (NAVFAC), the General Services Administration (GSA), the Small Business Administration (SBA), and the Environmental Protection Agency (EPA).

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SERVICES

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Chambers RANKED IN USA 2025 Reggie Jones

Before Fox Rothschild

Prior to joining Fox, Reggie was a partner with a federal government contracts and construction litigation boutique. He also served as a Captain in the U.S. Army (3/77 Armor Battalion, 3rd Brigade, 1st Armor Division and the 28th Transportation Battalion) from 1991 to 1996, serving four of those years in Germany, Hungary, Croatia and Bosnia-Herzegovina. While in law school, Reggie was a member of *University of Georgia Law Review*.

Beyond Fox Rothschild

Reggie is currently serving on the Board of Directors of the Greater Washington Board of Trade where he has been involved with the Connected DMV Task Force's Framework, Governance, & Law Solution Group, the Vaccine Task Force, and the WTOP Business Insights radio spots. Previously, Reggie served on the Board of Directors of the Washington Building Congress (WBC), the Board of Directors for the Virginia Chapter of the Associated Builders and Contractors (ABC Virginia Chapter), and as Chair of the Construction Division of the American Bar Association's Section of Public Contract Law.

He has authored numerous scholarly and business-friendly articles on federal government contract issues that have been published in American Bar Association publications, *The Procurement Lawyer*, the *Public Contract Law Journal* and *The Construction Lawyer*, as well as industry publications such as *Construction Executive*, the magazine of the Associated Builders and Contractors. Most recently, Reggie co-authored the "Data/Cybersecurity and Insurance" chapter of the American Bar Association's *Technology in Construction Law Legal Guide*.

In terms of community service, Reggie chairs the University of Georgia's School of Law DC Semester Advisory Committee, which supports Georgia law students who are interested in exploring federal government, public interest, and public policy positions. Lastly, but most importantly, Reggie has served on the board of directors of two domestic and sexual assault service providers — the Loudoun Abused Women's Shelter (LAWS) in Virginia from 2010 to 2021 where he served as the Treasurer of the Board of Directors, and the International Women's House in the Atlanta metropolitan community, where he served as the Chair of the Board of Directors in 2008 and 2009. Reggie continues to be a dedicated advocate of safety, hope and empowerment for victims of domestic abuse and sexual assault.

Bar Admissions

- District of Columbia
- Virginia
- Georgia

REGGIE JONES

- "Reggie is very easy to work with and available. He is very sophisticated on government contract matters."
- "He really understands military projects in Kuwait, Afghanistan and Iraq because he is ex-military himself."
- "Reggie Jones does a good job of managing challenging cases. He's receptive to input from in-house counsel while also adding his own advice and recommended approach to a case."
- "Reggie is incredibly responsive and helpful. He has a can-do attitude and a lot of resources at his fingertips."
- "Reggie is incredibly competent, capable and ... knowledgeable."
- "Reggie is an excellent construction lawyer."

— Chambers USA attorney review, including reference interviews (2021 - 2025)

Court Admissions

- U.S. District Court, District of Columbia
- U.S. Court of Federal Claims
- U.S. District Court, Eastern District of Virginia
- U.S. District Court, Western District of Virginia
- U.S. District Court, Middle District of Georgia
- U.S. District Court, Northern District of Georgia
- U.S. Court of Appeals, Sixth Circuit
- Armed Services Board of Contract Appeals
- Civilian Board of Contract Appeals
- Government Accountability Office Contract Appeals Board

Education

- University of Georgia School of Law (J.D.)
- The College of William and Mary (B.A.)

Memberships

- The Economic Club of Washington, DC
- Greater Washington Board of Trade
- Associated Builders and Contractors Metro Washington Chapter
- Associated General Contractors of America, Mississippi Valley Chapter
- American Bar Association
  - Forum on the Construction Industry
  - Construction Division Co-Chair (2009-2010)
  - Operations Division Co-Chair (2002-2004)
- Washington, DC Bar Association
- Virginia Bar Association, Construction Law Section
- Georgia Bar Association
- Atlanta Bar Association, Construction Law Section (1999 to present)
- Georgia Law DC Semester Program, Chair (2023 to present)

Board of Directors

- Greater Washington Board of Trade, Board of Directors (2023 to present)
- Washington Building Congress, Board of Directors (2020-2023)
- Washington Building Congress, Board of Governors (2010-2020)
- Associated Builders and Contractors Virginia Chapter, Board of Directors (2013-2017)

Languages

- German

Honors & Awards

- Recognized by *Chambers USA* for Construction in Washington, DC (2020-2025)
- Named a “Recognized Practitioner” for Construction in Washington, DC by *Chambers USA* (2018-2019)
- Construction Lawyers Society of America, Fellow (2019 to present)
- Selected to the "Best Lawyers in America" list for Construction Law in Washington, DC by *Best Lawyers* (2019-2025)
- AV Rated in Martindale-Hubbell
- Included in a list of "Super Lawyers" for Construction Litigation (2012-2024) and Government Contracts (2022-2024) in Washington, DC
- Included in a list of “Super Lawyers” by *Georgia Super Lawyers* (2010, 2011)
- Included in a list of “Rising Stars” by *Georgia Super Lawyers* (2005, 2009)
- Named as an “Up-and-Coming Individual” in construction law in Georgia by Chambers USA (2006, 2007)
- Recipient, Special Recognition Award for Outstanding Legal Services, International Women's House (a women's shelter) (2005)
- Recipient, Meritorious Service Medal, United States Army (1996)
- Omicron Delta Kappa (1990 to present)

Farella Braun + Martel

Sarah Peterman Bell

Partner

sbell@fbm.com
San Francisco 415.954.4450

Sarah Bell focuses her practice on environmental and natural resources litigation, administrative proceedings, and counseling, and advises clients in a broad range of disputes, including enforcement actions, cost recovery, citizen suits, water quality, complex toxic tort, and product liability matters. She has significant experience in matters involving both emerging contaminants – including PFAS – as well as legacy contaminants like PCE, TCE and other chemicals and VOCs. The bulk of her expertise involves cases relating to natural resources such as groundwater, surface water, sediments, air, and soil. She has experience with all the major federal and state environmental statutes, including the Clean Water Act, CERCLA, NEPA and CEQA, Proposition 65, RCRA, and the ESA.

Sarah's clients include manufacturers and distributors, transportation companies, wineries, research institutions, and commercial property owners. She has litigated matters throughout the western United States, in both state and federal courts, including Washington State, Nevada, New Mexico and California.

Sarah also counsels clients with respect to regulatory compliance, including storm water management and NPDES permits, site cleanup, and product stewardship, where she advises clients in matters relating to chemical content and PFAS laws and Extended Producer Responsibility (EPR) regulations. She often helps clients identify and mitigate environmental risks. As a counselor, Sarah seeks to keep her clients *out* of court. In these matters, she effectively negotiates reasonable resolutions so clients can maintain focus on their core businesses.

Whether in or out of court, Sarah is persuasive, engaging, and aggressive when necessary. She seeks solutions that are in the best interests of her clients, with a focus on pragmatism and client needs rather than a "one size fits all" approach. Environmental issues can be complex and involve high-stakes liability. Sarah is efficient and calm in a crisis, and brings order to this potential chaos.

Sarah was a judicial extern for the Honorable Maxine Chesney of the Northern District of California.

Distinctions

- *The Best Lawyers in America,* Environmental Law; Litigation–Environmental (2024-2025)
- *Chambers USA:* Environment - California (2021-2025)
- *The Lawdragon Green 500*: Leaders in Environmental Law (2023-2025)
- *Benchmark Litigation,* 40 & Under Hotlist (2018)
- Super Lawyers, Northern California Rising Stars (2012-2013)

Memberships and Affiliations

Services

- Environmental Law
- Environmental Litigation
- Environmental Regulatory / Compliance
- Extended Producer Responsibility
- Cannabis
- Consumer Products + Manufacturing
- Natural Resource Protection
- Per- and Polyfluoroalkyl Substances (PFAS)
- Product Liability and Stewardship
- Proposition 65 Counseling and Defense
- Renewable Energy

Education

Bar Admissions

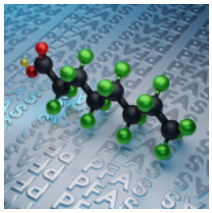
Court Admissions

- Member, ELI Leadership Council (2025)
- Co-Chair, Environmental & Energy Litigation Committee, Litigation Section, American Bar Association (2024-2025)
- Executive Committee Member, Environmental Law Section (Advisors/Emeritus), Bar Association of San Francisco
- Board of Directors, Golden Gate Audubon Society (2009 – 2016)
- Board of Directors, California Summer Music (2009 – 2013)

With expertise and creativity, I help clients resolve environmental litigation and issues allowing them to focus on growing their business, minimizing disruptions, and achieving clean-up goals.

Perspectives by Sarah Bell

PFAS Regulatory & Litigation Developments



FARELLA BRAUN + MARTEL LLP 2025 RECOGNIZED BY Best Lawyers

Upcoming Event

Federal Simplification/Deregulation Efforts for the DOE Complex

August 7, 2025
Department of Energy Contractor Attorneys Association

James Xiao

Senior Counsel and Ethics Program Manager
O: 803 557 9907

James is an attorney with over 11 years of experience working for a prime contractor with the Department of Energy specializing in government contracting and intellectual property. James is also serving as the the business ethics program manager in charge of the company's organizational conflict of interest program and internal investigations.

As procurement counsel, James has helped the company resolve multi-million dollar Requests for Equitable Adjustments (REAs) and other contractual disputes in reaching settlement agreements. James has also provided numerous training to procurement representatives regarding Federal Acquisition Regulations and Department of Energy Order contractor requirements documents compliance. James leads the company's efforts to be compliant with prime contract requirements and to ensure the proper flow-down of requirements in subcontracts.

James is a graduate of the University of Georgia School Law and received his Bachelor of Science degree in Environmental Science from the University of California, Los Angeles.

Jordan C. Gerken

Assistant General Counsel

Kansas City National Security Campus, managed and operated by Honeywell, FM&T LLC

Jordan is a compliance attorney with over 14 years of expertise in Federal regulatory compliance and audit strategies. She currently serves as Assistant General Counsel – Contracts and Special Projects at the Kansas City National Security Campus (KCNSC), managed and operated by Honeywell Federal Manufacturing & Technologies (FM&T), LLC.

Since arriving at KCNSC in 2022, Jordan has successfully led negotiations with DOE to secure Honeywell FM&T's prime contract extension through FY 2030. She has carefully designed and implemented FM&T's external Federal government audit compliance process ensuring no negative audit findings, recommendations, or disallowances during her tenure with FM&T. As part of the audit compliance process, Jordan led FM&T's efforts to design and institute a business-wide procedure for reviewing and approving all Federal audit responses prior to submission to the U.S. Government. Jordan has provided electronic learning and in-person training to hundreds of KCNSC staff regarding Federal engagements.

