
Monday
February 23, 1998

48 CFR

Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Chapter 1 et al.
Federal Acquisition Regulations (FAR);
Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97-04; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules, interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-04. A companion document, the Small Entity Compliance Guide, follows this FAC and may be

located on the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-04 and specific FAR case number(s).

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95-307	Moss.
II	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92-054B	Linfield.
III	Review of Procurement Integrity Clauses	97-601	Linfield.
IV	Certificate of Competency	96-002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97-020	Nelson.
VI	OMB Circular No. A-133	97-029	Olson.
VII	SIC Code and Size Standard Appeals	97-026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97-305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95-602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97-039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97-025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95-022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97-303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96-006	Nelson.
XV	Modular Contracting	96-605	Nelson.
XVI	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-04 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Use of Data Universal Numbering System as the Primary Contractor Identification (FAR Case 95-307)

This final rule amends FAR Subpart 4.6, Contract Reporting, and 52.212-1, Instructions to Offerors—Commercial Items; and adds a new solicitation provision at 52.204-6, Data Universal Numbering System (DUNS) Number; to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). It reflects Dun and Bradstreet procedures for offerors located overseas.

Item II—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92-054B)

The interim rule published as Item V of FAC 90-46 is revised and finalized. The rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements." The final rule differs from the interim rule in that it amends FAR 23.1004 and 52.223-5 to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act of 1986.

Item III—Review of Procurement Integrity Clauses (FAR Case 97-601)

This final rule amends FAR Parts 4 and 52 to revise the application of procurement integrity requirements to contracts for commercial items. The rule amends (1) 4.803 to remove an obsolete requirement for maintenance of a record of persons having access to proprietary or source selection information, (2) the clause at 52.212-4 to add the procurement integrity provisions of 41 U.S.C. 423 to the list of laws applicable

to contracts for commercial items, and (3) the clause at 52.212-5 to remove 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, from the list of FAR clauses required to implement provisions of law or Executive orders. As amended by the Clinger-Cohen Act of 1996, 41 U.S.C. 423 no longer requires that a contract clause specify administrative remedies for procurement integrity violations.

Item IV—Certificate of Competency (FAR Case 96-002)

The interim rule published as Item IX of FAC 97-01 is converted to a final rule with a minor change at 19.302(d). The rule implements revisions made to the Small Business Administration's procurement assistance programs contained in 13 CFR Part 125.

Item V—Applicability of Cost Accounting Standards (CAS) Coverage (FAR Case 97-020)

This final rule amends FAR Parts 12 and 52 to exempt contracts and subcontracts for the acquisition of commercial items from Cost Accounting Standards requirements when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the

price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A-133 (FAR Case 97-029)

This final rule amends FAR 15.209 and the associated clause at 52.215-2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A-133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97-026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97-305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105-135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95-602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212-5, 52.222-35, and 52.222-37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97-039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97-025)

This final rule amends FAR 30.101 and the clauses at 52.230-1 and 52.230-5 to conform to changes made to the

Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95-022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97-303)

This interim rule revises FAR 31.205-6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96-006)

This final rule revises FAR 31.205-10(a)(5) and 31.205-52 to conform to changes made to the Cost Accounting Standards regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96-605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104-106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Item XVI—Technical Amendments

Amendments are being made at FAR 1.201-1(b)(2), 44.204(b), and 52.219-1(b)(2) and (b)(3) to update references and make editorial changes.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97-04

[Date]

Federal Acquisition Circular (FAC) 97-04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-04 are effective April 24, 1998, except for Items VIII, X, XIII, and XVI, which are effective February 23, 1998.

Dated: February 11, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: February 12, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: February 12, 1998.

Deidre A. Lee,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 98-4290 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 52, and 53

[FAC 97-04; FAR Case 95-307; Item I]

RIN 9000-AH33

Federal Acquisition Regulation; Use of Data Universal Numbering System as the Primary Contractor Identification

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 61 FR 67412,

December 20, 1996, as Item III of Federal Acquisition Circular 90-43. This final rule amends the Federal Acquisition Regulation (FAR) to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 95-307.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4 and 52 to replace the CEC with the DUNS number as the means of identifying contractors in the FPDS. Federal agencies report data to the Federal Procurement Data Center, which collects, processes, and disseminates official statistical data on Federal contracting.

An interim rule was published in the **Federal Register** on December 20, 1996 (61 FR 67412). The final rule differs from the interim rule mainly (1) to reflect new Dun and Bradstreet procedures that accommodate offerors located overseas; and (2) to clarify that this requirement applies to commercial items by adding the DUNS requirement to the provision at FAR 52.212-1, Instructions to Offerors Commercial Items.

Public comments were received from two sources. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely replaces the Contractor Establishment Code with the Data Universal Numbering System number to identify contractors in the Federal Procurement Data System.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. The information collection aspects of this rule have been approved by the Office of Management and Budget and assigned Control No. 9000-0145.

List of Subjects in 48 CFR Parts 1, 4, 52, and 53

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 4, 52, and 53, which was published at 61 FR 67412, December 20, 1996, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 4, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entries:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment		OMB control No.
* * *		
4.602		9000-0145
4.603		9000-0145
* * *		
52.204-6		9000-0145
* * *		

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by revising paragraph (a) to read as follows:

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form.

(2) For offerors located outside the United States, the contracting officer may modify paragraph (c) of the provision at 52.204-6 to provide the correct phone numbers for the Dun and Bradstreet offices in the areas from which offerors are anticipated to respond.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.204-6 is amended by revising the section heading, provision heading and date; and the provision is amended by removing paragraph (a) and redesignating paragraphs (b), (c), and (d), as (a), (b), and (c), respectively; by revising newly designated paragraph (a), the third sentence of newly designated introductory paragraph (b), and newly designated paragraph (c) to read as follows:

52.204-6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Apr 1998)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) * * * For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. * * *

* * * * *

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at <http://www.dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

5. Section 52.212-1 is amended by revising the provision date to read "(Apr 1998)" and adding paragraph (j) to the provision to read as follows:

52.212-1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Apr 1998)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact

Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

[FR Doc. 98-4292 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 11, 23, and 52

[FAC 97-04; FAR Case 92-054B; Item II]

RIN 9000-AH39

Federal Acquisition Regulation; Federal Compliance With Right-To- Know Laws and Pollution Prevention Requirements

