



# Federal Register

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**Tuesday,  
June 6, 2000**

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**Part III**

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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**48 CFR Chapter 1 et al.  
Federal Acquisition Regulations; Final  
Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-18; Introduction**

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

**ACTION:** Summary presentation of final and interim rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97-18. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including

the SECG, is available via 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 97-18 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Rescission of Office of Federal Procurement Policy Letters .....	2000-605	Olson
II	FAR Drafting Principles .....	1999-610	De Stefano
III	Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services .....	1998-015 (98-015)	Linfield
IV	General Records Schedules .....	1999-615	Nelson
V	Federal Supply Schedules Small Business Opportunities .....	1998-609 (98-609)	Nelson
VI	Trade Agreements Thresholds .....	2000-004	Linfield
VII	Restrictions on Acquisitions from Yugoslavia and Afghanistan .....	1999-008	Linfield
VIII	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (Interim) .....	2000-301	Nelson
IX	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 97-18 amends the FAR as specified below:

**Item I—Rescission of Office of Federal Procurement Policy Letters (FAR Case 2000-605)**

This final rule reflects editorial amendments removing unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP) (65 FR 16968, March 30, 2000).

**Item II—FAR Drafting Principles (FAR Case 1999-610)**

This final rule adds Federal Acquisition Regulation drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users. This rule affects all contracting officers who use the FAR. The final rule adds drafting conventions in FAR 1.108 and amends 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

**Item III—Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services (FAR Case 1998-015 (98-015))**

This final rule implements Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. This rule is significant for all contracting officers who buy supplies, including supplies that are furnished under a service contract. The rule rewrites text currently in the FAR based on earlier Executive orders, but reorganizes and relocates some of the text to conform to plain language guidelines for Government writing. The rewrite and reorganization should make the text easier to use and understand. The revisions also emphasize Executive branch policies for the acquisition of products containing recovered material and other environmentally preferable products and services. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;
- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to

clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror's product meets requirements for recycled content or related standards;

- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed \$100,000; and
- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

**Item IV—General Records Schedules (FAR Case 1999-615)**

This final rule implements National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998. This rule affects all contracting officers. The rule—

- Rewrites and reorganizes the text already in the FAR to make it easier to understand.
- Simplifies the retention table by grouping several categories of records that were previously treated as separate records under more generic record categories (e.g., the contract file or the contract administration records).
- Deletes separate retention policy on signed original justifications and approvals, determinations and findings,

and rejected engineering change proposals. Those records are retained with the contract files shown in blocks 2 through 7 of the new retention table.

- Deletes the separate retention period for contract status, expediting, and production surveillance records. Those records are retained with the contract administration records shown in block 7 of the new retention table.

**Item V—Federal Supply Schedules Small Business Opportunities (FAR Case 1998–609) (98–609))**

This final rule amends the Federal Acquisition Regulation to ensure that small businesses holding contracts under the Federal Supply Schedules are afforded the maximum practicable opportunity to compete for and receive FSS purchases. This rule affects all ordering offices which place orders under Federal Supply Schedule contracts. The rule—

- Encourages ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order.

- Amends FAR Subpart 38.1 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before issuance of a solicitation.

- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

**Item VI—Trade Agreements Thresholds (FAR Case 2000–004)**

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11, and the clauses at 52.225–11 and 52.225–12 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000. Contracting Officers must review the new thresholds when acquiring supplies, services, or construction, in order to select the appropriate contract clauses to implement the Buy American Act, Balance of Payments Program, trade agreements, and sanctions of European

Union country end products and services.

**Item VII—Restrictions on Acquisitions from Yugoslavia and Afghanistan (FAR Case 1999–008)**

This final rule amends FAR Subpart 25.7, section 25.1103, and the associated clauses at 52.212–5, 52.213–4, and 52.225–13, to implement Executive Orders 13121 and 13129. These Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

This rule primarily affects contracting officers making purchases overseas, for overseas use, because the Treasury Department already prohibits import of these restricted goods and services into the United States. The rule is particularly beneficial to contracting officers facing unusual circumstances overseas (such as location within a restricted territory), explicitly providing an exception for such circumstances.

**Item VIII—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000–301)**

This interim rule amends FAR Part 30, Cost Accounting Standards Administration, and the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with Cost Accounting Standards. The rule—

- Amends the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million (“trigger contract”) to be subject to full CAS coverage, since

the CAS Board removed this “trigger contract” amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201–3. The CAS Board established a new “trigger contract” dollar amount of \$7.5 million in the CAS applicability section of its regulations (48 CFR 9903.201–1) rather than in its solicitation provision. Since FAR 30.201–1 already references this section, no FAR changes were required to address the new “trigger contract” dollar amount;

- Increases the dollar threshold for full CAS coverage from \$25 million to \$50 million; and

- Adds procedures and conditions for agency waiver of the applicability of CAS.

**Item IX—Technical Amendments**

These amendments update references and make editorial changes at sections 3.303, 5.204, 47.504, 49.601–1, and 49.601–2.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 97–18 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–18 are effective June 6, 2000 except for Item VII which is effective July 6, 2000 and items II, III, IV, and V which are effective August 7, 2000. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: May 26, 2000.

**R.D. Kerrins, Jr., Col, USA,**

*Acting Director, Defense Procurement.*

Dated: May 26, 2000.

**Edward C. Loeb,**

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

Dated: May 25, 2000.

**Anne Guenther,**

*Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 00–13816 Filed 6–1–00; 3:58 pm]

**BILLING CODE 6820–EP–P**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 15, 22, 35, 37, and 42

[FAC 97-18; FAR Case 2000-605; Item I]

RIN 9000-A180

Federal Acquisition Regulation; Rescission of Office of Federal Procurement Policy Letters

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make editorial amendments that remove unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP).

DATES: Effective Date: June 6, 2000.

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) 501-0692. Please cite FAC 97-18, FAR case 2000-605.

SUPPLEMENTARY INFORMATION:

A. Background

OFPP published a notice in the Federal Register at 65 FR 16968, March 30, 2000, that rescinded 22 OFPP policy letters. The rescission of these 22 policy letters reflected OFPP's conclusion that the Federal Acquisition Regulation (FAR) contains the current policies. Any policies embodied in OFPP policy letters rescinded by the notice that are not reflected in the FAR either have been superseded by subsequent statutory changes or are otherwise no longer necessary. The OFPP Federal Register notice rescinded OFPP Policy Letters 77-2, 78-2, 78-3, 78-4, 79-1, 79-2, 80-3, 80-6, 80-8, 81-1, 81-2, 82-1, 83-1, 83-2, 83-3, 84-1, 85-1, 89-1, 91-2, 91-4, 92-5, and 95-1. Although the notice required no substantive FAR change, cross-references in the FAR to those rescinded policy letters are no longer necessary or appropriate. This

final rule makes editorial amendments to the FAR to remove those cross-references.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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, the Council will consider comments from small entities concerning the affected FAR subparts 1, 9, 15, 22, 35, 37, and 42 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAC 97-18, FAR case 2000-605), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 1, 9, 15, 22, 35, 37, and 42

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 15, 22, 35, 37, and 42 as set forth below:

1. The authority citation for 48 CFR parts 1, 9, 15, 22, 35, 37, and 42 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. In section 1.103, revise paragraph (a) to read as follows:

1.103 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83.