Jordan also serves as Honeywell FM&T's Assistant Executive Board Secretary and directs FM&T's review, interpretation, and incorporation of Federal agency directives into the KCNSC prime contract and relevant subcontracts. She is adept at managing high-risk negotiations and projects with the U.S. Federal government, successfully facilitating input from stakeholders, and deescalating conflict by focusing on beneficial solutions for both private and Federal partners.

Jordan began her legal career at the U.S. Department of Health and Human Services Office of Inspector General (OIG) in 2011, where she spent over 11 years successfully facilitating cross-agency collaboration to improve fraud detection techniques and optimize both criminal and civil case outcomes. While at OIG, Jordan oversaw State agency compliance with Federal grant program by providing regulatory and policy guidance and inspections of investigative and prosecutorial offices nationwide. Jordan routinely coordinated compliance efforts with Federal law enforcement offices (FBI, multiple agency OIG Offices of Investigations), OIG's Exclusions Branch, Centers for Medicare & Medicaid Services, and State Attorneys General offices.

Jordan graduated from the University of Missouri with a bachelor's degree in political science with an emphasis in international economic affairs in 2008 and attended Creighton University School of Law where she served as the Lead Article Editor for the Creighton Law Review before graduating cum laude in 2011.

Irvin Gray

JD (2009), MBA (2013), LLM (Government Procurement Law, 2022)

National Contract Management Association (NCMA) Fellow

Certified Professional Contracts Manager, Certified Federal Contracts Manager, Certified Commercial Contracts Manager

Associate General Counsel - Contracts and Special Projects

Honeywell Federal Manufacturing & Technologies, LLC (FM&T)

Kansas City, MO

Irvin Gray is Associate General Counsel - Contracts and Special Projects for the Kansas City National Security Campus (KCNSC) managed by Honeywell FM&T. In that role, he leads a team of contract attorneys to support the business.

Irvin has worked in the legal office at FM&T since 2018.

Irvin was the point of contract for KCNSC's input for the NNSA's FAR 2.0 review efforts in June/July 2025.

Before joining FM&T, Irvin served as a civilian attorney for the U.S. Army Corps of Engineers for nine years and a Navy Officer for ten years.

Irvin helps senior leaders to accomplish their goals and to manage risks through contracts. Focus areas are prime contract compliance, conflicts of interest, subcontract formation/administration, and emerging issues/initiatives.

Irvin has taught the Capstone Course on Government Procurement for the University of Dayton School of Law since January 2023. He has trained over 1,000 contract management professionals through the NCMA and the Department of Energy's Contractor Acquisition

University. He has published over 60 articles on government contract in the NCMA's Contract Management magazine.

Irvin presented two topics at the NCMA World Congress in 2025.

- "Most Negotiated Terms" The NCMA's 2024 Most Negotiated Terms Report uncovered a disconnect between common negotiation priorities and the factors that drive favorable business outcomes. The 7-hour interactive workshop explored the key findings of this global study and how more flexible, collaborative negotiations can lead to cost savings and mutual success.
- "Economic Price Adjustment Clauses" The FAR includes about 700 pages of clauses for agency's to use when applicable. The FAR Economic Price Adjustment clauses allow agencies to fix a price for future deliveries by using market indices such as the producer price index. This fairly allocates the risk of market fluctuations and inflation between the buyer and the seller.

2025 DOECAA Fall Conference

PANEL 3: Supreme Court and Executive Order Updates

DOECAA

Supreme Court & Executive Order Updates

Chuck Young
Associate General Counsel
Consolidated National Security, LLC

Andrew Mathias
Shareholder
Maynard Nexsen PC

Jody Smitherman
Senior Counsel
Savannah River Nuclear Solutions, LLC

Matt Ennis
Senior Counsel
Fluor Corporation

Agenda

- Human Resources
  - DEI/DEIA Certification and Litigation Status
    - Across the Complex
    - Nationwide Injunctions & Trump v. CASA, Inc.
    - Notable District and Circuit Court Cases
  - DOGE & the Workforce

- National Environmental Policy Updates
  - Executive Orders
  - Seven County Infrastructure v. Eagle County, Co.
  - NRC v. Texas
  - DOE Activity

- Technology
  - Executive Orders
  - DOE, Industry, and Site/Lab Activity

Human Resources

Executive Order 14173

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

January 21

(iv) The head of each agency shall include in every contract or grant award:

(A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and

(B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

Certification Requirement

Prime Contract Considerations
Implementation of a DEI/DEIA Certification

Savannah River Nuclear Solutions, LLC

DOECAA

Nationwide Injunctive Relief

Trump v. Casa, Inc., June 27, 2025 (Birthright Citizenship)

"Some say that the universal injunction "give[s] the Judiciary a powerful tool to check the Executive Branch." Trump, 585 U. S., at 720 (THOMAS, J., concurring) (citations omitted). But federal courts do not exercise general oversight of the Executive Branch; they resolve cases and controversies consistent with the authority Congress has given them. When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too.

The Government's applications to partially stay the preliminary injunctions are granted, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue. The lower courts shall move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity. The injunctions are also stayed to the extent that they prohibit executive agencies from developing and issuing public guidance about the Executive's plans to implement the Executive Order. . . "

DOECAA

Trump v. Casa, Inc.

Concurring (Thomas, Gorsuch)

- "The Court today holds that federal courts may not issue so-called universal injunctions. I agree and join in full. As the Court explains, the Judiciary Act of 1789—the statute that "'authorizes the federal courts to issue equitable remedies'"—does not permit universal injunctions. Ante, at 5. It authorizes only those remedies traditionally available in equity, and there is no historical tradition allowing courts to provide "relief that extend[s] beyond the parties." Ante, at 5–11."

Concurring (Alito, Thomas)

- "Putting the kibosh on universal injunctions does nothing to disrupt Rule 23's requirements. Of course, Rule 23 may permit the certification of nationwide classes in some discrete scenarios. But district courts should not view today's decision as an invitation to certify nationwide classes without scrupulous adherence to the rigors of Rule 23."

Concurring (Kavanaugh)

- "To reiterate, this Court should not insert itself into run-of-the-mill preliminary-injunction cases where we are not likely to grant certiorari down the road."

DOECAA

Trump v. Casa, Inc.

Dissenting (Sotomayor, Kagan, Jackson)

- The majority ignores entirely whether the President's Executive Order is constitutional, instead focusing only on the question whether federal courts have the equitable authority to issue universal injunctions. Yet the Order's patent unlawfulness reveals the gravity of the majority's error and underscores why equity supports universal injunctions as appropriate remedies in this kind of case.

Dissenting (Jackson)

- "I agree with every word of JUSTICE SOTOMAYOR's dissent. I write separately to emphasize a key conceptual point: The Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law.
- It is important to recognize that the Executive's bid to vanquish so-called "universal injunctions" is, at bottom, a request for this Court's permission to engage in unlawful behavior."

Cert. Requirement; Notable Cases

2nd Circuit
- State of New York v. Department of Education (D. Mass 1:25-cv-11116)
  - June 2, 2025. Preliminary injunction granted
  - June 3, 2025. Government appealed to the second circuit.

4th Circuit
- Natl. Assoc. of Diversity Officers in Higher Edu. v. Donald Trump
  - D. Maryland (1:25-cv-00333-ABA)
    - February 21, 2025. Preliminary injunction granted.
    - May 1, 2025. Plaintiffs were denied in their attempt to vacation the preliminary injunction to seek additional relief.
  - 4th Circuit (25-1189)
    - March 14, 2025. Injunction stayed pending appeal.
    - Oral Argument set for September 11, 2025

7th Circuit
- Chicago Women in Trades v. Trump
  - N.D. Ill. (1:25-cv-02005)
    - April 14. Granted in part and denied in part Plaintiff's motion for preliminary injunction; injunction is limited to the Dept. of Labor.
  - 7th Circuit (25-2144)
    - Briefing currently scheduled to conclude in October 2025.

9th Circuit
- State of California v. Department of Justice
  - N.D. Cal (3:25-cv-04863)
    - June 2, 2025 administration sends letter requiring certification by local education agencies that it would not implement Bylaw 300.D, which allowed students to participate in activities based on gender identity.
    - June 9, 2025 California filed suit seeking declaratory and injunctive relief – alleging violation of the Spending Clause and Administrative Procedure Act.

DOGE & the Workforce

Executive Order 14210 (Feb. 11)
- Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative

Executive Order 14238 (Mar. 20)
- Continuing the Reduction of the Federal Bureaucracy

Government Deferred Resignation Program
- Widespread challenges to Agency deferred resignation programs and reductions-in-force

DOE/NNSA Contractor Funding Shifts

Preview: Furloughs and Reductions-in-Force

American Federation of Govt Employees v. Trump, N.D. Cal., 25-CV-03698-SI

National Environmental Policy Act Executive Orders (Being litigated)

Key Executive Orders

- EO 14154. Unleashing American Energy (Jan. 20)
- EO 14192. Unleashing Prosperity Through Deregulation (Jan. 31)
- EO 14270. Zero-Based Regulatory Budgeting to Unleash American Energy (Apr. 9)
- EO 14299. Deploying Advanced Nuclear Reactor Technologies for National Security (May 23)
- EO 14300. Ordering the Reform of the Nuclear Regulatory Commission (May 23)
- EO 14301. Reforming Nuclear Reactor Testing at the Department of Energy (May 23)
- EO 14318. Accelerating Federal Permitting of Data Center Infrastructure (Jul. 23)

Other Environmental Executive Orders

- EO 14148. Initial Rescissions of Harmful Executive Orders and Actions (Jan. 20)
- EO 14153. Unleashing Alaska's Extraordinary Resource Potential (Jan. 20)
- EO 14156. Declaring a National Energy Emergency (Jan. 20)
- **Pres. Memo** 90 FR 8363. Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects (Jan. 20)
- EO 14241. Immediate Measures to Increase American Mineral Production (Mar. 20)*
- EO 14260. Protecting American Energy from State Overreach (Apr. 8)
- EO 14261. Reinvigorating America's Beautiful Clean Coal Industry & Amending EO 14241 (Apr. 14)
- EO 14262. Strengthening the Reliability and Security of the United States Electric Grid (Apr. 8).
- **Pres. Memo,** Updating Permitting Technology for the 21st Century (Apr. 15)
- EO 14285. Unleashing America's Offshore Critical Minerals and Resources (Apr. 24)
- EO 14315. Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources (Jul. 7).
- **Pres. Proc**. 10956, 90 FR 34583. Regulatory Relief for Certain Statutory Sources to Promote American Energy (Jul. 17)

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Seven County Infrastructure Coalition v. Eagle County, Colorado

Bottom Line.

- The Circuit Court failed to afford substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the project at hand.

Overview.