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 62 FR 12690, March 17, 1997, as Item V of Federal Acquisition Circular 90-46. The rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". This regulatory action was not subject to Office of Management and Budget (OMB) review under E.O. 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul

Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 92-054B.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for public comment was published on March 17, 1997 (62 FR 12690), to implement E.O. 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". E.O. 12856 requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109) and the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050). As a result of the one public comment received in response to the interim rule, FAR 23.1004(b) and 52.223-5(b) have been revised to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the PPA and the EPCRA.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The rule will apply to all contractors that use certain hazardous or toxic substances in the performance of contracts on a Federal facility. It is estimated that there are approximately 6,100 small business contractors to which the rule will apply. Such contractors must provide any information necessary to enable the Federal facility to fulfill its reporting requirements under EPCRA, PPA, and E.O. 12856. The information collection would be prepared by contractor employees using records that the contractor is required to maintain under existing law and regulation. No special professional skills are needed for preparation of the required information.

There are no known alternatives which would accomplish the objectives of the PPA, EPCRA, and E.O. 12856. The rule implements an explicit requirement of E.O. 12856 to provide a contract clause to collect information on the use of specific substances from certain contractors. Any alternative to the final rule that lessens the burden on small entities would fail to comply with E.O. 12856.

C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that

require approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection requirements imposed by the interim rule have been approved by OMB through May 31, 2000, under OMB Control Number 9000-0147.

List of Subjects in 48 CFR Parts 1, 11, 23, and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 23 and 52, which was published at 62 FR 12696, March 17, 1997, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entry:

1.106 OMB approval under the Paperwork Reduction Act.

	FAR segment	OMB Control No.
*	*	*
*	*	*
52.223-5	9000-0147
*	*	*

PART 11—DESCRIBING AGENCY NEEDS

11.001 [Amended]

3. Section 11.001 is amended by removing the definition of "New".

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.1004 [Amended]

4. Section 23.1004 is amended at the end of paragraph (b) by removing the period and inserting " , and other agency obligations under E.O. 12856."

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213-4 [Amended]

5. Section 52.213-4 is amended by revising the date of the clause to read "(APR 1998)"; and in paragraph (b)(1)(vii) of the clause by revising "(MAR 1997)" to read "(APR 1998)".

6. Section 52.223-5 is amended by revising the clause date and paragraph (b) to read as follows:

52.223-5 Pollution Prevention and Right-to-Know Information.

* * * * *

Pollution Prevention and Right-to-Know Information (Apr 1998)

* * * * *

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856. (End of clause)

[FR Doc. 98-4293 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 97-04; FAR Case 97-601; Item III]

RIN 9000-AH92

Federal Acquisition Regulation; Review of Procurement Integrity Clauses

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the application of procurement integrity requirements to contracts for commercial items. This regulatory action was not subject to Office of

Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 97-601.

SUPPLEMENTARY INFORMATION:

A. Background

Prior to its amendment by the Clinger-Cohen Act of 1996 (Public Law 104-106), Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) required that the FAR prescribe a contract clause specifying appropriate contractual penalties for procurement integrity violations. The resulting clause is FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity. A reference to this clause was included in the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. The final rule published in the **Federal Register** at 62 FR 226, January 2, 1997, as FAR case 96-314, Item I of FAC 90-45, implemented the Clinger-Cohen amendments to 41 U.S.C. 423, but did not revise the contract clauses applicable to contracts for commercial items.

Upon subsequent review, the Councils have determined that 41 U.S.C. 423, as amended, no longer requires that a contract clause specify administrative remedies for procurement integrity violations. Therefore, this rule amends FAR 52.212-5 to remove the reference therein to FAR 52.203-10. However, since contracts for commercial items are not exempt from the procurement integrity prohibitions at 41 U.S.C. 423, the clause at FAR 52.212-4 is amended to add 41 U.S.C. 423 to the list of applicable laws.

The rule also amends FAR 4.803 to remove the obsolete requirement to maintain a record of persons having access to proprietary or source selection information.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected FAR subparts

will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97-04, FAR Case 97-601), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

2. Section 4.803 is amended by removing paragraph (a)(42).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.212-4 is amended by revising the date of the clause and paragraph (r) to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Apr 1998)

* * * * *

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

* * * * *

52.212-5 [Amended]

4. Section 52.212-5 is amended by revising the date of the clause to read

“(Apr 1998)” and removing and reserving paragraph (b)(2).

[FR Doc. 98-4294 Filed 2-20-98; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 19

[FAC 97-04; FAR Case 96-002; Item IV]

RIN 9000-AH66

Federal Acquisition Regulation; Certificate of Competency

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

ACTION: Interim rule adopted as final with a minor change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with one change, the interim rule published in the **Federal Register** at 62 FR 44819, August 22, 1997, as Item IX of Federal Acquisition Circular 97-01. This final rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 96-002.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule amended FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 and published at 61 FR 3310, January 31, 1996. The rule increased the threshold over which contracting officers may appeal the award of a certificate of

competency (COC) from \$25,000 to \$100,000; updated the names of SBA offices involved in processing COCs; implemented the requirement that compliance with the limitations on subcontracting be considered an element of responsibility; and removed language implementing Section 305 of Pub. L. 103-403, as Section 305 has expired.

No public comments were received in response to the interim FAR rule. The interim FAR rule is being converted to a final rule with a minor change to provide a more precise reference to SBA regulations.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR Part 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With A Minor Change

Accordingly, the interim rule amending 48 CFR Parts 9 and 19, which was published at 62 FR 44819, August 22, 1997, is adopted as a final rule with the following change:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.302 [Amended]

2. Section 19.302 is amended in the introductory text of paragraph (d) by removing the reference “13 CFR 121.10” and inserting “13 CFR 121.1004”.