\* \* \* \* \*

PART 9—CONTRACTOR QUALIFICATIONS

3. In section 9.500, revise paragraph (c) to read as follows:

9.500 Scope of subpart.

\* \* \* \* \*

(c) Implements section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100-463, 102 Stat. 2270-47 (1988).

PART 15—CONTRACTING BY NEGOTIATION

15.304 [Amended]

4. In section 15.304, amend paragraph (c)(3)(iv) by removing "(OFPP Policy Letter 92-5)".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1101 [Amended]

5. Amend section 22.1101 by removing the second, third, and fourth sentences.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.000 [Amended]

6. Amend section 35.000 by removing paragraph (c).

PART 37—SERVICE CONTRACTING

7. Amend section 37.503 by revising paragraph (c) to read as follows:

37.503 Agency-head responsibilities.

\* \* \* \* \*

(c) Specific procedures are in place before contracting for services to ensure compliance with OFPP Policy Letter 92-1, Inherently Governmental Functions; and

\* \* \* \* \*

37.600 [Amended]

8. Amend section 37.600 by removing the last sentence.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.002 [Amended]

9. Amend section 42.002 in paragraph (a) by removing the parenthetical at the end of the sentence.

42.1500 [Amended]

10. Amend section 42.1500 by removing the second sentence.

[FR Doc. 00-13817 Filed 6-1-00; 3:58 pm]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 1 and 52**

[FAC 97-18; FAR Case 1999-610; Item II]

RIN 9000-A166

**Federal Acquisition Regulation; FAR  
Drafting Principles**

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add FAR drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users.

**DATES:** *Effective Date:* August 7, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

**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. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-18, FAR case 1999-610.

**SUPPLEMENTARY INFORMATION:****A. Background**

The final rule amends FAR Parts 1 and 52 to enhance a common understanding of how the FAR is drafted. The final rule adds FAR 1.108 and amends 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on January 26, 2000 (65 FR 4346). Three respondents provided public comments. The Councils considered all the comments in the development of the final rule. The final rule revises the proposed rule as follows:

- FAR 1.108(d)(2) to clarify that contracting officers must not award or modify contracts to include the FAR change until the effective date of the FAR change.

- FAR 1.108(e) to include Executive orders, Office of Management and Budget policy letters, and Code of Federal Regulations citations.

- **Editorial changes throughout for clarity.**

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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 only addresses drafting principles and does not impose any additional requirements on Government offerors or contractors. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on January 26, 2000 (65 FR 4346).

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 1 and 52**

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 52 as set forth below:

1. The authority citation for 48 CFR parts 1 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. Amend section 1.105-2 by revising paragraphs (a) and (b)(2) to read as follows:

**1.105-2 Arrangement of regulations.**

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) \* \* \*

(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence: (a)(1)(i)(A)(1)(i).

\* \* \* \* \*

3. Add section 1.108 to read as follows:

**1.108 FAR conventions.**

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in Part 2 apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see 1.102-4(b)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the Code of Federal Regulations, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.101 in paragraph (a) by revising the definition “Substantially as follows”; and by revising paragraph (d) to read as follows:

### 52.101 Using Part 52.

(a) \* \* \*

*Substantially as follows or substantially the same as*, when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition. Any variation must include the salient features of the FAR provision or clause, and must be consistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

\* \* \* \* \*

(d) *Introductory text.* Within Subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

\* \* \* \* \*

5. Amend section 52.104 by revising paragraph (a) to read as follows:

### 52.104 Procedures for modifying and completing provisions and clauses.

(a) The contracting officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) “The contracting officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause”; or

(2) “The contracting officer may substitute the words ‘task order’ for the word ‘Schedule’ wherever that word appears in the clause.”

\* \* \* \* \*

6. Amend section 52.105 by revising paragraph (a) to read as follows:

### 52.105 Procedures for using alternates.

(a) The FAR accommodates a major variation in a provision or clause by use of an alternate. The FAR prescribes alternates to a given provision or clause in the FAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled “Alternate I,” “Alternate II,” “Alternate III,” etc.

\* \* \* \* \*

7. Revise section 52.200 to read as follows:

### 52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)) and gives a cross-reference to the location in the FAR that prescribes the provision or clause.

[FR Doc. 00–13818 Filed 6–1–00; 3:59 pm]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

[FAC 97–18; FAR Case 1998–015 (98–015); Item III]

RIN 9000–AI49

### Federal Acquisition Regulation; Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998.

**DATES:** *Effective Date:* August 7, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

**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 97–18, FAR case 1998–015.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 64 FR 51656, September 23, 1999. Seven respondents provided public comments. We considered all comments in finalizing the rule.

This rule amends the FAR to implement E.O. 13101. The rule amends guidance in FAR Subpart 7.1, 11.002(d), Subpart 23.4, Subpart 23.7, and the FAR clauses at 52.223–9 and 52.223–10 to conform with E.O. 13101 and the Resource Conservation and Recovery Act. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;
- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror’s product meets requirements for recycled content or related standards;
- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed \$100,000; and
- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. Interested parties may obtain a copy of the a Final Regulatory Flexibility Analysis (FRFA) from the FAR Secretariat.

The Councils’ prepared FRFA is summarized as follows:

The objective of the rule is to improve the Government’s use of recycled products and environmentally preferable products and services. E.O. 13101 requires revision of the Federal Acquisition Regulation to prescribe policies for the acquisition and use of environmentally preferable products and services through procurement preference programs favoring the purchase of these products and services. The rule primarily affects the internal operating procedures of Government agencies. The provisions affecting small entities are the requirements at FAR 23.705, 52.223–9, and 52.223–10. These provisions of the rule will apply to all Government contractors, both large and small businesses.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000-0134. The final rule reduces the annual reporting burden for OMB Control Number 9000-0134 estimated at 32,175 hours. This estimate was based on 64,350 respondents and a preparation time estimated at .5 hour per response. In the proposed rule, we estimated that removal of the certification requirement would affect more than one-half of the respondents and reduce preparation time for those respondents by one-third. No comments were received on this estimate.

As a result, we estimate the revised annual reporting burden to be as follows:

*Respondents:* 64,350;

*Responses per respondent:* 1;

*Total annual responses:* 64,350;

*Preparation hours per response:* 25 minutes;

*Total response burden hours:* 26,800.

#### List of Subjects in 48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, 11, 13, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 7, 11, 13, 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Energy-efficient product", "Environmentally preferable", "Pollution prevention", "Recovered material", "Virgin material", and "Waste reduction" to read as follows:

##### 2.101 Definitions.

\* \* \* \* \*

*Energy-efficient product* means a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard.

*Environmentally preferable* means products or services that have a lesser

or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

\* \* \* \* \*

*Pollution prevention* means any practice that—

(a)(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(b) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(c) Protects natural resources by conservation.

\* \* \* \* \*

*Recovered material* means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in Subpart 11.3 for paper and paper products, see the definition at 11.301.

\* \* \* \* \*

*Virgin material* means—

(a) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(b) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

*Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

#### PART 4—ADMINISTRATIVE MATTERS

##### 4.301 [Removed]

##### 4.302–4.304 [Redesignated as 4.301–4.303].

3. Amend Subpart 4.3 by removing section 4.301 and redesignating sections 4.302 through 4.304 as sections 4.301 through 4.303, respectively; and by revising the newly designated sections to read as follows:

##### Subpart 4.3—Paper Documents

\* \* \* \* \*

##### 4.301 Definition.

*Printed or copied double-sided*, as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

##### 4.302 Policy.

When electronic commerce methods (see 4.502) are not being used, a contractor should submit paper documents to the Government relating to an acquisition printed or copied double-sided on recycled paper whenever practicable. If the contractor cannot print or copy double-sided, it should print or copy single-sided on recycled paper.