- The project
- Agency deference
- Upstream, downstream, future projects, and increased use
- The agency's regulatory authority

No. 23-975, May 29, 2025

Seven County Infrastructure Coalition v. Eagle County, Colorado

The open question:

- Will this reduce regulatory burdens or will lower courts focus on language enabling them to clarify what an agency must worry about in a NEPA review?

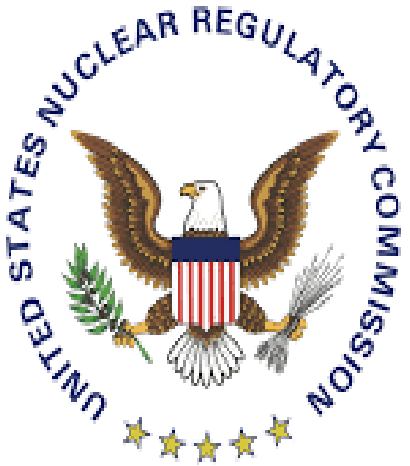
Fans say:

- This should relieve pressure on agencies and make the environmental impact review process more predictable and timely.

Critics say:

- This ignores NEPA's stated policy goals and leaves a murky direction to draw a "manageable line" around a project's effects.

Nuclear Regulatory Commission v. Texas



Bottom Line.

- "Because Texas and [the individual plaintiff] were not parties to the [NRC's] licensing proceeding, they are not entitled to obtain judicial review of the Commission's licensing decision."

Overview.

- NRC licensing process facts
  - Texas and the individual submitted comments
  - The individual attempted to intervene
- Atomic Energy Act party status requirement
- Hobbs Act limits relief to "parties aggrieved"

No. 23-1300, Decided June 18

Nuclear Regulatory Commission v. Texas

The open question:

- Does the NRC have authority to license private, temporary storage facilities for spent nuclear fuel away from reactor sites?

Fans say:

- Giving the NRC an opportunity to address challenges before issuing licenses results in better supported licenses.

Critics say:

- NRC tightly controls access to its proceedings (11 failed intervenors here) and thus shields itself from judicial scrutiny.

DOE Notice of Interim Final Rule

"U.S. Department of Energy (DOE) undertook a rulemaking in 2025 to remove most of the DOE regulations that contain its procedures implementing the National Environmental Policy Act (NEPA) from the Code of Federal Regulations.

DOE revised 10 CFR part 1021 to contain only administrative and routine actions excepted from NEPA review in appendix A, its existing categorical exclusions in appendix B, related requirements, and a provision for emergency circumstances."

90 Fed. Reg. 29676 (Jul. 3)

FERC NEPA Procedure & Staff Manual

". . . FERC voted unanimously to revise its regulations on the implementation of the National Environmental Policy Act (NEPA) and issued a staff manual outlining the revised procedures. . . . In response to President Trump's E.O. 14154, the Council on Environmental Quality (CEQ) rescinded its NEPA implementing regulations, which simplified the burdensome environmental review process and enabled FERC to implement revisions at an unprecedented pace. FERC's revisions remove all references to the now inoperative CEQ regulations.

. . .

The FERC staff manual provides details on how staff will: assess what actions are subject to NEPA's procedural requirements and the requisite level of NEPA review; ensure that relevant environmental information is identified and considered early in the process to support informed decision making; conduct coordinated, consistent, predictable and timely environmental reviews, and reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles, time limits, and applicant preparations of environmental documents."

June 2025 – Staff Guidance Manual on Implementation of NEPA

Criticisms and Concerns

- Weakened NEPA reviews (one-two punch with *Seven County Infrastructure*)
- Reduced scrutiny of greenhouse gas emissions
- Loss of community benefit plans
- Rushed rulemaking process (3 of 4 comments sought more time)

Also note criticisms of other DOE proposed rules, weaking or rescinding energy and water-efficiency standards for appliances, e.g.:

- Increased utility costs
- Increased waste
- Lack of transparency

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Nuclear Technology Executive Orders

Setting the Stage

EO 14154. Unleashing American Energy (Jan 20)

- Regulatory review includes nuclear energy resources

EO 14156. Declaring a National Energy Emergency (Jan. 20)

- Agencies to review and use authorities to facilitate identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including on federal lands.

EO 14213. Establishing the National Energy Dominance Council (Feb. 14)

- Council to advise POTUS on bringing small module reactors online

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Nuclear Technology Executive Orders

EO 14299.

Deploying Advaned Nuclear Reactor Technologies for National Security

May 23

Sec. 4. Deployment and Use of Advanced Nuclear Reactor Technologies at Department of Energy Facilities.

Sec. 3. Deployment and Use of Advanced Nuclear Reactor Technologies at Military Installations.

Sec. 5. Uranium and Related Materials for Reactors Referenced in this Order.

Nuclear Technology Executive Orders

EO 14300.

Ordering the Reform of the Nuclear Regulatory Commission

May 23

Sec. 4 . *Reforming the NRC's Structure.*

Sec. 5 . *Reforming and Modernizing the NRC's Regulations.*

- Establish fixed deadlines for license evaluation and approval
- Adopt science-based radiation limits.
- Establish an expedited pathways to approve reactor designs that have been tested and demonstrated safe.
- Establish a process for high-volume licensing of microreactors and modular reactors

Sec. 3 . *Reforming the NRC's Culture.*

- NRC shall consider the benefits of . . . nuclear power . . . in addition to safety, health, and environmental considerations

Nuclear Technology Executive Orders

EO 14301.

Reforming Nuclear Reactor Testing at the Department of Energy

May 23

Sec. 4. Reforming the National Laboratory Process for Reactor Testing

Sec. 5. Establishing a Pilot Program Outside the National Laboratories.

Nuclear Technology Executive Orders

EO 14302.

Reinvigorating the Nuclear Industrial Base

May 23

Sec. 4. Funding for Restart, Completion, Uprate, or Construction of Nuclear Plants

Sec. 3. Strengthening the Domestic Nuclear Fuel Cycle.

Sec. 5. Expanding the Nuclear Energy Workforce.

Department of Energy Activity

- DOE Office of Nuclear Energy – 9 Key Takeaways from President Trump's Executive Orders on Nuclear Energy
- DOE HALEU Availability Program & Fuel Allocation
- DOE Gateway for Accelerated Innovation in Nuclear Continues
- DOE OIG Report – DOE-OIG-25-25 (Jul. 2)

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Department of Energy Activity

- Example Funding Opportunities
  - DE-FOA-0003572 – Fuel Line Pilot Program
  - DE-FOA-0003569 – Reactor Pilot Program
  - DE-FOA-0003339 – U.S. Advanced Nuclear Energy Licensing Cost-Share Grant Program
  - DE-FOA-0003410 – Nuclear Reactor Safety Training and Workforce Development Program
- Request for Information – AI Infrastructure on DOE Lands
  - Four sites selected on July 25

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Industry Trends

- Is the Nuclear Renaissance *finally* happening?
  - Low-Hanging Fruit
  - Power Generation
  - Fuel Production and Fabrication
  - AI & Data Center Power Delivery
- Start-up Activity, Venture Capital, & Private Equity
- Data Center Operations

Laboratory and Site Impacts

- Land Use
- Workforce Development Opportunities
  - Increase nuclear energy-related apprenticeships, career, and technical ed.
  - Agencies providing educational grants to consider nuclear engineering and other nuclear-energy related careers as a priority
  - Increase access to R&D, workforce, and expertise at National Laboratories for students studying nuclear engineering and nuclear energy-related fields
- R&D Opportunities
  - DOE Rapid Turnaround Experiments to Advance Nuclear Fuels and Materials
  - Tech Transfer activities
- Input Opportunities Remain
  - National Energy Dominance Council
  - President's Council of Advisors on Science and Technology continue
  - FFRDC

Chuck Young

Chuck Young joined the Y-12 National Security Complex as an in-house attorney in 2010 and became Deputy General Counsel and senior attorney at the Pantex Plant in 2021 before returning to Y-12 in November 2024. He works on legal questions arising in procurement matters from acquisition planning to contract close-out, as well as in litigation of contract disputes. He also handles labor and employment litigation, intellectual property issues, and other matters for Consolidated Nuclear Security, LLC (CNS).

In addition to his work at CNS, Young has served as an Adjunct Professor at the University of Tennessee's College of Law, teaching Legal Writing and Pretrial Litigation. He has taught Business Writing seminars to multiple organizations across CNS's two sites, and he is a frequent speaker at continuing legal education seminars.

Before going in-house, Young was a litigation partner at Kramer Rayson LLP in Knoxville for eight years. While there, he represented federal contractors and other clients in commercial, employment, health care, and technology-related disputes. He has tried cases in federal and state courts and has experience in mediation and arbitration as well.

Chuck began his legal career as a law clerk to U.S. Sixth Circuit Judge Bailey Brown in Memphis, and he went on to work as a litigator with Alston & Bird LLP in Atlanta for six years.

Young earned an A.B. in English *cum laude* from Dartmouth College and a J.D. *summa cum laude* from the University of Tennessee. Before attending law school, he was a reporter with the *Concord Monitor* in Concord, New Hampshire.

[126-word version]

Chuck Young joined the Y-12 National Security Complex as an in-house attorney in 2010 and became Deputy General Counsel and senior attorney at the Pantex Plant in 2021 before returning to Y-12 in November 2024. He works on

legal questions arising in procurement matters from acquisition planning to contract close-out, as well as in litigation of contract disputes. He also handles labor and employment litigation, intellectual property issues, and other matters for Consolidated Nuclear Security, LLC.

Before going in-house, Young was a litigation partner at Kramer Rayson LLP in Knoxville for eight years. He began his legal career as a law clerk to a federal appellate court judge and went on to work as a litigator with Alston & Bird LLP in Atlanta for six years.

Andrew A. Mathias

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Practices

Litigation

Compliance & Risk Management

Government Investigations & White Collar Defense

Education

University of South Carolina School of Law
(2007, J.D.)

Clemson University
(2004, B.A.)

Admissions

State Bar: South Carolina

U.S. Court of Appeals: Second Circuit, Fourth Circuit

United States Supreme Court

Andrew Mathias is a high-stakes litigator with expertise in civil litigation and white-collar criminal prosecutions, handling shareholder divorces, commercial disputes, and tort cases. He represents individuals and businesses in internal and government investigations and mediates various civil matters.

His clients include government contractors, healthcare providers, and high-net-worth individuals, and he practices in all South Carolina courts, various federal appellate courts, and the United States Supreme Court. Andrew negotiates with civil attorneys and government prosecutors and engages with investigators from agencies such as the FBI, IRS, and SEC.

With extensive trial experience, he has handled significant cases in federal and state courts and has served as a court-appointed "Receiver." His focus on internal investigations has brought him clients from the financial sector, including banks and investment advisors, and he is committed to aggressively defending those facing indictment. Additionally, Andrew participates in political and redistricting litigation, representing legislative leaders in federal court challenges to state and congressional district maps.

