
Proposed US Government Contracting Rule Seeks Anti-Trafficking Reporting Requirements For Air Carrier Contractors

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On August 7, 2023, the US Department of Defense, General Services Administration, and the National Aeronautics and Space Administration proposed to amend the Federal Acquisition Regulation (“FAR”) to impose anti-trafficking reporting requirements on US-flag air carriers under certain contracts with US federal government agencies for air transportation of passengers. 88 Fed. Reg. 52102 (Aug. 7, 2023). The proposed rule, titled *Federal Acquisition Regulation: Training To Prevent Human Trafficking for Certain Air Carriers*, would amend the FAR to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425) to require covered air carriers to submit an annual anti-trafficking report to the General Services Administration, the US Department of Transportation, the US Department of Labor, the Transportation Security Administration, and the US Department of Homeland Security Center for Countering Human Trafficking. The annual report must include:

- The number of personnel trained in the detection and reporting of potential human trafficking;
- The number of notifications of potential human trafficking victims received from contractor personnel, subcontractors, or passengers; and
- Whether the contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking and, if so, the date the notification was made and the method of notification (e.g., text to hotline, call to law enforcement).

The reporting requirement would be imposed through a new government contract clause at FAR 52.247-XX, *Reporting Requirement for US-Flag Air Carriers Regarding Training to Prevent Human Trafficking*, which would be mandatory for solicitations and federal civilian agencies’ contracts with US-flag carriers for the air transportation of passengers, regardless of contract value, including contracts for commercial-type services. The clause would not apply to contracts awarded by the US Department of Defense. Among other changes, the proposed rule would also revise the FAR definition of “US-flag carrier” to align with the underlying statute, which defines the term to mean “an entity granted authority to provide air transportation in the form of a certificate of public convenience

and necessity under 49 USC. 41102."

The proposed rule does not impose new training or mandatory notification requirements. Instead, it builds upon training already mandated under the 2018 Federal Aviation Administration Reauthorization Act, which requires all US-flag air carriers—regardless of whether they are federal government contractors—to annually train “ticket counter agents, gate agents, and other air carrier workers whose jobs require regular interaction with passengers” to recognize and respond to potential instances of human trafficking. 49 USC. § 44734(a)(4).

This rule represents the latest in a series of consistent, bipartisan efforts to expand government regulation of forced labor in the United States and [globally](#). For example, in June 2022 the [Uyghur Forced Labor Prevention Act](#) created a rebuttable presumption that merchandise made in whole or in part in the Xinjiang Uyghur Autonomous Region of China or produced by a party on the UFLPA Entity List, was made with forced labor and, thus, prohibited from importation into the US. Also, the bipartisan *End Human Trafficking in Government Contracts Act of 2022* enacted in November 2022 requires US federal government agencies to refer substantiated allegations of trafficking violations by a recipient of a federal contract, grant, or cooperative agreement for evaluation by the relevant agency’s suspension and debarment official. This explicit internal government escalation increases the risk of potential suspension and debarment for noncompliant contractors, including those who self-report “credible information” of potential violations as already required by the mandatory *Combating Trafficking in Persons* clause at FAR 52.222-50(d)(1).

Those interested in commenting on the proposed air carrier rule are instructed to submit written comments to the Federal eRulemaking portal at www.regulations.gov, citing FAR Case 2019-017, on or before October 6, 2023 to be considered in the formation of the final rule.

WilmerHale counsels clients across industries on government contracting and ESG issues, including compliance with laws and regulations prohibiting forced labor and human rights violations in corporate supply chains. Our team monitors trends in this area and regularly advises companies on navigating developments. Please contact the WilmerHale ESG team to learn more.

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