##### 4.303 Contract clause.

Insert the clause at 52.204-4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.

#### PART 7—ACQUISITION PLANNING

4. Amend section 7.103 by revising paragraph (n) to read as follows:

##### 7.103 Agency-head responsibilities.

(n) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the minimum content standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see 11.303); and

(2) Comply with the policy in 11.002(d) regarding procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services.

#### PART 11—DESCRIBING AGENCY NEEDS

##### 11.001 [Amended]

5. Amend section 11.001 by removing the definitions "Recovered material" and "Virgin material."

6. Amend section 11.002 by revising paragraph (d) to read as follows:

##### 11.002 Policy.

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 12902 of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities, and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establish requirements for the procurement of products containing recovered

materials, and environmentally preferable and energy-efficient products and services. Executive agencies must consider use of recovered materials, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see 23.703(b)) when—

(1) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions), and standards;

(2) Describing Government requirements for supplies and services; and

(3) Developing source selection factors.

7. Subpart 11.3, consisting of sections 11.301 and 11.302, is revised, and sections 11.303 and 11.304 are added to read as follows:

### Subpart 11.3—Acceptable Material

#### 11.301 Definitions.

As used in this subpart—

*Postconsumer material* means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-use as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ overruns, converters’ scrap, and over-issue publications.

*Recovered material* for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber.

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting

from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

#### 11.302 Policy.

(a) Agencies must not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b)(1) When acquiring other than commercial items, agencies must require offerors to identify used, reconditioned, or remanufactured supplies; or unused former Government surplus property proposed for use under the contract. These supplies or property may not be used in contract performance unless authorized by the contracting officer.

(2) When acquiring commercial items, the contracting officer must consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property proposed for use under the contract. The request for the information must be included in the solicitation, and to the maximum extent practicable must be limited to information or standards consistent with normal commercial practices.

(c) When the contracting officer needs additional information to determine whether supplies meet minimum recovered material standards stated in the solicitation, the contracting officer may require offerors to submit additional information on the recycled content or related standards. The request for the information must be included in the solicitation. When acquiring commercial items, limit the information to the maximum extent practicable to that available under normal commercial practices.

#### 11.303 Special requirements for printing and writing paper.

(a) Section 505 of Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establishes minimum recovered material content standards for agency purchases of printing and writing paper. Section 505 requires that 100 percent of an agency’s

purchases of printing and writing paper must meet or exceed one of the minimum content standards specified in paragraph (b) of this section.

(b) For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent postconsumer materials. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase paper containing no less than 20 percent postconsumer material.

#### 11.304 Contract clause.

Insert the clause at 52.211–5, Material Requirements, in solicitations and contracts for supplies that are not commercial items.

### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

8. Amend section 13.005 by revising paragraph (a)(5) to read as follows:

#### 13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

\* \* \* \* \*

(a) \* \* \*

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds \$100,000.)

\* \* \* \* \*

9. Amend section 13.006 by revising paragraph (g) to read as follows:

#### 13.006 Inapplicable provisions and clauses.

\* \* \* \* \*

(g) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

10. Amend section 13.201 by adding paragraph (f) to read as follows:

#### 13.201 General.

\* \* \* \* \*

(f) The procurement requirements in the Resource Conservation and Recovery Act (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, apply to purchases at or below the micro-purchase threshold (see Subpart 23.4).



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

11. Revise section 23.400 to read as follows:

**23.400 Scope of subpart.**

This subpart prescribes policies and procedures for acquiring Environmental Protection Agency (EPA)—designated products through affirmative procurement programs required by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

**23.401 and 23.402 [Redesignate as 23.402 and 23.401]**

12. Redesignate sections 23.401 and 23.402 as 23.402 and 23.401, respectively.

13. Revise the newly designated sections 23.401 and 23.402 to read as follows:

**23.401 Definition.**

*EPA-designated product*, as used in this subpart, means a product—

- (1) That is or can be made with recovered material;
- (2) That is listed by EPA in a procurement guideline (40 CFR part 247); and
- (3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

**23.402 Authorities.**

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, requires agencies responsible for drafting or reviewing specifications used in agency acquisitions to—

- (1) Eliminate from those specifications any requirement excluding the use of recovered materials or requiring products to be manufactured from virgin materials; and
- (2) Require, for EPA-designated products, using recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item.

(b) RCRA also requires—

- (1) EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated products, including solid waste management services; and
- (2) Agencies to develop and implement affirmative procurement programs for EPA-designated products within 1 year after EPA's designation.

(c) Executive Order 13101 requires that the agency head—

(1) Work to increase and expand markets for recovered materials through greater Government preference and demand for such products consistent with the demands of efficiency and cost-effectiveness; and

(2) Develop and implement affirmative procurement programs in accordance with direction in RCRA and the Executive order.

14. Revise section 23.403 to read as follows:

**23.403 Policy.**

Government policy on the use of recovered materials considers cost, availability of competition, and performance. The objective is to acquire competitively, in a cost-effective manner, products that meet reasonable performance requirements and that are composed of the highest percentage of recovered materials practicable.

**23.404–23.405 [Redesignated as 23.405 and 23.406]**

15. Redesignate sections 23.404 and 23.405 as 23.405 and 23.406, respectively; add a new section 23.404; and revise the redesignated sections to read as follows:

**23.404 Agency affirmative procurement programs.**

(a) For EPA-designated products, an agency must establish an affirmative procurement program, if the agency's purchases meet the threshold in 23.405(a). Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs. Agency affirmative procurement programs must include—

- (1) A recovered materials preference program;
- (2) An agency promotion program;
- (3) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and
- (4) Annual review and monitoring of the effectiveness of the program.

(b) Agency affirmative procurement programs must require that 100 percent of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

- (1) Competitively within a reasonable time frame;
- (2) Meeting appropriate performance standards; or
- (3) At a reasonable price.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated products

at or below the micro-purchase threshold.

**23.405 Procedures.**

(a) These procedures apply to all agency acquisitions of EPA-designated products, including micro-purchases, if—

(1) The price of the product exceeds \$10,000; or

(2) The aggregate amount paid for products, or for functionally equivalent products, in the preceding fiscal year was \$10,000 or more. RCRA requires that an agency include micro-purchases in determining if the aggregate amount paid was \$10,000 or more. However, it is not recommended that an agency track micro-purchases unless it intends to claim an exemption from the requirement to establish an affirmative procurement program in the following fiscal year.

(b) Contracting officers should refer to EPA's list of EPA-designated products (available via the Internet at <http://www.epa.gov/cpg/>) and to their agencies' affirmative procurement programs when purchasing supplies that contain recovered material or services that could include supplies that contain recovered material.

(c) The contracting officer must place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not contain recovered material. If the agency has designated an Environmental Executive, the contracting officer must give a copy of the written justification to that official. The contracting officer must base the justification on the inability to acquire the product—

(1) Competitively within a reasonable period of time;

(2) At reasonable prices; or

(3) To reasonable performance standards in the specifications, provided a written determination by technical or requirements personnel of the performance standard's reasonableness is included with the justification. The technical and requirements personnel must base their determination on National Institute of Standards and Technology guidelines, if available.