Jody Smitherman

In-House Counsel
Savannah River Nuclear Solutions, LLC

EDUCATION

Bradley University
Bachelor of Science, Business Management and Administration

Valparaiso University School of Law
Juris Doctor

EXPERIENCE

Jody Smitherman serves as labor and employment counsel for Savannah River Nuclear Solutions. She provides representation, legal advice, and legal support to the company's board, officers, and employees. She is responsible for managing litigation as supervising attorney and provides legal representation as primary attorney in complex federal, state, and administrative litigation proceedings, including employment law and regulations, federal and state whistleblower claims, breach of contract, negligence, disciplinary panels, unemployment, and Equal Employment Opportunity Commission law. She also provides proactive and ameliorative training on issues such as leave conformity, co-employment liability, and HIPAA compliance; identifies areas for improvement in employee programs and policies; and identifies legal requirements and governmental reporting regulations. Additionally, she coordinates with and responds to external agencies, including the Department of Energy, the National Nuclear Security Administration, and other Savannah River Site contractors

Smitherman has been practicing law since 2003. She spent 10 years serving as a Senior Staff Attorney for the Augusta, Georgia Consolidated Government where she served as senior legal counsel and provided legal representation, advice, and support to Augusta, Georgia's Commission, elected officials, Administrator, and various departments, boards, and authorities. In that role, Smitherman successfully litigated cases as first chair, including in the Georgia Supreme Court and the 11th Circuit Court of Appeals.

Smitherman's prior roles also include Associate Attorney at Jackson Lewis, LLP, and the Small Business Law Firm of Payne & Associates in Greenville, South Carolina. She has also served as Staff Attorney to the Honorable Barbara A. McDonald in the Cook County Circuit Court in Chicago, Illinois.

Smitherman is licensed in South Carolina and Georgia and is a graduate of Leadership Augusta.

Matthew Ennis

Matthew Ennis is Senior Counsel for Fluor Corporation. In this capacity, his primary responsibility is holistic support of the nuclear, environmental, and civil business lines of Fluor Mission Solutions, LLC.

Ennis has more than 15 years of legal experience. His past roles include: Senior Counsel and Chief Compliance Officer and other progressing roles at Savannah River Nuclear Solutions, LLC, the Savannah River Site Management and Operating Contractor; associate at Faegre Baker Daniels, LLP (now Faegre Drinker Biddle & Reath, LLP), specializing in intellectual property litigation and counseling; and associate at Alston & Bird LLP, specializing in intellectual property litigation and Section 337 investigations at the U.S. International Trade Commission.

2025 DOECAA Fall Conference

PANEL 5: Workforce Restructuring in the DOE Complex

DOECAA Conference
August 2025
Workforce Restructuring in the DOE Complex

Presenters

JOSEPH S.CAMPBELL
General Counsel
Battelle Savannah River Alliance, LLC

KRISTIEN MERRICK
Assistant General Counsel, National Renewable Energy Laboratory

JOHN SULLIVAN
Associate General Counsel, Department of Energy

REBECCA SPRINGER
Partner, Crowell & Moring LLP

DAN BAKER
Chief Human Resources Officer, Argonne National Laboratory

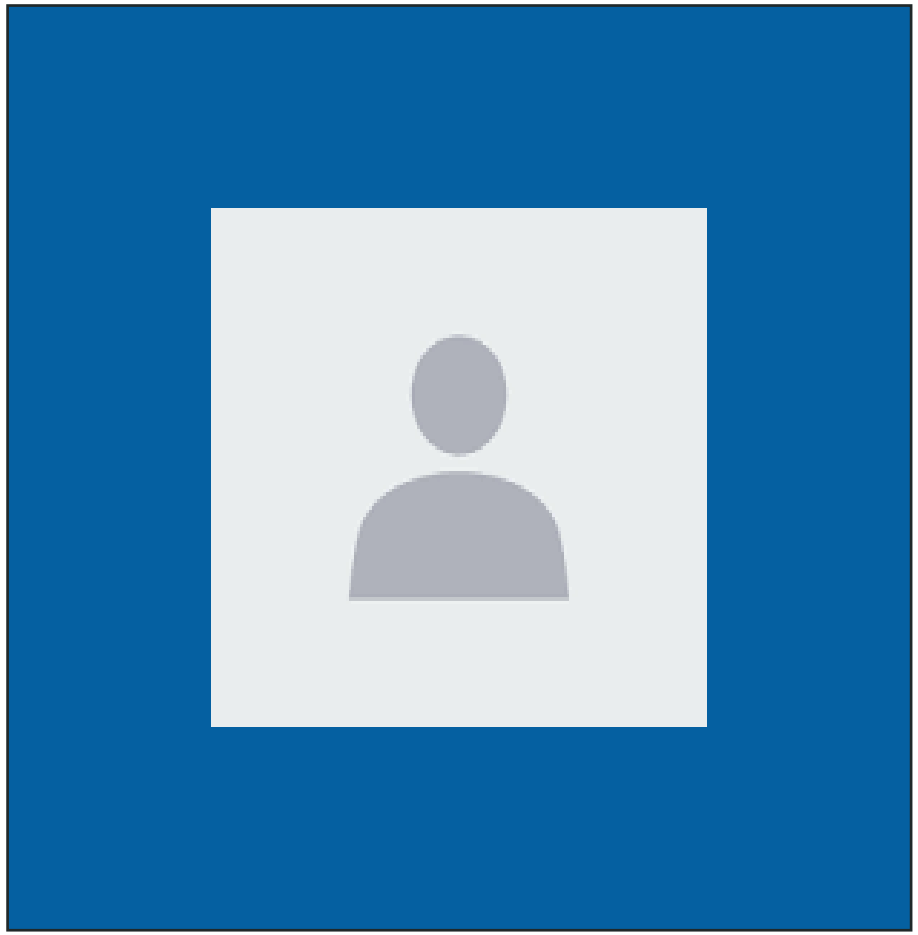
Mr. Joseph Campbell

Mr. Campbell is the General Counsel for the Savannah River National Laboratory (SRNL) and Battelle Savannah River Alliance, LLC, a management and operations (M&O) contractor at the Savannah River Site. He leads the Office of General Counsel in identifying and managing legal and other risk-related challenges to ensure SRNL staff are well-positioned to focus on their mission: “Putting Science to Work.” Mr. Campbell is a retired Special Agent of the Federal Bureau of Investigation. He also serves on the board of the Center for African American History, Art and Culture in Aiken, South Carolina.

Ms. Kristen Merrick

Kristen Merrick has served as Employment Counsel at the National Renewable Energy Laboratory (NREL) in Golden, Colorado for six years. At NREL, she ensures legal compliance and works to minimize risk, navigates complex employee relations matters, manages litigation, and trains new managers in the organization. She brings over 20 years of experience to her role. She earned her B.A. and J.D. from Loyola University Chicago and began her legal career in Chicago, working in employment litigation at law firms for seven years. She also served as an Adjunct Professor at Loyola Law School teaching appellate advocacy. Upon moving to Denver, she joined an employer association where she counseled, trained, and represented employers in administrative agency matters. She had an itch to litigate again and became employment counsel at the City and County of Denver which was a mix of client counseling and litigation. A fun fact about Kristen: her first semester of college she was a theater major.

Mr. John Sullivan



John Sullivan is the Associate General Counsel for Contractor Human Resources at the U.S. Department of Energy. With over eight years at DOE, he provides legal guidance on labor and employment matters affecting the Department's nationwide contractor workforce, including labor relations, workforce restructuring, compliance, and policy development. He previously served as a Field Attorney with the National Labor Relations Board and as a Peggy Browning Legal Fellow with LIUNA. John holds a J.D. and a Master's in Development Economics from Tulane University, is a member of the Maryland State Bar, and holds a Certificate in Employee Benefits from IAML. He brings more than a decade of experience at the intersection of labor law and public service.

Ms. Rebecca Springer

Rebecca Springer is a partner at Crowell & Moring. She formerly served as the Assistant to the Counselor to the President. Rebecca's practice is focused on Labor and Employment, Litigation, Government Contracts and more. Companies rely on Rebecca for expert guidance on complex employment issues that pose significant risks. Whether navigating the ever-changing landscape of diversity, equity and inclusion practices, developing comprehensive pay equity programs, conducting sensitive and high-profile investigations, advising on the unique employment obligations of government contractors and subcontractors, or providing strategic counsel on federal and state employment laws, Rebecca delivers tailored solutions to her clients' most pressing concerns.

Mr. Dan Raker

Dan Raker is Argonne's senior director, Human Resource Services, and chief human resources officer, and the laboratory's deputy general counsel. As chief human resources officer, Dan oversees the laboratory's talent strategy, seeking to attract, retain, and develop the people the lab needs to excel, and sustains a welcoming and respectful culture that helps the lab succeed and thrive. Since joining Argonne in 2008, Dan has provided legal support and leadership on a variety of governance, policy and risk issues in support of Argonne's mission. Prior to joining Argonne, Dan worked at a large multinational law firm headquartered in Chicago in the labor and employment practice group and represented Argonne as outside counsel. Dan has a bachelor's degree from Marquette University and a Juris Doctor degree from the University of Illinois College of Law, where he was a member of the Illinois Law Review and was selected for the Order of the Coif. Dan is a certified compliance and ethics professional and a member of the Association of Corporate Counsel and the Society of Corporate Compliance and Ethics.

Reduction in Force and Restructuring Considerations

- Selection Decisions
  - Objective vs. subjective criteria
  - Comparable roles
  - Business justifications/documentation

- Adverse Impact Analyses
  - Impact of Executive Order 14281 "Restoring Equality of Opportunity and Meritocracy"
  - *Griggs v. Duke Power*, 401 US 424 (1971)
  - State enforcement and private actions

Reduction in Force and Restructuring Considerations

- Separation Agreements/Releases
  - Consideration
  - Confidentiality/non-disparagement clauses
- Older Worker Benefit Protection Act (OWBPA) (29 CFR § 1625.22)
  - Required for release of ADEA claims
  - 45-day notice period
  - 7 days to revoke after signing
  - Advise in writing to consult with an attorney
  - OWBPA Notice detailing titles and ages of those in "decisional unit" selected and not selected for program

Reduction in Force and Restructuring Considerations

- Worker Adjustment and Retraining Notification (WARN) Act (29 USC Chapter 23)
  - Triggered by plant closings or mass layoffs
  - Must give 60 days notice or pay in lieu of notice
  - State mini-WARN Acts with lower thresholds, different obligations
- State Wage Payment Laws
  - Payments included in final paycheck
  - Same day, next day, next pay period
- Timing, Process and Messaging

JOHN SULLIVAN
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DEPARTMENT OF ENERGY

WORKFORCE RESTRUCTURING

Reductions in force (Voluntary or Involuntary Separations) that are expected to affect at least 100 employees within a 12-month period require DOE approval.