[FR Doc. 98-4295 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 97-04; FAR Case 97-020; Item V]

RIN 9000-AH89

Federal Acquisition Regulation; Applicability of Cost Accounting Standards (CAS) Coverage

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the criteria for application of Cost Accounting Standards (CAS) to negotiated Government contracts. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-04, FAR case 97-020.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 1997, the CAS Board published a final rule, Applicability of CAS Coverage, in the **Federal Register** (62 FR 31294). The CAS rule implemented Section 4205 of Public Law 104-106, the Clinger-Cohen Act, by exempting contracts and subcontracts for the acquisition of commercial items from CAS requirements when these contracts and subcontracts are firm-

fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

This final rule amends FAR Subpart 12.2, Special Requirements for the Acquisition of Commercial Items, and the clauses at 52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices, to conform the FAR to the revised CAS.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAC 97-04, FAR case 97-020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Section 12.214 is revised to read as follows:

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 48 CFR 30.201-1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for

commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 48 CFR 30.201.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230-2 is amended by revising the clause date and paragraph (d) to read as follows:

52.230-2 Cost Accounting Standards.

* * * * *

Cost Accounting Standards (Apr 1998)

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (End of clause)

4. Section 52.230-3 is amended by revising the clause date and paragraphs (d)(1), (2) and (3) to read as follows:

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt

from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (End of clause)

[FR Doc. 98-4296 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 97-04; FAR Case 97-029; Item VI]

RIN 9000-AH83

Federal Acquisition Regulation; OMB Circular No. A-133

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to Office of Management and Budget (OMB) Circular No. A-133, published as a final rule in the **Federal Register** at 62 FR 35277, June 30, 1997. This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-3221. Please cite FAC 97-04, FAR case 97-029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.209 and the associated clause at FAR 52.215-2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A-133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations", and now addresses audits of State and local Governments as well as audits of institutions of higher learning and other nonprofit organizations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C.610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.209 is amended by revising paragraph (b)(3) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.215-2 is amended by revising Alternate II to read as follows:

52.215-2 Audit and Records—Negotiation.

* * * * *

Alternate II (Apr 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

* * * * *

[FR Doc. 98-4297 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 19**

[FAC 97-04; FAR Case 97-026; Item VII]

RIN 9000-AH87

Federal Acquisition Regulation; SIC Code and Size Standard Appeals

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform to the Small Business Administration (SBA) regulations pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's Standard Industrial Classification (SIC) code designation and related small business size standard. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 97-026.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule amends FAR Subpart 19.3 to conform to SBA regulations at 13 CFR 121 and 134 pertaining to protest of small business representations, and appeal of SIC code designations and related small business size standards. The rule contains procedures for filing such protests and appeals.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19:

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.302 is amended—
 - a. By revising paragraph (a);
 - b. In paragraph (c)(1) by adding "Government Contracting" after "SBA";
 - c. In paragraph (d)(1)(i) by adding "business" after "1";
 - d. In paragraphs (e)(1) and (g)(1) by removing "protestant" and adding "protester" in its place;
 - e. In the first sentence of paragraph (g)(2) by adding "Government Contracting" after "SBA", and ", or designee," after "Director"; and in the third sentence by removing the word "below" and adding "of this section" in its place;
 - f. By revising the second sentence of paragraph (h)(4); and
 - g. By revising paragraphs (i) and (j) to read as follows:

19.302 Protesting a small business representation.

(a) An offeror, the SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, the SBA Associate

Administrator for Government Contracting, or another interested party may protest the small business representation of an offeror in a specific offer.

* * * * *

(h) * * *

(4) * * * The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(i) An appeal from an SBA size determination may be filed by: any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director; any concern or other interested party that has been adversely affected by a Government Contracting Area Director's decision; or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the—

Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416

within the time limits and in strict accordance with the procedures contained in subpart C of 13 CFR Part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

(j) A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. The protester shall be notified that the protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a notation that award has been made. The protester shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

3. Section 19.303 is amended by revising the section heading and paragraph (c) to read as follows:

19.303 Determining standard industrial classification codes and size standards.

* * * * *

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's SIC code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely SIC code appeal.

(2)(i) The appeal petition must be in writing and must be addressed to the—
Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the size determination or SIC code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon—

(i) The SBA official who issued the size determination;

(ii) The contracting officer who assigned the SIC code to the acquisition;

(iii) The business concern whose size status is at issue;

(iv) All persons who filed protests; and

(v) SBA's Office of General Counsel.

(4) Upon receipt of a SIC code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the SIC code appeal.

(5) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the

solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

[FR Doc. 98-4298 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97-04; FAR Case 97-305; Item VIII]

RIN 9000-AH91

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 401 of the Small Business Reauthorization Act of 1997. Section 401 eliminates the termination date of the Small Business Competitiveness Demonstration Program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 97-305.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program. Section 401 of the Small Business Reauthorization Act of 1997 (Pub. L. 105-135) amended Section 711(c) of the Small Business

Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to remove the program termination date of September 30, 1997.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.1001 is revised to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100-656 (15 U.S.C. 644 note). Pursuant to the Small Business Reauthorization Act (Pub. L. 105-135), the Small Business Competitiveness Demonstration Program has been extended indefinitely. The program is implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993, which remains in effect until supplemented or revised to reflect the statutory changes in Public Law 105-135. Pursuant to Section 713(a) of Public Law 100-656, the requirements of the FAR that are inconsistent with the

program procedures are waived. The program consists of two major components—

- (a) Unrestricted competition in four designated industry groups; and
- (b) Enhanced small business participation in 10 agency targeted industry categories.

3. Section 19.1003 is amended by revising the introductory text and the first sentence of paragraph (a) to read as follows:

19.1003 Purpose.

The purpose of the Program is to—
(a) Assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. * * *

* * * * *

4. Section 19.1006 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

19.1006 Procedures.

* * * * *

(b) *Designated industry groups.* (1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see paragraphs (b)(2) and (c)(1) of this section). * * *

* * * * *

[FR Doc. 98-4299 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97-04; FAR Case 95-602; Item IX]

RIN 9000-AH86

Federal Acquisition Regulation; Special Disabled and Vietnam Era Veterans

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revised Department of Labor

(DoL) regulations regarding affirmative action for employment of disabled veterans and veterans of the Vietnam era. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-04, FAR case 95-602.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of 1994 amendments to the Vietnam Veteran Readjustment Act, DoL published revisions to its regulations at 41 CFR 60-250 on January 5, 1995 (60 FR 1985), and corrections to these revisions on February 16, 1996 (61 FR 6116). This final rule amends the FAR to conform to the DoL revisions.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 95-602), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.13—Disabled Veterans and Veterans of the Vietnam Era

2. The heading of Subpart 22.13 is revised to read as set forth above.
 3. Sections 22.1300 and 22.1301 are revised to read as follows:

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971–1975 Comp., p. 752); and the regulations of the Secretary of Labor (41 CFR Part 60–250 and Part 61–250). In this subpart, the terms “contract” and “contractor” include “subcontract” and “subcontractor.”