(d) Agencies must establish procedures for consolidating and reporting contractor estimates required by the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

**23.406 Solicitation provision and contract clause.**

(a) Insert the provision at 52.223–4, Recovered Material Certification, in

solicitations that are for, or specify the use of, recovered materials.

(b) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding \$100,000 that include the provision at 52.223-4. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

16. Redesignate section 23.701 as 23.700 and revise the section heading; and add a new 23.701 to read as follows:

**23.700 Scope.**

\* \* \* \* \*

**23.701 Definition.**

*Biobased product*, as used in this subpart, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

17. Amend section 23.702 by removing paragraph (d); redesignate paragraphs (e) and (f) as (d) and (e) and revise; and add a new paragraph (f) to read as follows:

**23.702 Authorities.**

\* \* \* \* \*

(d) Executive Order 12856, of August 3, 1993, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.

(e) Executive Order 12902, of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities.

(f) Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

**23.703 [Removed]**

**23.704-23.706 [Redesignated as 23.703-23.705]**

18. Remove section 23.703 and redesignate sections 23.704 through 23.706 as 23.703 through 23.705, respectively.

19. Revise the newly designated sections 23.703 through 23.705 to read as follows:

**23.703 Policy.**

Agencies must—

(a) Implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services; and

(b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

(1) Maximize the utilization of environmentally preferable products

and services (based on EPA-issued guidance).

(2) Maximize the utilization of energy-efficient products.

(3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promote the use of nonhazardous and recovered materials.

(5) Realize life-cycle cost savings.

(6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

(7) Consider the use of biobased products.

**23.704 Application to Government-owned or -leased facilities.**

Executive Order 13101, Section 701, requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement programs required by 42 U.S.C. 6962 for all products designated in EPA's Comprehensive Procurement Guideline (40 CFR part 247).

**23.705 Contract clause.**

Insert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

20. Revise the section heading and text of 52.204-4 to read as follows:

**52.204-4 Printed or Copied Double-Sided on Recycled Paper.**

As prescribed in 4.303, insert the following clause:

**Printed or Copied Double-Sided on Recycled Paper (August 2000)**

(a) *Definitions.* As used in this clause—  
*Postconsumer material* means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer

fiber" defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

*Printed or copied double-sided* means printing or reproducing a document so that information is on both sides of a sheet of paper.

*Recovered material*, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards. (End of clause)

21. Amend section 52.211-5 by revising the introductory text, the date of the clause, the definitions "Recovered

material” and “Virgin material”, and paragraphs (b) and (e) to read as follows:

#### 52.211-5 Material Requirements.

As prescribed in 11.304, insert the following clause:

#### MATERIAL REQUIREMENTS (August 2000)

(a) \* \* \*

\* \* \* \* \*

*Recovered material* means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

\* \* \* \* \*

*Virgin material* means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

\* \* \* \* \*

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.  
(End of clause)

22. Amend section 52.212-5 by revising the date of the clause; by redesignating paragraphs (b)(16) through (b)(26) as (b)(17) through (b)(27), respectively; and by adding a new paragraph (b)(16) 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 (August 2000)

\* \* \* \* \*

(b) \* \* \*

(16)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

\* \* \* \* \*

#### 52.223-4 [Amended]

23. Amend the introductory text of section 52.223-4 by revising the citation “23.405(a)” to read “23.406(a)”.

24. Revise the section heading and text of 52.223-9 to read as follows:

#### 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

As prescribed in 23.406(b), insert the following clause:

#### Estimate of Percentage of Recovered Material Content for EPA-Designated Products (August 2000)

(a) *Definitions.* As used in this clause—  
*Postconsumer material* means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

*Recovered material* means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to  
[Contracting Officer  
complete in accordance with agency  
procedures].  
(End of clause)

*Alternate I (August 2000).* As prescribed in 23.406(b), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

#### Certification

I, \_\_\_\_\_ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

(Signature of the Officer or Employee)

(Typed Name of the Officer or Employee)

(Title)

(Name of Company, Firm, or Organization)

(Date)

(End of certification)

25. Revise section 52.223-10 to read as follows:

#### 52.223-10 Waste Reduction Program.

As prescribed in 23.705, insert the following clause:

#### Waste Reduction Program (August 2000)

(a) *Definitions.* As used in this clause—  
*Recycling* means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials

in the manufacture of products other than fuel for producing heat or power by combustion.

*Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

*Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).  
(End of clause)

[FR Doc. 00-13819 Filed 6-1-00; 3:59 pm]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 4

[FAC 97-18; FAR Case 1999-615; Item IV]

RIN 9000-AI77

### Federal Acquisition Regulation; General Records Schedules

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the revised National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998.

**DATES:** *Effective Date:* August 7, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

**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 K. Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-18, FAR case 1999-615.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The intent of the update was to align the FAR text with the revised NARA Schedule 3.

The rule—

- Amends FAR 4.705-2 and revises 4.805 to align the text with the new NARA Schedule 3;
- Revises and rearranges the table at FAR 4.805(b) to group similar types of contract instruments together (e.g., construction contracts and related case files, and unsuccessful offers and proposals); and
- Reorganizes and revises the FAR text for ease of use. The rule is written using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1999.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-18, FAR case 1999-615), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 4**

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

**PART 4—ADMINISTRATIVE MATTERS**

1. The authority citation for 48 CFR part 4 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. Amend section 4.705-2 by revising the section heading and paragraph (a) to read as follows:

**4.705-2 Construction contracts pay administration records.**

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 3 years after completion of contract, unless contract performance is the subject of enforcement action.

\* \* \* \* \*

3. Revise section 4.800 to read as follows:

**4.800 Scope of subpart.**

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files.

4. Revise section 4.805 to read as follows:

**4.805 Storage, handling, and disposal of contract files.**

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. Agency procedures for contract file disposal must include provisions that the documents specified in paragraph (b) of this section may not be destroyed before the times indicated, and may be retained longer if the responsible agency official determines that the files have future value to the Government. When

original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part. The retention periods for acquisitions at or below the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used small purchase procedures. The retention periods for acquisitions above the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used other than small purchase procedures.

Document	Retention period
(1) Records pertaining to Contract Disputes Act actions.	6 years and 3 months after final action or decision for files created prior to October 1, 1979. 1 year after final action or decision for files created on or after October 1, 1979.
(2) Contracts (and related records or documents, including successful proposals) exceeding the simplified acquisition threshold for other than construction.	6 years and 3 months after final payment.
(3) Contracts (and related records or documents, including successful proposals) at or below the simplified acquisition threshold for other than construction.	3 years after final payment.
(4) Construction contracts:	
(i) Above \$2,000	6 years and 3 months after final payment.
(ii) \$2,000 or less	3 years after final payment.