The contractor is required to review the following references before implementing workforce restructuring of any size:

- DOE Order 350.3 Chapter III, Reductions in Contractor Employment
- Prime Contract
  - Clauses in Sections H, J, K and Appendix A may contain workforce restructuring terms and requirements
  - If the prime contract conflicts with internal DOE policy, the prime contract terms will prevail.
- DOE's Workforce Restructuring Policy

If the contractor operates on or as a designated Defense Nuclear Facility, it must adhere to all statutory requirements and DOE interpretations of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 ("Section 3161").

List of Defense Nuclear Facilities: https://www.dnfsb.gov/doe-sites

- Hanford
- Idaho
- WIPP
- Savannah River
- SNL
- NNSS
- Y-12/ ORNL
- LLNL
- LANL
- Pantex

General considerations when considering a workforce restructuring:

- Contractors are encouraged to implement a self-select separation program prior to conducting involuntary separations, if feasible.

- Contractors should carefully evaluate their personnel needs before commencing a workforce restructuring action. The contractor should avoid departures of employees with critical skills whose positions must then be backfilled.

- DOE policy strongly discourages backfilling (hiring from the outside) to fill the positions of employees that are separated from the Contractor as part of a voluntary or involuntary separation for a period of one year.

- Congress has prohibited DOE from reimbursing contractors for enhanced benefits (i.e. benefits in excess of those provided for under the prime contract unless DOE submits a reprogramming request to the relevant Congressional committees.)

- Early retirement incentives that are funded through contractor pension plans will continue to be unallowable to avoid increasing DOE's long-term pension liabilities.

- Contractors are bound by the terms of their union collective-bargaining agreements, the duty to bargain with all involved unions, and relevant labor laws.

- Contractors are encouraged to consider use of employee releases and waivers (where appropriate)
    - See DOE models for
        - Voluntary separation releases and waivers, and
        - Involuntary separation releases and waivers

FREQUENTLY ASKED QUESTIONS

1. Does the contractor need approval from DOE before implementing any workforce restructuring plans?
   No. In some instances, DOE notification (not approval) is sufficient.
   Contractor notification to DOE of self-select voluntary separation programs is appropriate if the following parameters are met:
    - **compliance with contractor policies and prime contract requirements,**
    - **no enhanced benefits,**
    - **no backfilling or reemployment of employees for a one-year period**
    - **justification for the separations, including continuity of mission operations, and non- discriminatory implementation. See Order 350.3 Chapter III-3(c) for details.**
    - **No possibility of a follow-on involuntary separation program, or the combined actions to not meet the threshold.**

2. When is a contractor required to obtain approval before implementing a workforce restructuring?
   Approval is required if:

- **The contractor intends to reduce its workforce by 100 or more employees through voluntary/involuntary separation within a 12-month period.**

3. How does a contractor obtain approval?
   The process for seeking approval depends on whether the site at issue is considered a Defense Nuclear Facility (https://www.dnfsb.gov/doe-sites).
   - **Workforce Restructuring affecting more than 100 employees within a 12-month period requires submission of a *general plan* to DOE for approval and for notification to Congress.**
   - **Non-Defense Nuclear Facilities also need DOE approval when more than 100 employees are affected within a 12-month period, Contractors must seek approval by submitting a *specific plan* (rather than a *general plan)* to DOE.**
     - **Please note that some Non-defense Nuclear Facilities may have developed General Plans. If this describes your site, please contact GC-63.**

4. What must the contractor include in a *general plan* (pertinent only to a Defense Nuclear Facility)?
   - **A *general plan* (See template) must address how the workforce restructuring will be administered at the site in a manner that meets DOE policy objectives (See Order 350.3)**
   - ***General plans* provide a framework for workforce restructuring actions at a particular DOE or NNSA site; these plans are not limited to a specific workforce restructuring action. Departmental policy on matters such as use of incentives and employee waivers has changed over time, and, accordingly, it is crucial to periodically review and update the General Plans for each site.**
   - **Pursuant to Section 3161, the contractor must provide notice of at least 120 days to DOE, affected employees and local communities.**
   - **The *general plan must* be submitted to the appropriate DOE Under Secretary charged with responsibility for approving workforce restructuring actions.[1]**
   - **Discussion of draft employee releases and waivers, participation applications etc., if applicable (contractors are encouraged to consider use of employee releases and waivers where appropriate)**
   - **Section 3161 requires that eligible involuntarily separated contractor employees receive hiring preference eligibility. See Guide.**

5. What must the contractor include in a *specific plan* (pertinent to non-Defense Nuclear Facilities)?
   - **Detailed information about the proposed workforce restructuring**

[1] If the prime contract requires obtaining contracting officer approval to expend funds associated with the workforce restructuring action, the Contractor is still required to seek approval accordingly.

- **A stated business case for why restructuring is required (e.g. the need to realign the workforce to ensure an appropriate employee skill mix and/or budget concerns)**
    - **In the event of involuntary separations, the plan should address efforts to mitigate the impact of the separations while maintaining a workforce necessary to carry our continuing missions and strategic objectives of DOE.**
- **Discussion of draft employee releases and waivers, participation applications etc., if applicable**

6. What is an adverse impact analysis? Is the contractor required to prepare one?
   An adverse impact analysis can be a tool to ensure contractor compliance with applicable discrimination laws by assessing whether the workforce restructuring disparately impacts a protected class of individuals.[2]

   Contractors must perform an adverse impact analysis when implementing an involuntary separation action that affects 100 or more employees within a rolling 12-month period. See DOE Adverse Impact Analysis Guidance

7. Are contractors required to submit the adverse impact analysis to DOE? If so, to whom?
   DOE policy only requires the contractor to perform an adverse impact analysis. Contractors are not required to submit the analysis to the Office of General Counsel for approval. However, a copy of the analysis shall be provided to DOE site counsel (to protect Attorney-Client privilege) to assist in determinations regarding cost allowability.

8. At what point in the process can a contractor announce the upcoming workforce restructuring plan to employees?
    - **For Defense Nuclear Facilities, Section 3161(c)(1) requires at least a 120-day notice period before implementation of workforce restructuring.**
        - **Note: if the restructuring will affect more than 100 employees within a 12-month period, then DOE approval and Congressional notice are required before the 120-day period can begin.**
    - **For non-Defense Nuclear Facilities, contractors are encouraged to provide employees as much advance notice as possible for future workforce actions.**
        - **Note: if the restructuring will affect more than 100 employees within a 12-month period, then DOE approval is required before the action can be announced.**

[2] Order 350.3 currently refers to Executive Order (EO) 11246, which was revoked on January 21, 2025. Despite the revocation of the EO, contractors are still prohibited from engaging in workplace discrimination under Title VII, among other anti-discrimination laws, and must comply with applicable state and federal laws.

- **The Federal Worker Adjustment and Retraining Notice (WARN) Act requires notice of at least 60 days before a workforce restructuring action that constitutes mass layoffs under the Act).**
    - **Please note that many states have their own "mini-WARN" Acts that have varying requirements.**

9. Can the contractor offer pay in lieu in excess of two weeks notice?
   DOE will not approve contractor requests to provide involuntary separating employees pay in lieu of notice in excess of two weeks. Deviations must be approved by the Secretary or Deputy Secretary.
    - **If a Non-Defense Nuclear Facility prime contract specifically allows for more, it will supersede this restriction, but please notify GC-63.**

10. If the contractor implements a voluntary or involuntary separation program with its own funds (severance, voluntary separation incentives, etc.) and **does not** seek reimbursement from DOE for the separation), does the contractor still have to comply with DOE workforce restructuring policy—such as the no backfilling for one year rule?
    Yes. The terms of the prime contract and DOE's policy on workforce restructuring remain in effect even if the contractor does not seek reimbursement from DOE regarding the separation expenditures.

11. What is the WARN Act? What is its relevance to DOE contractors?
    The Federal Worker Adjustment and Training Notification (WARN) Act requires employers with 100 or more full-time employees to provide at least 60 calendar days advance written notice of worksite closing affecting 50 or more employees, or a mass layoff affecting at least 50 employees and 1/3 of the worksite's total workforce or 500 or more employees at a single site of employment during any 90-day period. See DOL WARN Act Resources. Contractors may be subject to WARN Act requirements if a workforce restructuring triggers the threshold.
    - **Note that many states have their own "mini-WARN Acts" that may**
        - **lengthen the required notice period,**
        - **redefines eligible employees,**
        - **reduces the number of affected employees,**
        - **among other differences.**

12. What are Displaced Worker Medical Benefits?
    Displaced Worker Medical Benefits are offered to all separating contractor employees (except those separated for cause) that were eligible for medical insurance coverage under the contractor's plan at the time of the separation from employment, provided they are not eligible for coverage under another plan (e.g. another employer's group health plan, spouse's medical plan or Medicare).

During the first year following separation, the contractor will continue to pay the employer portion of the medical premium share, depending on the type and level of coverage the employee has at separation. During the second year, the separated employee will be responsible for one-half of the full Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) rate for this coverage and the contractor will pay the remainder. Beginning the third year, and continuing thereafter, the separated employee will be responsible for paying the full COBRA rate.

TIMELINE/CHECKLIST

- Determine whether workforce restructuring will impact at least 100 employees within 12 months is necessary.
- Determine if the site is considered a Defense Nuclear Facility.
- Review DOE Order 350.3, prime contract, DOE workforce restructuring policy, and union collective-bargaining agreement (if applicable)
- Consider the impact of the potential workforce restructuring on DOE mission and contractor's ability to fulfill its obligations and how to tailor the restructuring to minimize impact and a need for backfilling for up to one year.
- Consider whether a voluntary separation program would be sufficient to reduce the workforce without requiring a follow-on involuntary separation program.
- Prepare a general or specific plan as applicable for DOE approval/notification including general waiver agreements and other required information.
    - If your prime contract departs from any stated DOE Policy, please cite clearly.
- Perform an adverse impact analysis if implementing an involuntary separation action that will affect 100 or more employees within a rolling 12-month period.
- Upon receipt of DOE approval, notify employees and the public if appropriate.
- Ensure compliance with WARN Act, and state equivalents before implementing the separation plan.
- **Contact the appropriate DOE official as soon as possible in this process to resolve questions and to ensure you are on the right path.**

DOECAA Fall 2025 Conference
Workforce Restructuring Panel 8-8-25
Kristen Merrick, Asst. General Counsel - Employment

First, in the event severance will be offered in connection with the ISP pursuant to a severance policy, consideration should be given to whether the severance policy is subject to Employee Retirement Income Security Act (ERISA). There is not a uniform standard for determining whether ERISA applies to severance benefits – the case law in this area is very circumstantial. However, courts generally deem a severance benefit to be subject to ERISA if it requires an "ongoing administrative scheme," and the employer retains discretion to identify which employees are eligible and to determine when severance benefits are payable. A Severance Policy that provides for an ongoing administrative responsibility to determine eligibility and to calculate benefits based on an employee's years of service, for example, would generally weigh in favor of ERISA's application.