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all employment openings, except those for executive and top management positions, positions to

be filled from within the contractor’s organization, and positions lasting 3 days or less, with the appropriate local employment service office. Contractors are required to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era without discrimination based on their disability or veteran’s status.

22.1303 [Amended]

4. Section 22.1303 is amended in the last sentence of paragraph (d) by removing the word “calendar”.

5. Section 22.1304 is amended by revising the first sentence of paragraph (b) to read as follows:

22.1304 Department of Labor notices and reports.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and disabled veterans unless all of the terms of the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, have been waived (see 22.1303). * * *

6. Section 22.1308 is amended by revising paragraphs (a)(1)(i) and (b) to read as follows:

22.1308 Contract clauses.

(a)(1) * * *
 (i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, “United States” includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam); or

(b) The contracting officer shall insert the clause at 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

22.1303, 22.1304, and 22.1306 [Amended]

7a. In the list below, for each section listed in the left column, remove the title indicated in the middle column, and add the title indicated in the right column:

Section	Remove	Add
22.1303(a) introductory text	Director, Office of	Deputy Assistant Secretary for.
22.1303(a) introductory text	(Director)	(Deputy Assistant Secretary).
22.1303(b)(1)	Director of OFCCP	Deputy Assistant Secretary.
22.1303(b)(2)	Director	Deputy Assistant Secretary.
22.1303(d)	Director	Deputy Assistant Secretary.
22.1304(a)	Director	Deputy Assistant Secretary.
22.1306, second sentence	Director of the Office of Federal Contract Compliance Programs of the DOL.	Deputy Assistant Secretary.

7b. In addition to the amendments set forth above, in Subpart 22.13 remove the phrase “Affirmative Action for Special Disabled and Vietnam Era Veterans” and add “Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era” in the following places:

- 22.1302(b)
- 22.1303(a) introductory text
- 22.1305
- 22.1307 introductory paragraph
- 22.1308(a)(1) introductory text

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.212–5 is amended by revising the date of the clause, and paragraphs (b)(7), (b)(9), and (e)(2) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Apr 1998)

(b) * * *
 (7) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
 (9) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
 (e) * * *
 (2) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

9. Section 52.213–4 is amended by revising the clause date and paragraphs (b)(1)(iii) and (b)(1)(v) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions Simplified Acquisitions (Other than Commercial Items) (Apr 1998)

(b)(1) * * *
 (iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Apr 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
 (v) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

10. Section 52.222–35 is amended—
 a. By revising the section heading, introductory paragraph, clause heading and date, and paragraph (a);

b. By revising paragraph (b)(1) introductory text;

c. In the first sentence of paragraph (c)(1) by removing the word “suitable”;

d. In (c)(2) by removing the words "their suitable" and adding "employment";

e. In the first sentence of paragraph (c)(3) by removing the word "suitable";

f. By removing paragraph (c)(5);

g. By revising paragraph (d);

h. In paragraph (e)(1)(i) by removing the word "special"; by revising (e)(2); and in (e)(3) by removing "special disabled and Vietnam Era veterans" and adding in its place "disabled veterans and veterans of the Vietnam era";

i. In the second sentence of paragraph (g) by removing the word "Director" and inserting in its place "Deputy Assistant Secretary"; and

j. By revising the introductory text of Alternate I. The revised text reads as follows:

52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(a)(1), insert the following clause:

Affirmative Action for Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) *Definitions.* As used in this clause—

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall

not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.* * * *

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

Alternate I (Apr 1984). As prescribed in 22.1308(a)(2), add the following as a preamble to the clause:

11. Section 52.222-37 is amended—

a. By revising the section heading, clause heading, and date of the clause;

b. By revising the introductory text of paragraph (a);

c. In paragraphs (a)(1) and (a)(2) by removing the word "special"; and

d. By revising paragraph (e). The revised text reads as follows:

52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.

Employment Reports on Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

12. Section 52.244-6 is amended by revising the date of the clause and paragraph (c)(2) to read as follows:

52.244-6 Subcontracts for Commercial Items and Commercial Components.

Subcontracts for Commercial Items and Commercial Components (Apr 1998)

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

[FR Doc. 98-4300 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97-04; FAR Case 97-039; Item X]

RIN 9000-AH93

Federal Acquisition Regulation; Treatment of Caribbean Basin Country End Products

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 97-039.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998 (62 FR 59014, October 31, 1997).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-039), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.402 is amended by revising paragraph (b) to read as follows:

25.402 Policy.

* * * * *

(b) The U.S. Trade Representative has determined that, in order to promote further economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries that are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart. This determination is effective until September 30, 1998. This date may be extended by the U.S. Trade

Representative by means of a notice in the **Federal Register**.

* * * * *

[FR Doc. 98-4301 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97-04; FAR Case 97-025; Item XI]

RIN 9000-AH88

Federal Acquisition Regulation; Administrative Changes to Cost Accounting Standards (CAS) Applicability

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-04, FAR case 97-025.

SUPPLEMENTARY INFORMATION:

A. Background

On July 29, 1996, the CAS Board published an interim rule, Applicability of CAS Coverage, in the **Federal Register** (61 FR 39360). The CAS rule implemented Section 4205 of Public Law 104-106, the Clinger-Cohen Act of 1996, by revising the criteria for application of CAS to negotiated Federal contracts. The interim rule revised the solicitation provision at 48 CFR 9903.201-3, Cost Accounting Standards Notices and Certifications, and the

contract clause at 48 CFR 9903.201-4, Cost Accounting Standards—Educational Institutions, to reflect these changes.

This final FAR rule amends Part 52 to conform the solicitation provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, and the contract clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution, to the corresponding CAS Board contract clauses at 48 CFR 9903.201-3 and 9903.201-4. In addition, FAR 30.101, CAS, is amended to reflect the current contents of the CAS Board regulations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 30 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Section 30.101 is amended by revising paragraph (c) to read as follows:

30.101 Cost Accounting Standards.

* * * * *

(c) The appendix to the FAR loose-leaf edition contains—

(1) Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost

Accounting Standards Board at 48 CFR Chapter 99; and

(2) The following preambles:

(i) Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board.