Document	Retention period	Document	Retention period
(iii) Related records or documents, including successful proposals, except for contractor's payrolls (see (b)(4)(iv)).	Same as contract file.	(10) Investigations, cases pending or in litigation (including protests), or similar matters.	Until final clearance or settlement, or, if related to a document identified in (b)(1)-(9), for the retention period specified for the related document, whichever is later.
(iv) Contractor's payrolls submitted in accordance with Department of Labor regulations, with related certifications, anti-kickback affidavits, and other related papers.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.	[FR Doc. 00-13820 Filed 6-1-00; 4:00 pm] <b>BILLING CODE 6820-EP-P</b>	
(5) Solicited and unsolicited unsuccessful offers, quotations, bids, and proposals: (i) Relating to contracts above the simplified acquisition threshold.	If filed separately from contract file, until contract is completed. Otherwise, the same as related contract file.	<b>DEPARTMENT OF DEFENSE</b> <b>GENERAL SERVICES ADMINISTRATION</b> <b>NATIONAL AERONAUTICS AND SPACE ADMINISTRATION</b>  <b>48 CFR Parts 8 and 38</b> <b>[FAC 97-18; FAR Case 1998-609 (98-609); Item V]</b> <b>RIN 9000-AI48</b> <b>Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities</b>	
(ii) Relating to contracts at or below the simplified acquisition threshold.	1 year after date of award or until final payment, whichever is later.	<b>AGENCIES:</b> Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA). <b>ACTION:</b> Final rule.  <b>SUMMARY:</b> The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to enhance the participation of small business concerns under the Federal Supply Schedules (FSS) program. <b>DATES:</b> <i>Effective Date:</i> August 7, 2000. <i>Applicability Date:</i> The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000. <b>FOR FURTHER INFORMATION CONTACT:</b> 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 97-18, FAR case 1998-609. <b>SUPPLEMENTARY INFORMATION:</b> <b>A. Background</b> The rule— • Amends FAR subpart 8.4 to encourage ordering offices to consider the availability of small business	
(6) Files for canceled solicitations.	5 years after cancellation.		
(7) Other copies of procurement file records used by component elements of a contracting office for administrative purposes.	Upon termination or completion.		
(8) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.		
(9) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements other than simplified acquisitions, and information required under 4.601.	5 years after submittal to FPDS.		

concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order;

- Amends FAR Part 38 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before a solicitation is issued; and
- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on September 14, 1999 (64 FR 49948). Thirty-two respondents submitted public comments. We considered all comments and converted the proposed rule to a final rule with minor changes.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Because this rule may impact small businesses, we are providing the FRFA in its entirety as follows:

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria stated in 5 U.S.C. 604.

##### 1. Statement of need for, and objectives of, the rule.

The purpose of this rule is to promote the growth of Federal procurement sales opportunities for small business concerns under the Federal Supply Schedules. The rule amends FAR Subparts 8.4 and 38.1 to encourage ordering offices to consider small business concerns, if available, when conducting evaluations before placing an order. The rule also recognizes the recent change made by the Small Business Administration requiring inclusion of Federal Supply Schedule orders in agencies' small business goals. Effective fiscal year 1999, agencies must include the dollar value of orders expected to be placed against the General Services Administration's (GSA) Federal Supply Service (FSS) Schedules and report accomplishments against those goals.

##### 2. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

We received one public comment that specifically addressed the Initial Regulatory Flexibility Analysis. The public comment expressed concerns that the data presented

did not adequately detail the impact the rule will have on small business concerns. Specifically, the respondent stated that although well represented in the Federal Supply Schedule program, small Federal Supply Schedule contractors cannot adequately compete with large Federal Supply Schedule contractors. In response, it is important to note that while sales under the program have increased to large businesses, sales to small businesses have increased as well. The Federal Supply Schedule program recognizes that in certain instances small business may not have the capability to meet some requirements of Federal agencies. However, the program permits schedule contractors to team with other schedule contractors to provide a solution to meet agency needs. A team can be any combination of large and small businesses. Therefore, small businesses can compete against large businesses by forming teams that can provide supplies and services tailored to address agency needs. The Federal Supply Schedules program is one of the most successful Government procurement programs; a program where small businesses can experience continuous growth.

We did not change the rule as a result of the comment. The rule encourages ordering offices to consider the availability of small business concerns under the schedule when conducting evaluations before placing an order. The preference for awarding an order to a small business "when two or more items at the same delivered price" will continue to apply. This final rule is intended to be beneficial by expanding small business consideration under Federal Supply Schedule orders.

3. *Description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.*

This rule will apply to all small business concerns under the Federal Supply Schedules program. Although the rule pertains to internal Government procedures, it is intended to increase the number of orders for supplies and services placed by the Government with small business concerns. Based on "Small Business Vital Statistics" found on SBA's homepage ([www.sba.gov/aboutsba/](http://www.sba.gov/aboutsba/)), SBA estimated that there are approximately 23 million small businesses in the United States that provide 47 percent of all sales in the country. Clearly, not all of the businesses that are considered small seek to participate in the Federal Supply Schedules program. However, according to fiscal year 1999 statistical data maintained by GSA's Federal Supply Service, small business concerns hold 5,705 national scope schedule contracts out of a total population of 7,431 national scope schedule contracts. Thus, approximately 77 percent of the schedule contractors are small business concerns. In fiscal year 1999, small business schedule contractors received approximately \$3.2 billion or 31 percent of total schedule sales. This exceeds the current Governmentwide small business goal. During fiscal year 1998, 4,900 small businesses held contracts out of a total of 7,000 national scope schedule contracts. Small business sales in 1998 were \$2.5 billion or 33 percent of total schedule

sales. Between fiscal year 1998 and fiscal year 1999, the number of small businesses holding FSS contracts increased 6 percent and small business sales increased 28 percent. The increased sales to small businesses total almost 3/4 of a billion dollars. SBA reports that in 1998 the small business share of all Federal prime contract dollars dropped to 20.6 percent. Clearly, small businesses are receiving a greater market share under the schedules.

The General Services Administration (GSA) has radically restructured the schedules program over the past 4 years. GSA has streamlined both contracting and ordering processes for industry and for Government users of the program. The changes made to the program over the last 4 years provide small business vendors easy access to the Federal community and provide users with streamlined procedures. The procedures give small business contractors the opportunity to fairly compete within the broader universe of schedule contractors. These changes ensure that ordering activities have the broad discretion, and effective and flexible business solutions, to meet agency requirements. The rule also supports continued increases in small business sales.

4. *Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

There are no projected reporting, recordkeeping, or other compliance requirements.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

We considered various alternative approaches, as well as the adverse and beneficial impacts upon large businesses, small business, and the Government. One alternative that we considered was to apply small business set-asides to the FSS ordering process, including mandatory application of the rule of two for orders at certain dollar thresholds. Another alternative we considered was to allow agencies, at their discretion, to limit consideration of schedule orders to small business concerns. A third alternative we considered was to set-aside a significant number of Federal Supply Schedules for small businesses by applying the rule of two. However, contracting officers under the FSS program already issue solicitations that comply with the requirements of FAR Parts 5, 6, and 19. Determinations regarding small business set-asides are made during acquisition planning and solicitation preparation. All schedule solicitations must be reviewed by the Small Business Administration Procurement Center Representative (PCR) before issuance. For the reasons provided, we considered these alternatives inappropriate for adoption.

We determined that the alternatives offered by respondents to the proposed rule would be detrimental to the effectiveness and flexibility of the schedules program. We are converting the proposed rule to a final rule because it enhances the participation of small business in the Federal Supply Schedules program and provides a mechanism to increase the sales to small business under the FSS program.

The rule encourages ordering offices to consider the availability of small business concerns under the schedule and when conducting evaluations before placing an order. We expect sales to small businesses under the Federal Supply Schedules to increase because agencies are encouraged to include small business when conducting evaluations for an order and because agencies may credit small business schedule orders towards agency small business goals. The rule also ensures that all sectors of the economy may participate in the Federal Supply Schedules program. After we publish the final rule, we will track sales to verify if this rule has a positive impact on small business.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 8 and 38

Government procurement.