Advantages of the Severance Policy being subject to ERISA:

- ERISA's preemption provisions ensure that ERISA provides the exclusive remedy for any claims for severance pay under the plan. All state law claims relating to the plan are preempted, including claims for constructive discharge and punitive damages. Because many state laws provide substantive remedies or requirements that are more onerous than those imposed by ERISA, this is a significant advantage.
- No jury trial is available in actions to remedy ERISA violations.
- ERISA's mandated detailed claims procedures encourage the employer and the employee to resolve potential disputes without litigation. Generally, a participant must exhaust administrative remedies before filing a suit for benefits in state or federal court.
- A court must generally give the employer's decisions a more deferential standard of review. Therefore, if an employee's claim for severance benefits is denied and the employee files suit under ERISA, a court should not review the administrator's decision on a de novo basis.

Disadvantages of the Severance Policy being subject to ERISA:

- Claims for severance benefits must be subject to a formal claims procedure.
- The plan has less flexibility in how it is operated, although the employer can preserve the right to change benefits under the plan and determine that some employees will not receive benefits.
- The plan must be in writing and comply with ERISA's reporting and disclosure requirements (i.e., filing an annual Form 5500, and issuing and summary plan

description). The Severance Policy can meet these requirements by, for example, being incorporated into the employer's wrap plan.

This is a step that can be taken in advance to ensure the Severance Policy either meets the requirements to be subject to ERISA or not.

Second, most employment counsel have a standard settlement agreement template that can be modified for use in a reduction in force that is compliant with the Older Workers Benefit Protection Act for those age 40 or over. *See* 29 U.S.C. § 626(f); 29 CFR § 1625.22. Counsel should also ensure their templates are compliant with recent laws restricting the ability to include confidentiality and non-disparagement clauses in employment-related agreements, such as Colorado's Protecting Opportunities and Workers' Rights (POWR) Act, which took effect in August 2023. C.R.S. § 24-34-407. It is also recommended to include a paragraph in which the employee acknowledges the return of all employer property and employer-owned information.

What employment counsel may not be thinking about is Internal Revenue Code (IRC) Section 409A compliance. Depending on the time of year of an ISP, consider adding to your release agreement (1) a standard clause regarding Section 409A compliance, and (2) some clarifying language regarding the type of payment (lump sum is the assumption) and the timing of the payment. With respect to the latter, in the IRS's view, payment conditioned on a release violates Section 409A if the release gives the employee an indirect choice as to when to receive severance payments, based on when the employee elects to sign and return the release. For example: If an employee receives the Involuntary Separation Release on November 30, 2025, they could control whether they receive payment in 2025 or 2026, depending on when they sign the release. To prevent a potential Section 409A violation, you must add language defaulting payments that could become payable in one of two tax years to the later tax year.

Third, If the severance policy is subject to ERISA, and likely even if it is not, the lump sum severance payment is considered wages and, therefore, taxes and withholdings are deducted from the gross sum. Even though the same is true for employee paychecks, employees generally are not thinking about the fact that their gross pay is considerably higher than their take home pay. A number of employees expressed surprise at the take home severance amount. In particular, employees expressed consternation over the withholding for 403(b) retirement contributions. Consider adding language to the severance agreement highlighting deductions and advising employees that they may change their retirement withholdings via the plan's website before signing the agreement.

The NREL ISP did not trigger the Worker Adjustment and Retraining Notification (WARN) Act. See 29 U.S.C. § 2101, *et seq*. If the WARN Act applies to an ISP, employees must receive 60 days' notice of their layoff. In that event, employees could be advised that if they want to change their withholding, they should do so before the severance payment. In a non-WARN Act setting, there are two options: 1) if the plan allows, the employer can choose not to withhold retirement contributions. However, consult with payroll before making a determination. At NREL, it would have been a manual process to remove the 403(b) deduction from each settlement payment; 2) allow the natural consequence, which is that the retirement contribution will automatically deduct out of the severance payment while benefits are active and it will not deduct from the severance payment when benefits are not active. For instance, NREL's ISP was on May 5, 2025. Benefits for impacted employees remained active through May 31, 2025. The employees under 40, and those age 40 and over that signed in May, were subject to the deduction. The age 40 and over employees that signed in June were not.

A practice pointer is to allow impacted employees limited access to your HRIS system so they can see the "check stub" showing a breakdown of the deductions from their severance check.

Fourth, if the ISP does not trigger the WARN Act, then it is up to the employer whether to provide impacted employees with advance notice and, if so, how much notice. NREL did not provide notice in advance of the May 5, 2025 ISP and it was by far the biggest complaint from impacted and non-impacted employees alike. A strong consideration in favor of notice is the favorability among employees and the positive effect on workplace culture. Another positive aspect of providing notice is that it allows employees to wrap up work and to transition work and files in an orderly, organized fashion, and exchange contact information with co-workers. The strongest con against notice is the concern of an insider threat. In addition, it can create an uncomfortable work environment with employees who are impacted transitioning work to employees who are not impacted, and may disrupt productivity.

If an ISP does trigger the WARN Act, employers may seek ways to mitigate the disruption and discomfort that can result from impacted and nonimpacted employees working together for sixty days, for example by placing the employees on administrative leave so they continue to receive the required pay and benefits but do not work. This would not be an allowable expense under the prime contract.

These are just a few of the many considerations when planning a workforce restructuring action. There are a number of additional points that must be considered including, but not limited to, property collection from employees that do not reside in the local area, how and when on-site employees' personal effects are provided to them, employees in the United

States on employer-sponsored visas – particularly H-1Bs that require the employer to pay for a return trip home and file notice, security presence during the ISP, following procedures for clearance holders, final paycheck laws of the state of residence of impacted employees, following applicable workplace exposure processes, how and when IT access will be cut, and consistent and appropriate messaging for a variety of audiences – impacted employees, non-impacted employees, managers, and external stakeholders. As with any workplace restructuring action, lab culture and philosophy should be touchstones as decisions are made with respect to how and when the action will be conducted.

2025 DOECAA Fall Conference

PANEL 5: False Claims Act - Updates and Litigation Trends

Developments in False Claims Act Litigation

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Agenda

- Background on the False Claims Act
- Recent Trends and Case Law Developments
- Growing Decline in Federal Support for Disadvantaged Businesses
- Executive Order 14173
- DOE Responses to Executive Order 14173

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The False Claims Act (FCA)

- The **False Claims Act (FCA)** is the federal government's primary tool for combating fraud against the United States. It imposes liability on individuals and companies who knowingly submit or cause to be submitted false or fraudulent claims for payment to the federal government.

- Given its significant contracting and grant-making authority for energy infrastructure, environmental cleanup, and research, the Department of Energy (DOE) and its contractors are frequent parties in FCA actions.

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Key FCA Provisions

- **31 U.S.C. § 3729(a)(1)** ➔ A person is liable under the FCA if they knowingly present or cause to be presented a false or fraudulent claim for payment; knowingly make or use, or causes to be made or used, a false record or statement material to a false claim; conspire to commit an FCA violation; or improperly avoid or decrease an obligation to pay the government.

- **31 U.S.C. § 3729(b)(1)** ➔ The FCA does not require proof of actual intent to defraud. The statute defines "knowing" as having actual knowledge, deliberate ignorance of the truth or falsity; or reckless disregard of the truth or falsity.

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Qui Tam Actions

- Under the FCA, private individuals, known as relators or whistleblowers, may bring civil actions for violations of § 3729 on behalf of the government.
- These actions, known as ***qui tam*** suits, must be filed under seal and accompanied by a written disclosure of all material evidence provided to the government.
- The government then has 60 days, which is often greatly extended, to decide whether to intervene and take over the case or allow the relator to proceed independently.
- If the government intervenes, it assumes primary responsibility for prosecuting the case, but the relator retains the right to participate, subject to certain limitations. If the lawsuit is successful, relators may receive 15–30% of the recovery.

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Recent Trends

- In May of 2025, the DOJ expressed its heightened commitment to rooting out fraud, waste, and abuse.

- Recent FCA litigation has also increasingly focused on cybersecurity and compliance with agency-specific reporting obligations; small business and disadvantaged business program fraud; and grants, cooperative agreements, and CARES Act funding misuse.

- Furthermore, courts, regulators, and new policy initiatives are expanding the scope of liability and encouraging more insider reporting, thus increasing the risk of FCA claims for any industries that receive federal funds.

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Recent Trends

- DOJ has signaled its intent to pursue FCA actions against entities that violate U.S. trade and tariff laws, including those misrepresenting country-of-origin labeling or circumventing anti-dumping duties.

- CARES Act and COVID-19 relief funds have drawn heightened FCA scrutiny, with enforcement actions targeting misuse of PPP loans, provider relief funds, and other pandemic-related government aid.

- Cybersecurity enforcement expands under DOJ's Civil Cyber-Fraud Initiative, targeting false claims related to data protection and breach reporting.

DOECAA

Recent Case Law Developments

- In recent years, federal courts have begun expressing concerns over the constitutionality of *qui tam* provisions.

- **Supreme Court of the United States: Thomas Dissent in *United States ex rel. Polansky v. Executive Health Resources* (2023)** ➔ "Congress cannot authorize a private relator to wield executive authority to represent the United States' interests in civil litigation."

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Recent Case Law Developments

- **Middle District of Florida: *United States ex rel. Zafirov v. Florida Medical Associates* (2024)** ➔ FCA relators are officers of the United States and thus their appointment must comply with the Appointment Clause. Reasoning that a relator's "self-appointment, obviously, does not satisfy the Appointments Clause," the Court deemed the FCA's qui tam provision unconstitutional.

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Recent Case Law Developments

- **Fifth Circuit: Duncan Concurrence in *United States ex rel. Montcrief v. Peripheral Vascular Associates* (2025)** ➔ "It seems inescapable that the FCA's *qui tam* device violates the Appointments Clause" because, by appointing themselves, relators do not qualify as appointed officers of the United States. Additionally, "the *qui tam* device violates the Take Care Clause by allowing private persons . . . to initiate and prosecute suits to enforce federal law."

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Decline in Federal Support for DBEs

- The Trump Administration's approach to DEI marks a landmark shift in federal contracting priorities.

- The federal government has long implemented programs to promote contracting opportunities for Disadvantaged Business Entities (DBEs), Women-Owned Business Enterprises (WBEs), and Minority Business Enterprises (MBEs).

- One of such programs, the **8(a) Program**, is a federal initiative managed by the Small Business Administration (SBA) to support socially and economically disadvantaged small businesses.

DOECAA

Decline in Federal Support for DBEs

- In January of 2025, several executive orders banned DEI-based provisions in federal contracts.
- In response to these orders, the SBA reduced its DBE contracting goals from 15% to the statutory requirement of 5%.
  - This reduction signifies a decrease in the federal government's commitment to promoting and supporting socially and economically disadvantaged businesses.
- On June 27, 2025, the SBA announced a full-scale audit of the 8(a) Program.
  - While aimed at restoring integrity, the scale and retrospective nature of the audit may impose significant compliance burdens and uncertainty on legitimate 8(a) participants, potentially delaying awards and disrupting ongoing projects.

