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Part III

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Chapter I, et al.

Federal Acquisition Circular 2001-14; Final
Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 2001-14;
Introduction**

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

ACTION: Summary presentation of final rules and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-14. 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 2001-14 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Geographic Use of the Term "United States"	1999-400	Davis.
II	Miscellaneous Cost Principles	2001-029	Loeb.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services	2000-308	Loeb.
IV	Electronic Signatures	2000-304	Smith.
V	Increased Federal Prison Industries, Inc. Waiver Threshold (Interim)	2003-001	Nelson.
VI	Past Performance Evaluation of Federal Prison Industries Contracts	2001-035	Smith.
VII	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items.	2000-009	Moss.
VIII	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.

FAC 2001-14 amends the FAR as specified below:

**Item I—Geographic Use of the Term
"United States" (FAR Case 1999-400)**

This final rule amends the FAR to clarify the use of the term "United States," when used in a geographic sense. The term "United States" is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of "outlying areas" of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands.

**Item II—Miscellaneous Cost Principles
(FAR Case 2001-029)**

This final rule amends the FAR by deleting the cost principle at FAR 31.205-45, Transportation costs, and streamlining the cost principles at FAR 31.205-10, Cost of money; FAR 31.205-28, Other business expenses; and FAR

31.205-48, Deferred research and development costs. The rule will only affect contracting officers that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contract costs.

**Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services
(FAR Case 2000-308)**

The interim rule published in the **Federal Register** at 66 FR 53485, October 22, 2001, is converted to a final rule, without change, to implement statutory and regulatory changes related to late payment of an interim payment under a cost-reimbursement contract for services. The rule is of special interest to contracting officers that award or administer these type of contracts.

The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *." This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107-107 states that this policy applies to cost-reimbursement contracts for services awarded before,

on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000.

**Item IV—Electronic Signatures (FAR
Case 2000-304)**

Recent laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

**Item V—Increased Federal Prison
Industries, Inc. Waiver Threshold (FAR
Case 2003-001)**

This interim rule revises the Federal Acquisition Regulation to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at 8.606(e) from \$25 to \$2,500 and eliminates the criterion that delivery is required within 10 days. Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001–035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2000–009)

This final rule amends the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 52.213–4(a)(2)(vi), 52.244–6 section and clause headings, and 52.247–64(a).

Dated: May 13, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–14 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–14 are effective June 23, 2003, except for Items III, V and VIII which are effective May 22, 2003.

Dated: May 9, 2003.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2003.

David A. Drabkin,
Deputy of Acquisition Policy, General Services Administration.

Dated: May 5, 2003.

Tom Luedtke,
Assistant Administrator for Procurement,
National Aeronautics and Space Administration.

[FR Doc. 03–12300 Filed 5–21–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

[FAC 2001–14; FAR Case 1999–400; Item I]

RIN 9000–AI99

Federal Acquisition Regulation; Geographic Use of the Term “United States”

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 clarify the use of the term “United States” in the FAR, in accordance with the FAR Drafting Guide.

DATES: *Effective Date:* June 23, 2003.

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. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–14, FAR case 1999–400.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to clarify the use of the term “United States,” when used in a geographic sense. The term “United States” is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part

or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of “outlying areas” of the United States, a term that encompasses all outlying commonwealths, territories, and minor outlying islands.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 39230, July 27, 2001. No public comments were received. The Councils have agreed to convert the proposed rule to a final rule with only minor editorial changes.

This is not a significant regulatory action and, therefore, was not subject to 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 simply standardizes terminology and clarifies existing meaning. This rule is not intended to make policy changes.

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 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(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 “Contiguous United States (CONUS)”, “Customs territory of the United States”, and “Outlying areas”; by removing the definition “Possessions”; and by revising the definition “State and local taxes”. The added and revised text reads as follows:

2.101 Definitions.

* * * * *

Contiguous United States (CONUS) means the 48 contiguous States and the District of Columbia.

* * * * *

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

* * * * *

Outlying areas means—

- (1) *Commonwealths.* (i) Puerto Rico.
- (ii) The Northern Mariana Islands;
- (2) *Territories.* (i) American Samoa.
- (ii) Guam.
- (iii) U.S. Virgin Islands; and
- (3) *Minor outlying islands.* (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

* * * * *

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.303 [Amended]

- 3. Amend section 3.303 in paragraph (e) by removing the comma after the word “States” and adding “and its outlying areas,” in its place.
- 4. Amend section 3.801 by revising the definition “State” to read as follows:

3.801 Definitions.

* * * * *

State, as used in this section, means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

PART 4—ADMINISTRATIVE MATTERS

- 5. Amend section 4.603 in paragraph (a)(1) by removing “The contracting officer shall insert” and adding “Insert” in its place; and by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

* * * * *

(b) Insert the provision at 52.204–5, Women-Owned Business (Other Than Small Business), in solicitations that—

- (1) Are not set aside for small business concerns;
- (2) Exceed the simplified acquisition threshold; and
- (3) Are for contracts that will be performed in the United States or its outlying areas.

PART 5—PUBLICIZING CONTRACT ACTIONS

- 6. Amend section 5.202 by revising the first sentence of paragraph (a)(12) to read as follows:

5.202 Exceptions.

* * * * *

- (a) * * *
- (12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. * * *

* * * * *

5.303 [Amended]

- 7. Amend section 5.303 in paragraph (a)(2) by removing “or its possessions” and adding “and its outlying areas” in its place.