Dated: May 26, 2000.

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 38 as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Revise section 8.402 to read as follows:

#### 8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. Occasionally, GSA may establish special ordering procedures. The affected Federal Supply Schedules will outline these procedures.

3. In section 8.404—  
a. Revise paragraph (a);

- b. Remove from paragraph (b)(1) "Ordering Offices can place" and add "Place" in its place;
- c. Revise the introductory text of paragraph (b)(2);
- d. Revise paragraph (b)(2)(i);
- e. Remove from the last sentence of the introductory text of paragraph (b)(3) ", ordering offices shall";
- f. Revise paragraph (b)(3)(i);
- g. Revise the first sentence in paragraph (b)(3)(iii); and
- h. Revise paragraphs (b)(4), (b)(5), and (b)(6) to read as follows:

#### 8.404 Using schedules.

(a) *General.* Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303-2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, ordering offices need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) \* \* \*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.404(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, the ordering office may consider—

(i) Special features of the supply or service required for effective program performance;

\* \* \* \* \*

(3) \* \* \*

(i) Review additional schedule contractors' catalogs or pricelists, or use the "GSA Advantage!" on-line shopping service;

\* \* \* \* \*

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). \* \* \*

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303-2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offer the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, women-owned small, and/or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

\* \* \* \* \*

#### PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

4. Revise section 38.101 to read as follows:

##### 38.101 General.

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3)(A), provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48

contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (e.g., Parts 5, 6, and 19). The requirements of Parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule solicitation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

[FR Doc. 00-13821 Filed 6-1-00; 4:00 pm]

BILLING CODE 6820-EP-P

#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Parts 25 and 52

[FAC 97-18; FAR Case 2000-004; Item VI]

RIN 9000-A178

##### Federal Acquisition Regulation; Trade Agreements Thresholds

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement

(NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000.

**DATES:** *Effective Date:* June 6, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

**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 97-18, FAR case 2000-004.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000.

The rule also amends the clauses at FAR 52.225-11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, and 52.225-12, Notice of Buy American Act—Balance of Payments Program Requirements—Construction Materials under Trade Agreements. This rule revises Alternate I to FAR 52.225-11, because the threshold for NAFTA construction is now higher than the threshold for TAA construction, and adds the corresponding alternate to 52.225-12.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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, the Councils will consider comments from small entities concerning the affected FAR subparts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-18, FAR case 2000-004), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies. However, the Councils' amendments to the FAR do not change information collection requirements previously approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The approved OMB clearances for the affected clauses are 9000-0022, 9000-0023, 9000-0024, 9000-0025, 9000-0130, and 9000-0141.

**List of Subjects in 48 CFR Parts 25 and 52**

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION**

2. In section 25.202, revise paragraph (c) to read as follows:

**25.202 Exceptions.**

\* \* \* \* \*

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$6,806,000 or more, see 25.403. If the acquisition value is \$7,068,419 or more, also see 25.405.

3. In section 25.403, revise paragraph (b)(1) to read as follows:

**25.403 Trade Agreements Act.**

\* \* \* \* \*

(b) *Thresholds.* (1) Except as provided in 25.401, the Trade Agreements Act applies to an acquisition for supplies or services if the estimated value of the acquisition is \$177,000 or more; the Trade Agreements Act applies to an acquisition for construction if the estimated value of the acquisition is \$6,806,000 or more. These dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years (see Executive Order 12260).

\* \* \* \* \*

**25.405 [Amended]**

4. Amend section 25.405 as follows:  
a. In paragraph (a) remove "\$53,150" and add "\$54,372" in its place;  
b. In paragraph (b) remove "\$6,909,500" and add "\$7,068,419" in its place; and  
c. In paragraph (c) remove "\$53,150" and "\$6,909,500" and add in their

places "\$54,372" and "\$7,068,419", respectively.

**25.601 [Amended]**

5. Amend paragraph (a) of section 25.601 as follows:

- a. In paragraph (a)(1) remove "\$186,000" and add "\$177,000" in its place;
- b. In paragraph (a)(2) remove "\$7,143,000" and add "\$6,806,000" in its place; and
- c. In paragraph (a)(3)(ii) remove "\$186,000" and add "\$177,000" in its place.

**25.1101 [Amended]**

6. Amend section 25.1101 as follows:

- a. In paragraph (b)(1)(i) remove "\$186,000" and add "\$177,000" in its place;
- b. In paragraphs (b)(1)(iii) and (b)(2)(iii) remove "\$53,150" and add in their places "\$54,372"; and
- c. In paragraphs (c)(1) and (d) remove "\$186,000" and add in their places "\$177,000".

7. Amend section 25.1102 as follows:

- a. In paragraphs (a) and (c) remove "\$6,909,500" and add in their places "\$6,806,000";
- b. Revise paragraph (c)(3); and
- c. Add paragraph (d)(3) to read as follows:

**25.1102 Acquisition of construction.**

\* \* \* \* \*

(c) \* \* \*

(3) For acquisitions valued at \$6,806,000 or more, but less than \$7,068,419, use the clause with its Alternate I.

\* \* \* \* \*

(d) \* \* \*

(3) For acquisitions valued at \$6,806,000 or more, but less than \$7,068,419, use the clause with its Alternate II.

**25.1103 [Amended]**

8. Amend section 25.1103 in paragraphs (c)(1)(i) and (c)(1)(ii)(B) by removing "\$186,000" and adding "\$177,000" in their places.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

9. In section 52.225-11, in the introductory paragraph remove "25.1102(c)(1)" and add "25.1102(c)" in its place; and revise Alternate I to read as follows:

**52.225-11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.**

\* \* \* \* \*

*Alternate I (June 2000).* As prescribed in 25.1102(c)(3), delete the definitions of "North



American Free Trade Agreement country" and "North American Free Trade Agreement country construction material" from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

10. In section 52.225-12, add Alternate II to read as follows:

**52.225-12 Notice of Buy American Act/ Balance of Payments Program Requirement—Construction Materials under Trade Agreements.**

\* \* \* \* \*

*Alternate II (June 2000).* As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* "Construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

[FR Doc. 00-13822 Filed 6-1-00; 4:01 pm]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

[FAC 97-18; FAR Case 1999-008; Item VII]

RIN 9000-AI54

**Federal Acquisition Regulation; Restrictions on Acquisitions from Yugoslavia and Afghanistan**

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement two Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4. These Executive orders prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban.

**DATES:** *Effective Date:* July 6, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after July 6, 2000.

**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 97-18, FAR case 1999-008.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR Subpart 25.7, section 25.1103, and the clauses at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—

Commercial Items, FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), and FAR 52.225-13, Restrictions on Foreign Purchases, to implement Executive Order 13121 of April 30, 1999, Blocking Property and Prohibiting Transactions With the Taliban; and Executive Order 13129 of July 4, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo. These Executive orders, as modified by OFAC General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on December 1, 1999 (64 FR 67446). Four respondents submitted comments. The Councils considered all comments in the formulation of this final rule. This final rule differs from the proposed rule as follows:

- Limits the restriction to Serbia (excluding the territory of Kosovo), rather than Serbia and Montenegro, based on OFAC General Licenses Numbers 2 and 4. General License No. 2 was issued by OFAC on May 5, 1999, and relates to trade transactions with Montenegro. General License No. 4 was issued by OFAC on August 17, 1999, and relates to trade transactions involving the territory of Kosovo.