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Executive Order ("EO") 14173

- "*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*"
  - Signed Jan. 2025.
  - Requires all federal contracts to include terms obligating recipients to: **(1)** certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws"; and **(2)** "agree that its compliance [with such laws] is **material** to the government's payment decisions for purposes of [the FCA]."

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EO14173 and the Civil Rights Fraud Initiative

- **DOJ Launches Civil Rights Fraud Initiative** (May 19, 2025): Deputy AG Todd Blanche announced DOJ will "utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws."

  - DOJ "strongly encourages" private whistleblowers to bring FCA lawsuits under the Act's *qui tam* provisions.

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EO14173 and the Civil Rights Fraud Initiative

- To avoid FCA liability, federal funding agencies have begun taking various actions to try to add such terms to existing awards, to new awards, and to the general terms governing such awards.

> (2) Grant award certification.
> (a) By accepting the grant award, recipients are certifying that:
> (i) They do not, and will not during the term of this financial assistance award, operate any programs that
> advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination
> laws; and
> (ii) They do not engage in, and will not during the term of this award engage in, a discriminatory prohibited
> boycott.
> (3) HHS reserves the right to terminate financial assistance awards and claw back all funds if the recipients,
> during the term of this award, operate any program in violation of Federal anti-discriminatory laws or
> engages in prohibited boycott.

HHS Grants Policy Statement **(April 16, 2025).**

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DOE Response to EO 14173

- On May 16, 2025, the Department of Energy issued Policy Flash 2025-29, adopting a class deviation from the FAR to comply with EO 14173. Contracting officers are now required to use modified FAR clauses when issuing new solicitations, awarding new contracts, and modifying existing ones.
- The Class Deviation Requires contractors to:
  - **Remove the following FAR clauses from all new solicitations and contracts**:
    - 52.222-9(c) (Apprentices and Trainees)
    - 52.222-21 to -27 (Equal Opportunity & Affirmative Action clauses)
    - 52.222-29 (Notification of Visa Denial)
  - **Include the following updated or modified FAR clauses**:
    - 52.204-8 (Annual Reps & Certs)
    - 52.212-3, -5 (Offeror Reps and Commercial Terms)
    - 52.213-4 (Simplified Acquisitions)
    - 52.244-6 (Subcontracts for Commercial Products & Services)
  - **Amend open solicitations to reflect these clause changes**.

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Civilian Agency Acquisition Council Letter 2025-01

GSA

Office of Government-wide Policy
U.S. General Services Administration

February 15, 2025

CAAC Letter 2025-01

MEMORANDUM FOR CIVILIAN AGENCIES

FAR subparts 22.13, Equal Opportunity for Veterans, and 22.14, Employment of Workers with Disabilities, and their related provisions and clauses, are based in statute, are not covered by E.O. 11246, and thus are not affected by this Letter.

Executive Order (E.O.) 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, revoked E.O. 11246, Equal Employment Opportunity. Several FAR provisions promulgated to enforce E.O. 11246 are not consistent with the direction of the President (see FAR subpart 22.8 and associated provisions and clauses as prescribed at FAR 22.810). This Letter describes changes to contract and solicitation terms that will ensure compliance with E.O. 14173 and serves as consultation in accordance with FAR 1.404, authorizing agencies to issue a class deviation to implement the necessary changes.

FAR subparts 22.13, Equal Opportunity for Veterans, and 22.14, Employment of Workers with

Contractors are still covered by existing United States laws on civil rights/nondiscrimination. These laws apply whether or not the company is a government contractor.

The Department of Labor sent a message stating: "On January 21, 2025, the White House and President Donald Trump issued an Executive Order: "Ending Illegal Discrimination and Restoring Merit-Based Opportunity", which revoked Executive Order 11246. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025". You may read the full message here.

This letter also addresses E.O. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, by removing the defined term "gender identity" at FAR 22.801 and the clauses at FAR part 52 that include the term.

This CAAC Letter is being issued in my capacity as Chair of the Civilian Agency Acquisition Council to serve as consultation in accordance with FAR 1.404, authorizing agencies to issue a class deviation to ensure compliance with Executive orders 14173 and 14168. If a FAR deviation is issued by their agencies consistent with this Letter, contracting officers shall use the following changes.

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DOE Response to EO 14173

"As of February 15, 2025, FAR clauses and provisions covered under E.O. 11246, Equal Employment Opportunity, will no longer be enforced. Therefore, contractors and their subcontractors will not be held accountable for applying the FAR clauses or provisions outlined in FAR subpart 22.8 - Equal Employment Opportunity or the associated provisions and clauses prescribed at FAR 22.810. In addition, contractors will no longer be required to comply with the System for Award Management (SAM) representation requirements based on these provisions and clauses. Examples include:

- FAR 52.222-25, Affirmative Action Compliance, and
- FAR 52.212-3(d), Offeror Representations and Certifications – Commercial Products and Commercial Services.

As of February 15, 2025, all uses of the term "gender identity" are not to be recognized or used prospectively by Federal contractors.

This notification does not affect:

- Any FAR subparts that are based on statute or are not covered by E.O. 11246 such as:
  - FAR subparts 22.13, Equal Opportunity for Veterans and its related clauses and provisions; and
  - FAR subpart 22.14, Employment of Workers with Disabilities.
- Existing U.S. laws on civil rights, nondiscrimination, or any laws that generally apply to a company regardless of whether it is a government contractor.

Contractors that receive this notification must, in-turn, provide this notification to their subcontractor(s)."

Required notification to contractors on existing contracts or orders with a remaining period of less than six months

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New Solicitations

- When issuing new solicitations, contractors must include the following notice:
  - *"System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in agency solicitations. Examples include 52.222-25, Affirmative Action Compliance, and paragraph (d) of 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services. Contracting officers will not consider these representations when making award decisions or enforce requirements. Entities are not required to, nor are they able to, update their entity registration to remove these representations in SAM."*

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Existing Contracts/Orders

For existing contracts or orders, contracting officers shall take the following actions:

- For existing contracts or orders with remaining periods of performance of six months or more, modify the contract or order at the next reasonable opportunity to remove the deleted clauses and incorporate, as applicable, the deviated clauses pursuant to the FAR Deviation Text document attached to the CAAC Letter.
- For existing contracts or orders with a remaining period of performance less than six months, and where all options to extend have been exhausted or an option to extend is not planned, contracting officers are not required to revise or remove the FAR clauses associated with the rescinded E.O. 11246. However, contracting officers must provide the following notification to contractors:

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EO 14173 Legal Considerations for Contractors

- EO14173 includes certification requirements. Contractors need to perform extensive *privileged* internal reviews to ensure compliance
  - Review existing recruiting and training practices
    - Internships, mentorships, scholarships, or other hiring practices limited to certain demographics need to be reviewed to ensure compliance.
    - DEI training programs, many of which were designed to effectuate EO 11246, must be closely reviewed to ensure compliance.
  - Review existing contract terms to ensure they comply.
    - Certain FAR provisions are to be removed, new/modified ones added.
    - Unclear how this is being handled at the CO level. Be proactive and engage with CO if necessary

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EO 14173 Legal Considerations for Contractors

- Review existing and pending subcontracts
  - May need to modify existing subcontracts or solicitations to ensure compliance.

- Review solicitations, proposals, and pending awards
  - Ensure your proposal language is carefully drafted to ensure compliance. Source selection personnel will be vigilant when reviewing proposals.

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Current Impacts in the DOE Complex Related to EO 14173

Jan 29, 2025 CO Letter to SRNS

In accordance with the referenced Executive Order, Savannah River Nuclear Solutions, LLC is directed to immediately suspend:

- Diversity, equity, and inclusion (DEI) policies, procedures, programs, activities, and reviews involving or relating to DEI objectives and principles until further notice;
  - All DEI programs including those related to employee training, hiring, evaluation, promotion, and discipline, must be suspended.

If you wish to seek an exception for a DEI policy, program, or procedures, you must submit a request for exception to the Contracting Officer for approval. No such activity may be resumed absent explicit Acting Secretarial approval. This direction applies to all costs incurred under this M&O contract, and the M&O's cost reimbursement subcontracts.

23

Current Impacts in the DOE Complex Related to EO 14173

- **March 17 CO Letter to suspend due to Injunction**

In accordance with DOJ's guidance and Senior Procurement Executive direction, I am hereby rescinding my previously issued Contracting Officer direction dated January 29, 2025, which required Management and Operating Contractor Savannah River Nuclear Solutions, LLC, to immediately suspend:

- Diversity, equity, and inclusion (DEI) policies, procedures, programs, activities, and reviews involving or relating to DEI objectives and principles until further notice;
  - All DEI programs including those related to employee training, hiring, evaluation, promotion, and discipline, must be suspended.

As of February 21, 2025, you may resume work on the DEI policies, procedures, programs, activities, and reviews that were suspended by the January 28 direction.

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DOECAA Current Impacts in the DOE Complex Related to EO 14173

- Email from Gov't CO later that day to SRNS CO…

CO - Based on information I have just received, please hold the subject letter until further guidance is provided.

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Current Impacts in the DOE Complex Related to EO 14173

- **March 26 CO Letter to Gov't**

The purpose of this letter is for Savannah River Nuclear Solutions, LLC (SRNS) to notify the Contracting Officer (CO) that the FY25 Affirmative Action Plan for Minority and Gender and associated data is complete and available for review, per the Reference.

Pursuant to the most recent government direction that SRNS received via Executive Orders "Ending Radical and Wasteful Government DEI Programs and Preferencing" and "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," SRNS interprets this guidance to indicate that the FY25 Affirmative Action Plan for Minority and Gender should not be formally submitted. SRNS considers its actions to satisfy the contract requirement while also adhering to direction of the Executive Orders.

If the CO requests the Plan be formally submitted, SRNS will send the Plan. Otherwise, SRNS considers this matter closed.

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DOECAA Current Impacts in the DOE Complex Related to EO 14173

- **May 22, 2025 CO Letter to Gov't from SRNS**

Currently the SRNS Prime Contract has sections that conflict with the above Executive Orders. SRNS requests relief from the following contractual requirements:

52.222-26 Equal Opportunity (Apr 2022) (I Clause Incorporated by Reference)

b. subparagraphs (2), (3), (6), (7), (8), (10)

The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

1. **Appendix J, Guidance for Preparation of Equal Opportunity Program**
   a. Demonstrated Commitment from Contractor Leadership, subparagraph (1)
   b. Integration of EEO into the Company's Strategic Mission, subparagraphs (1), (4), (8)
   c. Management and Program Accountability, subparagraph (1)
   d. Proactive Prevention of Unlawful Discrimination
   e. Efficiency, subparagraphs (5) through (8)

   Ensures contractors and subcontractors have "an affirmative program of equal employment opportunity" for all employees and applicants for employment. To this end, the contractors must maintain the essential elements of a Model Equal Employment Opportunity (EEO) Program as follows.