(ii) Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board.

(iii) Part III—Preambles Published under the FAR System.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230-1 is amended by revising the provision date and paragraph (a) to read as follows:

52.230-1 Cost Accounting Standards Notices and Certification.

* * * * *

Cost Accounting Standards Notices and Certification (Apr 1998)

* * * * *

(a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

* * * * *

4. Section 52.230-5 is amended by revising the clause date and paragraphs (d)(1) and (d)(2); and by adding (d)(3) to read as follows:

52.230-5 Cost Accounting Standards—Educational Institution.

* * * * *

Cost Accounting Standards—Educational Institution (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

[FR Doc. 98-4302 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 32, 42, 46, 47, and 52

[FAC 97-04; FAR Case 95-022; Item XII]

RIN 9000-AH27

Federal Acquisition Regulation; Changes in Contract Administration and Audit Cognizance

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add policies and procedures for assigning and performing contract audit services and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-04, FAR case 95-022.

SUPPLEMENTARY INFORMATION:

A. Background

In February 1994, the Office of Federal Procurement Policy formed a Contract Audit Committee. This final rule implements recommendations of the committee pertaining to civilian agencies' contract administration and audit practices. The rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect costs rates. A proposed rule was published in the **Federal Register** on December 11, 1996 (61 FR 65306). Forty-two comments were

received from 19 respondents. All comments were considered in the development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to internal Government procedures for performing contract administration functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 32, 42, 46, 47, and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 31, 32, 42, 46, 47, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 32, 42, 46, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.109 [Amended]

2. Section 31.109 is amended in paragraph (f)(3) by removing the word "cognizant" and adding "responsible" in its place.

PART 32—CONTRACT FINANCING

32.503-3 [Amended]

3. Section 32.503-3 is amended in paragraph (b)(2) by removing "cognizant independent" and adding "responsible" in its place.

32.503-12 [Amended]

4. Section 32.503-12 is amended in paragraph (c) by removing "cognizant independent" and adding "responsible" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. The heading for Part 42 is revised as set forth above.

6. Section 42.000 and Subparts 42.1 and 42.2 are revised to read as follows: Sec.

42.000 Scope of part.

42.001 Definitions.

42.002 Interagency agreements.

42.003 Cognizant Federal agency.

Subpart 42.1—Contract Audit Services

42.101 Contract audit responsibilities.

42.102 Assignment of contract audit services.

42.103 Contract audit services directory.

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.

42.202 Assignment of contract administration.

42.203 Contract administration services directory.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

42.000 Scope of part.

This part prescribes policies and procedures for assigning and performing contract administration and contract audit services.

42.001 Definitions.

As used in this part—
Cognizant Federal agency means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

Responsible audit agency means the agency that is responsible for performing all required contract audit services at a business unit (as defined in 48 CFR 31.001).

42.002 Interagency agreements.

(a) Agencies shall avoid duplicate audits, reviews, inspections, and examinations of contractors or subcontractors, by more than one agency, through the use of interagency agreements (see OFPP Policy Letter 78-4, Field Contract Support Cross-Servicing Program).

(b) Subject to the fiscal regulations of the agencies and applicable interagency agreements, the requesting agency shall reimburse the servicing agency for rendered services in accordance with the Economy Act (31 U.S.C. 1535).

(c) When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.

42.003 Cognizant Federal agency.

(a) For contractors other than educational institutions and nonprofit organizations, the cognizant Federal agency normally will be the agency with the largest dollar amount of negotiated contracts, including options. For educational institutions and nonprofit organizations, the cognizant Federal agency is established according to Subsection G.11 of OMB Circular A-21, Cost Principles for Educational Institutions, and Attachment A, Subsection E.2, of OMB Circular A-122, Cost Principles for Nonprofit Organizations, respectively.

(b) Once a Federal agency assumes cognizance for a contractor, it should remain cognizant for at least 5 years to ensure continuity and ease of administration. If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies shall coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.

Subpart 42.1—Contract Audit Services

42.101 Contract audit responsibilities.

(a) The auditor is responsible for—

(1) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs;

(2) Reviewing the financial and accounting aspects of the contractor's cost control systems; and

(3) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(b) Normally, for contractors other than educational institutions and nonprofit organizations, the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies shall agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions and nonprofit organizations, audit cognizance will be determined according to the provisions of OMB Circular A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

42.102 Assignment of contract audit services.

(a) As provided in agency procedures or interagency agreements, contracting officers may request audit services directly from the responsible audit agency cited in the Directory of Federal Contract Audit Offices. The audit request should include a suspense date and should identify any information needed by the contracting officer.

(b) The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.103 Contract audit services directory.

(a) DCAA maintains and distributes the Directory of Federal Contract Audit Offices. The directory identifies cognizant audit offices and the contractors over which they have cognizance. Changes to audit cognizance shall be provided to DCAA so that the directory can be updated.

(b) Agencies may obtain a copy of the directory or information concerning cognizant audit offices by contacting the—Defense Contract Audit Agency, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.

(a) For each contract assigned for administration, the contract administration office (CAO) (see 48 CFR 2.101) shall—

(1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for the functions specifically withheld;

(2) Perform the functions listed in 42.302(b) only when and to the extent specifically authorized by the contracting officer; and

(3) Request supporting contract administration under 42.202(e) and (f) when it is required.

(b) The Defense Logistics Agency, Defense Contract Management Command, Fort Belvoir, Virginia, and other agencies offer a wide variety of contract administration and support services.

42.202 Assignment of contract administration.

(a) *Delegating functions.* As provided in agency procedures, contracting officers may delegate contract administration or specialized support services, either through interagency agreements or by direct request to the cognizant CAO listed in the Federal

Directory of Contract Administration Services Components. The delegation should include—

(1) The name and address of the CAO designated to perform the administration (this information also shall be entered in the contract);

(2) Any special instructions, including any functions withheld or any specific authorization to perform functions listed in 42.302(b);

(3) A copy of the contract to be administered; and

(4) Copies of all contracting agency regulations or directives that are—

(i) Incorporated into the contract by reference; or

(ii) Otherwise necessary to administer the contract, unless copies have been provided previously.