- Adds an exception at FAR 25.701(a)(2) permitting the contracting officer, in unusual circumstances, to acquire for use outside the United States supplies and services restricted in 25.701(a)(1).

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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 it only applies to acquisition of items from Serbia or Afghanistan.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 25 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

2. Amend section 25.701 by revising paragraph (a) to read as follows:

25.701 Restrictions.

(a)(1) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, except as provided in paragraph (a)(2) of this section, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through

- (i) Cuba (31 CFR part 515);
(ii) Iran (31 CFR part 560);
(iii) Iraq (31 CFR part 575);
(iv) Libya (31 CFR part 550);
(v) North Korea (31 CFR part 500);
(vi) Sudan (31 CFR part 538);
(vii) Territory of Afghanistan

controlled by the Taliban (Executive Order 13129 of July 4, 1999, Blocking Property and Prohibiting Transactions With the Taliban); or

(viii) Serbia, excluding the territory of Kosovo (Executive Order 13121 of April 30, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo).

(2)(i) Unless agency procedures require a higher level of approval, the

contracting officer may, in unusual circumstances, acquire for use outside the United States supplies and services restricted in paragraph (a)(1) of this section. Examples of unusual circumstances are an emergency or when the supplies or services are not otherwise available and a substitute is not acceptable.

(ii) The contracting officer must provide documentation in the contract file whenever this exception is used.

\* \* \* \* \*

3. Revise section 25.702 to read as follows:

25.702 Source of further information.

Refer questions concerning the restrictions in 25.701 to the Department of the Treasury, Office of Foreign Assets Control, Washington, D.C. 20220 (Telephone (202) 622-2520).

4. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) Restrictions on certain foreign purchases. Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding \$2,500, unless an exception applies (see 25.701(a)(2)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by—
a. Revising the date of the clause and paragraph (a);

b. In the first sentence of the introductory text of paragraphs (b), (c), and (d), by removing "agrees to" and adding "shall" in their place; and

c. Removing paragraph (b)(21) and redesignating paragraphs (b)(19) and (b)(20) as (b)(20) and (b)(21), respectively; and adding a new paragraph (b)(19) 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 (July 2000)

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755).
(2) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) \* \* \* ; (19) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

\* \* \* \* \*

6. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(1)(ii) 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) (July 2000)

(a) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(ii) 52.225-13, Restrictions on Certain Foreign Purchases (July 2000) (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129).

\* \* \* \* \*

7. Amend section 52.225-13 by revising the date of the clause and the last sentence of paragraph (a) to read as follows:

52.225-13 Restrictions on Certain Foreign Purchases.

\* \* \* \* \*

Restrictions on Certain Foreign Purchases (July 2000)

(a) \* \* \* Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

\* \* \* \* \*

[FR Doc. 00-13823 Filed 6-1-00; 4:01 pm]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97-18; FAR Case 2000-301; Item VIII]

RIN 9000-AI79

Federal Acquisition Regulation; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

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 (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 802 of the National Defense

Authorization Act for Fiscal Year 2000 and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises CAS applicability requirements, dollar thresholds, and waiver requirements.

**DATES:** Effective Date: June 6, 2000.

**Applicability Date:** The FAR, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

**Comment Date:** Interested parties should submit comments to the FAR Secretariat at the address shown below on or before August 7, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC, 20405.

Submit electronic comments via the Internet to: farcase.2000-301@gsa.gov

Please submit comments only and cite FAC 97-18, FAR case 2000-301 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 97-18, FAR case 2000-301.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65)—

- Revised, at 41 U.S.C. 422(f)(2)(B), the categories of contracts and subcontracts that are exempt from all CAS requirements;
- Required the Administrator for Federal Procurement Policy to revise the rules and procedures issued under 41 U.S.C. 422(f) to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revised 41 U.S.C. 422(f) to permit the head of an executive agency to waive the applicability of CAS under certain conditions.

In response to Pub. L. 106-65, the CAS Board in the Office of Federal Procurement Policy published an interim rule in the **Federal Register** on February 7, 2000 (65 FR 5990). The CAS Board rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage, amended the regulations at 48 CFR part 9903 to implement Section 802.

This interim FAR rule—

- Amends the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million ("trigger contract") to be subject to "full CAS coverage," since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201-3. The CAS Board added a new "trigger contract" dollar amount of \$7.5 million at paragraph (b)(7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revises FAR 30.201-4(b), Disclosure and consistency of cost accounting practices, and amends the provision at FAR 52.230-1 to reflect changes made by the CAS Board to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revises the CAS waiver procedures and conditions at FAR 30.201-5, as required by Section 802 of Pub. L. 106-65.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### 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 contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201-1(b)(3). Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-18, FAR case 2000-301), in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget 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 action is necessary because this rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. Section 802 became effective 180 days after the date of enactment of Public Law 106-65 (October 5, 1999). The CAS Board's interim rule that implements Section 802 became effective on April 2, 2000. It is necessary that the Councils publish an interim FAR rule to amend FAR Parts 30 and 52 to implement Section 802 and the CAS Board's interim rule. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

##### List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 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. Amend section 30.201-4 by revising paragraph (b)(1) to read as follows:

##### 30.201-4 Contract clauses.

\* \* \* \* \*

(b) *Disclosure and consistency of cost accounting practices.* (1) Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000, but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR

Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

\* \* \* \* \*

3. Revise section 30.201-5 to read as follows:

**30.201-5 Waiver.**

(a) The head of the agency—  
(1) May waive the applicability of CAS for a particular contract or subcontract under the conditions listed in paragraph (b) of this subsection; and

(2) Must not delegate this waiver authority to any official in the agency below the senior contract policymaking level.

(b) The head of the agency may grant a waiver when one of the following conditions exists:

(1) The contract or subcontract value is less than \$15,000,000, and the head of the agency determines, in writing, that the segment of the contractor or subcontractor that will perform the contract or subcontract—

(i) Is primarily engaged in the sale of commercial items; and

(ii) Has no contracts or subcontracts that are subject to CAS.

(2) The head of the agency determines that exceptional circumstances exist whereby a waiver of CAS is necessary to meet the needs of the agency. Exceptional circumstances exist only when the benefits to be derived from waiving the CAS outweigh the risk associated with the waiver. The determination that exceptional circumstances exist must—

(i) Be set forth in writing; and  
(ii) Include a statement of the specific circumstances that justify granting the waiver.

(c) When one of the conditions in paragraph (b) of this subsection exists, the request for waiver should include the following:

(1) The amount of the proposed award.

(2) A description of the contract or subcontract type (e.g., firm-fixed-price, cost-reimbursement).

(3) Whether the segment(s) that will perform the contract or subcontract has CAS-covered contracts or subcontracts.

(4) A description of the item(s) being procured.

(5) When the contractor or subcontractor will not accept the contract or subcontract if CAS applies, a statement to that effect.

(6) Whether cost or pricing data will be obtained, and if so, a discussion of how the data will be used in negotiating the contract or subcontract price.

(7) The benefits to the Government of waiving CAS.

(8) The potential risk to the Government of waiving CAS.

(9) The date by which the waiver is needed.

(10) Any other information that may be useful in evaluating the request.

(d) When neither of the conditions in paragraph (b) of this subsection exists, the waiver request must be prepared in accordance with 48 CFR 9903.201-5(e) (FAR Appendix) and submitted to the CAS Board.