2. **SUBPART B CONTRACTORS' AGREEMENTS, Section 202**

   Subparagraph (1), in part - "The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

   Subparagraphs (3) through (6)

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Current Impacts in the DOE Complex Related to EO 14173

Specifically, the below listed routine reports support the above contractual guidance, and SRNS requests relief from compilation and submission:

- Annual Race and Gender Affirmative Action Plan (AAP)
- Monthly Utilization Reports that support the AAP
- Monthly Impact Ratio Analyses (IRA)

SRNS is committed to maintaining fairness in all employment decisions but must weight contractual requirements against the contrast of current guidance contained in the above referenced executive orders. The inherent risks of not modifying this language will result in SRNS liability for not complying with the current guidance. In contrast, SRNS's compliance with current executive guidance will result in contractual non-compliance and could cause potential harm to several protected classes, as well as undue years of progress in the areas of fairness and equality in all areas of employment.

SRNS is requesting CO review of the above request for relief from contractual requirements in conflict with the current administration Executive orders and requests a response to this letter within 14 days of receipt. If SRNS receives no response beyond standard confirmation of receipt, we will assume concurrence with this relief request.

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DOECAA Current Impacts in the DOE Complex Related to EO 14173

- Policy Flash 2025-23 Compliance with Federal Anti-Discrimination Laws

DOE-H-2089 Compliance With Federal Anti-Discrimination Laws.

Prescription: The Contracting Officer shall insert the following clause in all solicitations and contracts for products and services over the simplified acquisition threshold.

COMPLIANCE WITH FEDERAL ANTI-DISCRIMINATION LAWS (APR 2025)

(a) *Definition.* As used in this clause—
Program promoting diversity, equity, and inclusion means a program whose purpose is to promote preferences based on race, color, religion, sex, or national origins, such as in training or hiring.

(b) *Compliance.* The Contractor shall comply with all applicable Federal anti-discrimination laws. These laws apply whether or not the company is a Government contractor. Compliance with applicable Federal anti-discrimination laws is material to eligibility for and payment under this contract for purposes of 31 U.S.C. 3729(b)(4).

(c) *Certification.* By requesting payment under this award, the contractor certifies that, to the best of its knowledge and belief, it does not operate programs promoting diversity, equity, and inclusion that violate any applicable Federal anti-discrimination laws.

(End of Clause)

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Current Impacts in the DOE Complex Related to EO 14173

H-86 DOE-H-2089 COMPLIANCE WITH FEDERAL ANTI-DISCRIMINATION LAWS (APR 2025)

(a) Definition. As used in this clause—

Program promoting diversity, equity, and inclusion means a program whose purpose is to promote preferences based on race, color, religion, sex, or national origins, such as in training or hiring.

(b) Compliance. The Contractor shall comply with all applicable Federal anti-discrimination laws. These laws apply whether or not the company is a Government contractor. Compliance with applicable Federal anti-discrimination laws is material to eligibility for and payment under this contract for purposes of 31 U.S.C. 3729(b)(4). For purposes of this clause, only requests for payments associated with costs incurred for promoting or conducting diversity, equity, and inclusion programs which violate any applicable anti-discrimination laws will be considered false or fraudulent claims pursuant to 31 U.S.C. 3729 *et. seq.*

(c) Certification. Prior to~~By~~ requesting payment under this award, the contractor will at least annually certify by way of contracting officer letter~~ies~~ that, to the best of its knowledge and belief, it does not operate programs promoting diversity, equity, and inclusion that violate any applicable Federal anti-discrimination laws.

(End of Clause)

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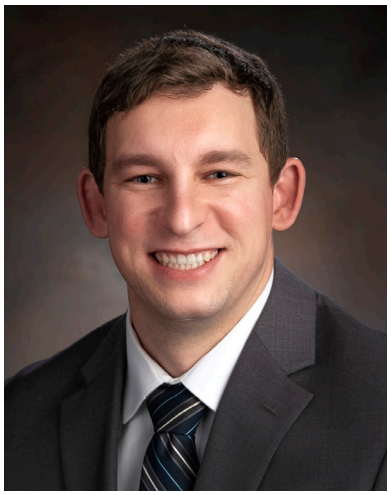
Scott P. Fitzsimmons
Senior Partner
Watt, Tieder, Hoffar, & Fitzgerald, LLP

For more than 20 years, Scott has focused his practice on government contracts and construction. He has represented contractors in numerous trials and hearings before state and federal tribunals, including federal courts and the U.S. Boards of Contract Appeals. Scott's experience includes high-stake matters with values exceeding $300 Million. He also represents contractors in high-value bid protests before the United States Government Accountability Office (GAO).

Scott's practice also includes serving as an arbitrator for disputes brought before the American Arbitration Association (AAA). Scott has been admitted to the distinguished Panel of AAA Arbitrators to resolve construction and government contract related matters.

Before joining Watt Tieder, Scott served for two years as a law clerk to a federal judge on the United States Court of Federal Claims where he focused on federal government contract matters including bid protest and Contract Disputes Act (CDA) claims. Scott's experience in federal government contracts offers clients incredible insight into the federal arena and helps shepherd contractors through the administrative and regulatory requirements of public contracting.

In addition to being an attorney with Watt Tieder, Scott serves as an Officer in the United States Navy Reserve, where he holds the rank of Captain (O-6) and has commanded six units. His most recent assignment was with the Office of the Secretary of Defense in the Pentagon. Scott spends his spare time on his farm in Purcellville, Virginia, where he and his wife own several amazing horses including the 2015 Theodora A. Randolph National Fieldhunter Champion.



R. Jackson Cooper

Chief Compliance Officer & Senior Counsel
Savannah River Nuclear Solutions, LLC

EDUCATION

University of South Carolina
Bachelor of Science, Business Administration

University of South Carolina School of Law
Juris Doctor

EXPERIENCE

R. Jackson Cooper is Chief Compliance Officer and Senior Counsel for Savannah River Nuclear Solutions, LLC (SRNS) at the Savannah River Site (SRS), located near Aiken, SC. In this capacity, he manages the SRNS compliance program, while also serving as a Senior Counsel member in the SRNS Office of General Counsel. Aside from compliance, his practice areas focus on prime contracts and subcontract matters associated with the Savannah River Plutonium Processing Facility (SRPPF) project at SRS, export control, and litigation management.

Cooper has a decade of legal practice experience. Prior to coming to SRS, Cooper served as an Assistant Solicitor under J. Strom Thurmond, Jr., prosecuting complex criminal cases in South Carolina's Second Judicial Circuit.

AREAS OF PRACTICE

- Construction
- Government Contracts
- Commercial Litigation

EDUCATION

- University of Baltimore School of Law, J.D., *magna cum laude*
- University of Maryland, B.A., 2010

BAR ADMISSIONS

- Maryland
- Virginia

COURT ADMISSIONS

- U.S. District Court for the District of Columbia
- U.S. District Court for the Western District of Virginia
- U.S. District Court of Appeals for the 4th Circuit
- U.S. Court of Federal Claims
- Superior Court for the District of Columbia
- Maryland Court of Appeals
- Supreme Court of Virginia and All Virginia State Courts

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Brandon Regan is a partner in Watt Tieder's McLean, Virginia office concentrating his practice in the areas of construction, government contracts and commercial litigation. Brandon is an experienced litigator with nearly a decade of courtroom experience.

Before joining Watt Tieder, Brandon served as a Judge Advocate for four years in the U.S. Marine Corps, serving as a line prosecutor, Staff Judge Advocate, and Senior Complex Trial Counsel. In these billets Brandon litigated several high-profile cases as first-chair counsel with sustained success. Brandon now serves as a Judge Advocate in the U.S. Marine Corps Reserves and holds the rank of Major (O-4).

After leaving active-duty Brandon served for four years as an Assistant United States Attorney (AUSA) in the District of Columbia U.S. Attorney's Office. As an AUSA Brandon successfully prosecuted over 400 cases, including several federal jury trials.

HONORS & AWARDS

- Eastern Judicial Circuit Prosecutor of the Year (2016)
- Navy-Marine Corps Litigator of the Year (2017)
- U.S. Attorney's Award for Creativity and Innovation in 2021

MEMBERSHIPS & AFFILIATIONS

- American Bar Association (ABA)
- Maryland Bar Association
- Virginia Bar Association
- Board of Contract Appeals Bar Association, Inc.
- Department of Energy Contractor Attorneys Association

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SPEAKING ENGAGEMENTS & PUBLICATIONS

- Co-Author: "Navigating Federal Government Contracts Under Newly Imposed Tariffs," Watt Tieder Newsletter, Spring 2025; re-published in ConsensusDocs Newsletter, March 12, 2025.
- Speaker: "8th Annual Federal Contracting Update," Virginia Bar Association, Fairfax, VA, September 2024.
- Speaker: "Trial Practice at the Boards of Contract Appeals," Boards of Contract Appeals Bar Association (BCABA), Washington, DC, June 2024.
- Author: "Supreme Court's End to Chevron Deference Impacts CDA Claims and Bid Protest Procedures," Watt Tieder Newsletter, Fall 2024; republished in ConsensusDocs Newsletter, July 2024.
- Speaker and Author: "2024 Trial Practice Seminar; Effective Trial Practice Before the Board of Contract Appeals," Washington DC, June 2024.

REPRESENTATIVE MATTERS

- Counsel at two-week trial in federal district court, successfully recovered $13.09 Million on claims arising from the design and construction of a boiler facility on the Radford Army Ammunition Plant. Opposing party's claims were denied in their entirety. Fluor Federal Solutions, LLC v. BAE Systems, Ordnance Systems, Inc., No. 19-598, 2024 WL 4635304 (WDVA Oct. 30, 2024).
- Counsel at three-week trial in federal court arising from $180 Million in dispute for design and construction of a chemical processing facility on Radford Army Ammunition Plant. BAE Systems, Ordnance Systems, Inc. v. Fluor Federal Solutions, LLC, No. 20-587 (WDVA February 2024).
- Counsel on post award bid protests at GAO and COFC arising from $320 Million award for Federal Emergency Management Agency (FEMA) support services (December 2023).
- Counsel for prime contractor on termination for convenience of multiple United States Army Corps of Engineers (USACE) Border Fence Projects with contract values exceeding $1.1 Billion (May 2021 to Present).
- Counsel for prime contractor on multi-million dollar payment dispute involving construction of a biofuel/renewable energy facility.
- Counsel to maintenance and operation contractor for Department of Energy (DOE) United States Strategic Petroleum Reserve facility $2 Billion upgrade to petroleum facilities and transfer units (Dec. 2018 to Present).