(b) *Special instructions.* As necessary, the contracting officer also shall advise the contractor (and other activities as appropriate) of any functions withheld from or additional functions delegated to the CAO.

(c) *Delegating additional functions.* For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302: *Provided* that—

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) *Rescinding functions.* The contracting officer at the requesting agency may rescind or recall a delegation to administer a contract or perform a contract administration function, except for functions pertaining to cost accounting standards and negotiation of forward pricing rates and indirect cost rates (also see 42.003). The requesting agency must coordinate with the CAO to establish a reasonable transition period prior to rescinding or recalling the delegation.

(e) *Secondary delegations of contract administration.* (1) A CAO that has been delegated administration of a contract under paragraph (a) or (c) of this section, or a contracting office retaining contract administration, may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall—

(i) Be in writing;

(ii) Clearly state the specific functions to be performed; and

(iii) Be accompanied by a copy of pertinent contractual and other necessary documents.

(2) The prime contractor is responsible for managing its subcontracts. The CAO's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless—

(i) The Government otherwise would incur undue cost;

(ii) Successful completion of the prime contract is threatened; or

(iii) It is authorized under paragraph (f) of this section or elsewhere in this regulation.

(f) *Special surveillance.* For major system acquisitions (see Part 34), the contracting officer may designate certain high risk or critical subsystems or components for special surveillance in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner consistent with the policy of requesting that the cognizant CAO perform contract administration functions at a contractor's facility (see 42.002).

(g) *Refusing delegation of contract administration.* An agency may decline a request for contract administration services on a case-by-case basis if resources of the agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.203 Contract administration services directory.

The Defense Contract Management Command (DCMC) maintains and distributes the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMC and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may obtain a free copy of the directory on disk by writing to—HQ Defense Logistics Agency, ATTN: DCMC-AQBF, 8725 John J. Kingman Road, Fort Belvoir, VA 22060, or access it on the Internet at <http://www.dcmc.dcrb.dla.mil>.

7. Section 42.301 is revised to read as follows:

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration

functions in accordance with 48 CFR Chapter I, the contract terms, and, unless otherwise agreed to in an interagency agreement (see 42.002), the applicable regulations of the servicing agency.

8. Section 42.302 is amended by revising paragraphs (a) introductory text, (a)(11) introductory text, (a)(11)(iv), (a)(13), (a)(20), (a)(32), (a)(61), and (a)(63) to read as follows:

42.302 Contract administration functions.

(a) The following contract administration functions are normally delegated to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the contracting officer has been designated to perform these functions by the cognizant Federal agency (see 42.001).

* * * * *
 (11) In connection with Cost Accounting Standards (see 48 CFR 30.601 and 48 CFR Chapter 99 (FAR Appendix))—

* * * * *
 (iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 48 CFR 52.230-2, 52.230-3, 52.230-4, 52.230-5, and 52.230-6.

* * * * *
 (13) Make payments on assigned contracts when prescribed in agency acquisition regulations.

* * * * *
 (20) For classified contracts, administer those portions of the applicable industrial security program delegated to the CAO (see Subpart 4.4).

* * * * *
 (32) Perform preaward surveys (see Subpart 9.1).

* * * * *
 (61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a periodic, consolidated basis to ensure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

* * * * *
 (63) Cancel unilateral purchase orders when notified of nonacceptance by the contractor. The CAO shall notify the contracting officer when the purchase order is canceled.

* * * * *

9. Section 42.602 is amended by revising paragraphs (c)(2) and (d) to read as follows:

42.602 Assignment and location.

* * * * *

(c) * * *

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest dollar balance, including options, of affected contracts). In such cases, agencies may also consider geographic location.

(d) The directory of contract administration services components referenced in 42.203 includes a listing of CACO's and the contractors for which they are assigned responsibility.

42.603 [Amended]

10. Section 42.603 is amended in the introductory text of paragraph (a) by removing the parenthetical "(see subpart 42.3)"; and in the introductory text of paragraph (b)(1) by removing the word "cognizant" and adding "responsible" in its place.

11. Section 42.701 is amended by revising the definitions for "Business unit" and "Indirect cost", and by adding, in alphabetical order, the definition for "Forward pricing rate agreement" to read as follows:

42.701 Definitions.

* * * * *

Business unit is defined at 31.001.

* * * * *

Forward pricing rate agreement is defined at 48 CFR 15.401.

Indirect cost is defined at 48 CFR 31.203.

* * * * *

12. Section 42.703-1 is amended by revising the first sentence of paragraph (a), and paragraph (c) to read as follows:

42.703-1 Policy.

(a) A single agency (see 42.705-1) shall be responsible for establishing final indirect cost rates for each business unit. * * *

* * * * *

(c) To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a)—

(1) Final indirect cost rates shall be used for contract closeout for a business unit, unless the quick-closeout procedure in 42.708 is used. These final rates shall be binding for all cost-reimbursement contracts at the business unit, subject to any specific limitation in a contract or advance agreement; and

(2) Established final indirect cost rates shall be used in negotiating the final price of fixed-price incentive and fixed-

price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established, unless the quick-closeout procedure in 42.708 is used.

42.703-2 [Amended]

13. Section 42.703-2(d) is amended by removing the word "contractor" and adding "contractor's" in its place.

14. Section 42.704 is amended by revising paragraphs (a), (b), and (c) to read as follows:

42.704 Billing rates.

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under 42.705 for establishing the final indirect cost rates also shall be responsible for determining the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor shall establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the contracting officer (or cognizant Federal agency official) or auditor should ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).

* * * * *

15. Section 42.705-1 is amended by revising paragraphs (a) introductory text, (a)(3), (a)(4), (b)(1), (b)(2), and (b)(3) to read as follows:

42.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall

be used for the following, with the indicated cognizant contracting officer (or cognizant Federal agency official) responsible for establishing the final indirect cost rates:

* * * * *

(3) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

(4) Educational institutions (see 42.705-3).

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 48 CFR 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address <http://www.dtic.mil/dcaa/chap5.html>;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767-1061;

(iii) Sending an e-mail request to *CMO@hql.dcaa.mil; or

(iv) Writing to—Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(2) The auditor shall submit to the contracting officer (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer (or cognizant Federal agency official) shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

15. Section 42.705-2 is amended by revising paragraphs (a)(2) introductory text, (a)(2)(iv), and (b) to read as follows:

42.705-2 Auditor determination procedure.