(e) Each agency must report any waivers granted under paragraph (a) of this subsection to the CAS Board, on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Amend section 52.230-1 by—

a. Revising the date of the provision;

b. In the first sentence of paragraph (c)(3) by removing the phrase "more than \$25 million (of which at least one award exceeded \$1 million)" and adding "\$50 million or more" in its place;

c. In paragraph (c)(4)—

(i) In the "Caution" paragraph, by removing "\$25 million" and adding "\$50 million" in its place;

(ii) At "II. Cost Accounting Standards—Eligibility for Modified Contract Coverage," in the second paragraph, by revising the first sentence; and

(iii) In the "Caution" paragraph following paragraph II by removing "\$25 million" each time it is used (twice) and adding "\$50 million" in their places. The revised text reads as follows:

**52.230-1 Cost Accounting Standards Notices and Certification.**

\* \* \* \* \*

**COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUNE 2000)**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

\* \* \* \* \*

□ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of

CAS-covered prime contracts and subcontracts.

\* \* \* \* \*

[FR Doc. 00-13824 Filed 6-1-00; 4:02 pm]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 3, 5, 47, and 49**

[FAC 97-18; Item IX]

**Federal Acquisition Regulation; 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 the Federal Acquisition Regulation in order to update references and make editorial changes.

**EFFECTIVE DATE:** June 6, 2000.

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

**List of Subjects in 48 CFR parts 3, 5, 47, and 49**

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 47, and 49 as set forth below:

1. The authority citation for 48 CFR parts 3, 47, and 49 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 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**3.303 [Amended]**

2. Amend section 3.303 in the first sentence of paragraph (a) by removing "41 U.S.C. 253(B)(e) and 10 U.S.C. 2305(b)(5)" and adding "41 U.S.C. 253b(i) and 10 U.S.C. 2305(b)(9)" in its place.

**PART 5—PUBLICIZING CONTRACT ACTIONS**

3. Revise the last sentence of section 5.204 to read as follows:

**5.204 Presolicitation notices.**

\* \* \* Synopsizing of a proposed contract action is required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

Acknowledgment of Notice; and in paragraph (a) of the Alternate notice.  
[FR Doc. 00-13825 Filed 6-1-00; 4:02 pm]  
**BILLING CODE 6820-EP-P**

Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. 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 rules appearing in Federal Acquisition Circular (FAC) 97-18 which amend the FAR. The rules marked with an asterisk (\*) indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97-18 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

**PART 47—TRANSPORTATION**

**47.504 [Amended]**

4. In section 47.504, amend the first sentence of paragraph (e) by removing “(see 12.504(a)(13))” and adding “(see 12.504(a)(11))” in its place.

**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

**PART 49—TERMINATION OF CONTRACTS**

5. Remove “19...” and add “20 ” in the following places:

a. Section 49.601-1 in paragraphs (a) and (b); and

b. Section 49.601-2 in paragraph (a) of the Notice of Termination to Prime Contractors; in paragraph (i) in the

**LIST OF RULES IN FAC 97-18**

Item	Subject	FAR case	Analyst
I .....	Rescission of Office of Federal Procurement Policy Letters .....	2000-605	Olson.
II .....	FAR Drafting Principles .....	1999-610	De Stefano.
III .....	Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services * .....	1998-015 (98-015)	Linfield.
IV .....	General Records Schedules .....	1999-615	Nelson.
V .....	Federal Supply Schedules Small Business Opportunities * .....	1998-609 (98-609)	Nelson.
VI .....	Trade Agreements Thresholds .....	2000-004	Linfield.
VII .....	Restrictions on Acquisitions from Yugoslavia and Afghanistan .....	1999-008	Linfield.
VIII .....	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (Interim) .....	2000-301	Nelson.

**Item I—Rescission of Office of Federal Procurement Policy Letters (FAR Case 2000-605)**

This final rule reflects editorial amendments removing unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP) (65 FR 16968, March 30, 2000).

**Item II—FAR Drafting Principles (FAR Case 1999-610)**

This final rule adds Federal Acquisition Regulation drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users. This rule affects all contracting officers who use the FAR. The final rule adds drafting conventions in FAR 1.108 and amends 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

**Item III—Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services (FAR Case 1998-015 (98-015))**

This final rule implements Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. This rule is significant for all contracting officers who buy supplies, including supplies that are furnished under a service contract. The rule rewrites text currently in the FAR based on earlier Executive orders, but reorganizes and relocates some of the text to conform to plain language guidelines for Government writing. The rewrite and reorganization should make the text easier to use and understand. The revisions also emphasize Executive branch policies for the acquisition of products containing recovered material and other environmentally preferable products and services. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;

- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror’s product meets requirements for recycled content or related standards;

- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed \$100,000; and

- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

**Item IV—General Records Schedules (FAR Case 1999–615)**

This final rule implements National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998. This rule affects all contracting officers. The rule—

- Rewrites and reorganizes the text already in the FAR to make it easier to understand.
- Simplifies the retention table by grouping several categories of records that were previously treated as separate records under more generic record categories (e.g., the contract file or the contract administration records).
- Deletes separate retention policy on signed original justifications and approvals, determinations and findings, and rejected engineering change proposals. Those records are retained with the contract files shown in blocks 2 through 7 of the new retention table.
- Deletes the separate retention period for contract status, expediting, and production surveillance records. Those records are retained with the contract administration records shown in block 7 of the new retention table.

**Item V—Federal Supply Schedules Small Business Opportunities (FAR Case 1998–609) (98–609)**

This final rule amends the Federal Acquisition Regulation to ensure that small businesses holding contracts under the Federal Supply Schedules are afforded the maximum practicable opportunity to compete for and receive FSS purchases. This rule affects all ordering offices which place orders under Federal Supply Schedule contracts. The rule—

- Encourages ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order.
- Amends FAR Subpart 38.1 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before issuance of a solicitation.

- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

**Item VI—Trade Agreements Thresholds (FAR Case 2000–004)**

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11, and the clauses at 52.225–11 and 52.225–12 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000. Contracting Officers must review the new thresholds when acquiring supplies, services, or construction, in order to select the appropriate contract clauses to implement the Buy American Act, Balance of Payments Program, trade agreements, and sanctions of European Union country end products and services.

**Item VII—Restrictions on Acquisitions from Yugoslavia and Afghanistan (FAR Case 1999–008)**

This final rule amends FAR Subpart 25.7, section 25.1103, and the associated clauses at 52.212–5, 52.213–4, and 52.225–13, to implement Executive Orders 13121 and 13129. These Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

This rule primarily affects contracting officers making purchases overseas, for overseas use, because the Treasury Department already prohibits import of these restricted goods and services into the United States. The rule is particularly beneficial to contracting officers facing unusual circumstances overseas (such as location within a

restricted territory), explicitly providing an exception for such circumstances.

**Item VIII—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000–301)**

This interim rule amends FAR Part 30, Cost Accounting Standards Administration, and the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with Cost Accounting Standards. The rule—

- Amends the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million (“trigger contract”) to be subject to full CAS coverage, since the CAS Board removed this “trigger contract” amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201–3. The CAS Board established a new “trigger contract” dollar amount of \$7.5 million in the CAS applicability section of its regulations (48 CFR 9903.201–1) rather than in its solicitation provision. Since FAR 30.201–1 already references this section, no FAR changes were required to address the new “trigger contract” dollar amount;
- Increases the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Adds procedures and conditions for agency waiver of the applicability of CAS.

Dated: May 26, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*  
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