(a) (2) In addition, auditor determination may be used for business units that are covered in 42.705-1(a) when the contracting officer (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(iv) The contracting officer (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) Procedures. (1) The contractor shall submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with 42.705-1(b)(1).

(2) Upon receipt of a proposal, the auditor shall—

(i) Audit the proposal and seek agreement on indirect costs with the contractor;

(ii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see 42.203), who will then resolve the disagreement; and

(iv) Distribute resulting documents in accordance with 42.706.

16. Section 42.705-3 is amended by revising paragraph (a)(2) to read as follows:

42.705-3 Educational institutions.

(a) (2) OMB Circular No. A-21, Cost Principles for Educational Institutions, assigns each educational institution to a

single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

PART 46—QUALITY ASSURANCE

17. Section 46.103 is amended by revising paragraph (d) to read as follows:

46.103 Contracting office responsibilities.

(d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and

18. Section 46.104 is amended by revising paragraph (f) to read as follows:

46.104 Contract administration office responsibilities.

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

19. Section 46.502 is amended by revising the second sentence to read as follows:

46.502 Responsibility for acceptance.

When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

PART 47—TRANSPORTATION

47.301-3 [Amended]

20. Section 47.301-3 is amended in the introductory text of paragraph (c) by removing “42.202(d)” and adding “42.202(a)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 52.216-7 is amended by revising the clause date and the first sentence of paragraph (d)(2)(i) to read as follows:

52.216-7 Allowable Cost and Payment.

Allowable Cost and Payment (Apr 1998)

(d) Final indirect cost rates. (1) (2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal

agency official) and auditor within the 6-month period following the expiration of each of its fiscal years.

(End of clause)

22. Section 52.216-13 is amended by revising the clause date and the first sentence of paragraph (c)(2)(i) to read as follows:

52.216-13 Allowable Cost and Payment—Facilities.

Allowable Cost and Payment—Facilities (Apr 1998)

(c) Negotiated Indirect Costs. (1) (2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years.

(End of clause)

23. Section 52.216-15 is amended by revising the clause date and the first sentence of paragraph (b)(1); by revising the second sentence of paragraph (d); and revising paragraph (e) to read as follows:

52.216-15 Predetermined Indirect Cost Rates.

Predetermined Indirect Cost Rates (APR 1998)

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years.

(d) The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

(End of clause)

[FR Doc. 98-4303 Filed 2-20-98; 8:45 am]

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 97-04; FAR Case 97-303; Item XIII]

RIN 9000-AH90

**Federal Acquisition Regulation;
Limitation on Allowability of
Compensation for Certain Contractor
Personnel**

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) by limiting the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

Applicability Date: This policy applies to costs of compensation incurred under Federal contracts after January 1, 1998, regardless of the date of contract award.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 24, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-303@gsa.gov

Please cite FAC 97-04, FAR case 97-303 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-04, FAR case 97-303.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) limits allowable compensation costs of senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator, Office of Federal Procurement Policy. Section 808 requires the Administrator, Office of Federal Procurement Policy (OFPP), to review commercially available surveys of executive compensation, and, on the basis of the results of the review, determine the benchmark compensation amount for each fiscal year. See OFPP's "Determination of Executive Compensation Benchmark Amount", as published by GSA in the Notices Section of this **Federal Register**. This determination shall be made in consultation with the Defense Contract Audit Agency and other executive agencies, as the Administrator deems appropriate. Section 808 defines benchmark compensation as the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination is made.

This interim rule revises FAR 31.205-6(p) to implement the statutory ceiling on allowable compensation costs for senior executives. Because the commercial survey used in making the benchmark compensation determination is based on Securities and Exchange Commission disclosure data (which cannot be separately broken down), it includes the cost of employer contributions to defined contribution pension plans (which are a form of deferred compensation). The implementing language at FAR 31.205-6(p)(2)(i) specifies the components of compensation subject to the benchmark compensation. This restriction applies to costs of compensation incurred after January 1, 1998, under contracts awarded before, on, or after the date of the enactment of Public Law 105-85 (November 18, 1997). This restriction applies to the chief executive officer (CEO), the four most highly compensated employees in management positions other than the CEO, and the five most highly compensated

individuals in management positions at intermediate home offices and segments if a contractor is organizationally subdivided into such units.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97-303), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting, recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) and applies to costs of compensation incurred after January 1, 1998, under contracts entered into before, on, or after the date of enactment (November 18, 1997) of this public law. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-6 is amended by revising paragraph (p) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) Costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under Section 39 of the OFPP Act (41 U.S.C. 435) are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 256(e)(1)(P)). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs.

(2) As used in this paragraph:

(i) *Compensation* means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(5) and (j)(8) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) *Senior executive* means—

(A) The contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity;

(B) The contractor's four most highly compensated employees in management positions, other than the CEO; and

(C) If the contractor has intermediate home offices or segments that report directly to the contractor's corporate headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(iii) *Fiscal year* means the fiscal year established by the contractor for accounting purposes.

[FR Doc. 98-4304 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97-04; FAR Case 96-006; Item XIV]

RIN 9000-AH56

Federal Acquisition Regulation; Transfer of Assets Following a Business Combination

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement a final rule of the Cost Accounting Standards (CAS) Board regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-3221. Please cite FAC 97-04, FAR case 96-006.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on July 2, 1997 (62 FR 35890). The rule proposed amendments to the FAR to implement a final rule published by the CAS Board on February 13, 1996 (61 FR 5520), that amended CAS 9904.404, Capitalization of Tangible Assets, and CAS 9904.409, Depreciation of Tangible Capital Assets. The final FAR rule differs from the proposed rule by revising FAR 31.205-

52(a) to clarify that CAS 9904.404 measures the capitalized asset values that are used to compute depreciation expense and cost of money, and FAR 31.205-52(b) to delete the term "depreciation," since intangible capital assets do not generate depreciation expense.

Public comments were received from three sources. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-10 is amended by revising paragraph (a)(5) to read as follows:

31.205-10 Cost of money.

(a) * * *

(5) The requirements of 31.205-52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.

* * * * *

3. Section 31.205-52 is revised to read as follows:

31.205-52 Asset valuations resulting from business combinations.

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

[FR Doc. 98-4305 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 39**

[FAC 97-04; FAR Case 96-605; Item XV]

RIN 9000-AH55

**Federal Acquisition Regulation;
Modular Contracting**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 5202 of the Information Technology Management Reform Act (ITMRA) of 1996, which encourages maximum practicable use of modular contracting in acquiring information technology. ITMRA is part of the Clinger-Cohen Act of 1996 (Public Law 104-106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405 (202) 501-4755 for information pertaining to

status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst at (202) 501-1900. Please cite FAC 97-04, FAR case 96-605.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed rule with request for comment and notice of public meeting was published in the **Federal Register** (62 FR 14756) on March 27, 1997. Comments were received from four respondents. All comments were considered in the development of the final rule. The final rule differs from the proposed rule by adding in paragraph 39.103(d) "task order contracts" as another example.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while it may affect the structure of certain information technology (IT) acquisition programs, it will not impose any specific cost burden on small entities. The modular contracting approach should slightly benefit small entities, because use of modular contracting techniques should increase the number of business opportunities available to them. When a modular contracting approach is used, large, complex IT systems acquisitions will be divided into smaller, discrete increments that may subsequently be made available to small entities for competition.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 39 is amended as set forth below:

**PART 39—ACQUISITION OF
INFORMATION TECHNOLOGY**

1. The authority citation for 48 CFR Part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 39.002 is amended by adding in alphabetical order the definition of "Modular contracting" to read as follows:

39.002 Definitions.

Modular contracting, as used in this part, means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

* * * * *

3. Section 39.103 is added to read as follows:

39.103 Modular contracting.

(a) This section implements Section 5202, Incremental Acquisition of Information Technology, of the Clinger-Cohen Act of 1996 (Public Law 104-106). Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the Governments need for timely access to rapidly changing technology. Consistent with the agency's information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see 2.101) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

(1) Are easier to manage individually than would be possible in one comprehensive acquisition;

(2) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions;

(4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments; and

(5) Reduce risk of potential adverse consequences on the overall project by

isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and shall conform to the agency's master information technology architecture.

(2) The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to Parts 16 and 17 of the Federal Acquisition Regulations, contracting officers shall select the contract type and method appropriate to the circumstances (e.g., indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with 48 CFR 14.209 or 15.206(e). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

[FR Doc. 98-4306 Filed 2-20-98; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 44, and 52

[FAC 97-04; Item XVI]

Federal Acquisition Regulations; Technical Amendments

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

ACTION: Technical amendments.

SUMMARY: This document makes amendments to Federal Acquisition Regulations in order to update references, and make editorial changes.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

List of Subjects in 48 CFR Parts 1, 44 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201-1 [Amended]

1. Section 1.201-1 is amended in paragraph (b)(2) by adding "Social Security Administration," after "Agency,".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

2. Section 44.204 is amended at the end of paragraph (b) by removing "See also 44.205."

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219-1 [Amended]

3. Section 52.219-1 is amended by revising the date of the provision to read "(FEB 1998)", and in the parentheticals of paragraphs (b)(2) and (b)(3) by removing "block (b)(1) of this section" and adding "paragraph (b)(1) of this provision".

[FR Doc. 98-4307 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97-04 which amends the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-04 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501-4755. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97-04

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95-307	Moss.

LIST OF RULES IN FAC 97-04—Continued

Item	Subject	FAR case	Analyst
II *	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92-054B	Linfield.
III	Review of Procurement Integrity Clauses	97-601	Linfield.
IV	Certificate of Competency	96-002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97-020	Nelson.
VI	OMB Circular No. A-133	97-029	Olson.
VII	SIC Code and Size Standard Appeals	97-026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97-305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95-602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97-039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97-025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95-022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97-303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96-006	Nelson.
XV	Modular Contracting	96-605	Nelson.

Item I—Use of Data Universal Numbering System as the Primary Contractor Identification (FAR Case 95-307)

This final rule amends FAR Subpart 4.6, Contract Reporting, and 52.212-1, Instructions to Offerors—Commercial Items; and adds a new solicitation provision at 52.204-6, Data Universal Numbering System (DUNS) Number; to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). It reflects Dun and Bradstreet procedures for offerors located overseas.

Item II—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92-054B)

The interim rule published as Item V of FAC 90-46 is revised and finalized. The rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements." The final rule differs from the interim rule in that it amends FAR 23.1004 and 52.223-5 to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act of 1986.

Item III—Review of Procurement Integrity Clauses (FAR Case 97-601)

This final rule amends FAR Parts 4 and 52 to revise the application of procurement integrity requirements to contracts for commercial items. The rule amends (1) 4.803 to remove an obsolete requirement for maintenance of a record of persons having access to proprietary or source selection information, (2) the clause at 52.212-4 to add the

procurement integrity provisions of 41 U.S.C. 423 to the list of laws applicable to contracts for commercial items, and (3) the clause at 52.212-5 to remove 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, from the list of FAR clauses required to implement provisions of law or Executive orders. As amended by the Clinger-Cohen Act of 1996, 41 U.S.C. 423 no longer requires that a contract clause specify administrative remedies for procurement integrity violations.

Item IV—Certificate of Competency (FAR Case 96-002)

The interim rule published as Item IX of FAC 97-01 is converted to a final rule with a minor change at 19.302(d). The rule implements revisions made to the Small Business Administration's procurement assistance programs contained in 13 CFR Part 125.

Item V—Applicability of Cost Accounting Standards (CAS) Coverage (FAR Case 97-020)

This final rule amends FAR Parts 12 and 52 to exempt contracts and subcontracts for the acquisition of commercial items from Cost Accounting Standards requirements when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A-133 (FAR Case 97-029)

This final rule amends FAR 15.209 and the associated clause at 52.215-2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A-133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher

learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97-026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97-305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105-135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95-602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212-5, 52.222-35, and 52.222-37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97-039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97-025)

This final rule amends FAR 30.101 and the clauses at 52.230-1 and 52.230-5 to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95-022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97-303)

This interim rule revises FAR 31.205-6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96-006)

This final rule revises FAR 31.205-10(a)(5) and 31.205-52 to conform to changes made to the Cost Accounting Standards regarding the treatment of

gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96-605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104-106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98-4308 Filed 2-20-98; 8:45 am]

BILLING CODE 6820-EP-P