PART 6—COMPETITION REQUIREMENTS

- 8. Amend section 6.302–3 by revising paragraph (b)(1)(v) to read as follows:

6.302–3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

* * * * *

- (b) * * *
- (1) * * *
- (v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in—
- (A) The United States or its outlying areas; or
- (B) The United States, its outlying areas, or Canada.

* * * * *

6.401 [Amended]

- 9. Amend section 6.401 in the first sentence of paragraph (b)(2) by removing

“, its possessions, or Puerto Rico” and adding “and its outlying areas” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

- 10. Amend section 8.1100 by revising the last sentence to read as follows:

8.1100 Scope of subpart.

* * * It does not apply to motor vehicles leased outside the United States and its outlying areas.

8.1104 [Amended]

- 11. Amend section 8.1104 in the introductory text by removing “The contracting officer shall insert” and adding “Insert” in its place; and in paragraph (d) by removing “(see 41 CFR 101–38.6)” and adding “(see subpart B of 41 CFR 102–34)” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.102 [Amended]

- 12. Amend section 9.102 in paragraph (a)(1) by removing “, its possessions, or Puerto Rico” and adding “or its outlying areas” in its place.
- 13. Amend section 9.406–2 by adding an introductory paragraph; revising the introductory text of paragraph (a), and paragraphs (a)(4), (b)(1) introductory text, (b)(1)(iii), the first sentence in (b)(2), and (c) to read as follows:

9.406–2 Causes for debarment.

The debarring official may debar—

- (a) A contractor for a conviction of or civil judgment for—

* * * * *

- (4) Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)); or

* * * * *

- (b)(1) A contractor, based upon a preponderance of the evidence for—

* * * * *

- (iii) Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)).

* * * * *

(2) A contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). * * *

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

■ 14. Amend section 9.407-2 by revising paragraph (a)(5) to read as follows:

9.407-2 Causes for suspension.

(a) * * *

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558));

* * * * *

PART 14—SEALED BIDDING

■ 15. Revise section 14.203-1 to read as follows:

14.203-1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be transmitted as specified in 14.205 and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located outside the United States shall be sent by electronic data interchange or air mail if security classification permits.

PART 19—SMALL BUSINESS PROGRAMS

■ 16. Amend section 19.000 by revising paragraph (b) to read as follows:

19.000 Scope of part.

* * * * *

(b) This part, except for subpart 19.6, applies only in the United States or its outlying areas. Subpart 19.6 applies worldwide.

■ 17. Amend section 19.001 by revising the definition "Concern" to read as follows:

19.001 Definitions.

* * * * *

Concern means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas

and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

* * * * *

19.101 [Amended]

■ 18. In section 19.101, amend the last sentence of the definition "Affiliates" by removing "inside the United States" and adding "in the United States or its outlying areas" in its place.

■ 19. Amend section 19.102 by revising the introductory text of paragraph (f), (f)(1), and (f)(7) to read as follows:

19.102 Size standards.

* * * * *

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a "nonmanufacturer"), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term "nonmanufacturer" includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at 52.219-14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

* * * * *

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in part 13—

(A) Is set aside for small business; and
(B) Is not anticipated to exceed \$25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

* * * * *

■ 20. Amend section 19.307 by revising paragraphs (a)(1) and (c) to read as follows:

19.307 Solicitation provisions.

(a)(1) Insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

* * * * *

(c) When contracting by sealed bidding, insert the provision at 52.219-2, Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

■ 21. Amend section 19.702 by revising paragraph (b)(3) to read as follows:

19.702 Statutory requirements.

* * * * *

(b) * * *

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

* * * * *

■ 22. Amend section 19.708 by—

■ a. Revising the introductory text of paragraph (a) and (a)(2);

■ b. Removing from the first sentence of paragraph (b)(1) the words "The contracting officer shall, when contracting by negotiation, insert" and adding "Insert" in its place; and

■ c. Removing from paragraph (b)(2) "The contracting officer shall insert" and adding "Insert" in its place. The revised text reads as follows:

19.708 Contract clauses.

(a) Insert the clause at 52.219-8, Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless—

* * * * *

(2) The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.

* * * * *

■ 23. Amend section 19.1202-2 by revising paragraph (b)(4) to read as follows:

19.1202-2 Applicability.

* * * * *

(b) * * *

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.102-2 [Amended]

■ 24. Amend section 22.102-2 in the first sentence of paragraph (b) by adding "U.S." before the word "Virgin".

■ 25. Amend section 22.103-1 by revising the introductory text of the definition "Normal workweek" to read as follows:

22.103-1 Definition.

Normal workweek, as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

* * * * *

■ 26. Amend section 22.202 by revising the introductory paragraph to read as follows:

22.202 Contract clause.

Insert the clause at 52.222-3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

* * * * *

■ 27. Revise section 22.305 to read as follows:

22.305 Contract clause.

Insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below the simplified acquisition threshold;

(b) For commercial items;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in

the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR 5.15);

(e) For work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see subpart 22.6);

(f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

■ 28. Revise section 22.603 to read as follows:

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that—

(a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;

(b) Exceed or may exceed \$10,000; and

(c) Are not exempt under 22.604.

■ 29. Amend section 22.604-2 by revising paragraph (a)(2) to read as follows:

22.604-2 Regulatory exemptions.

(a) * * *

(2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

■ 30. Amend section 22.801 by revising the definition "United States" to read as follows:

22.801 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

■ 31. Amend section 22.1001 by revising the definition "United States" to read as follows:

22.1001 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*) but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

* * * * *

■ 32. Amend section 22.1408 by revising the introductory text of paragraph (a) and (a)(1) to read as follows:

22.1408 Contract clause.

(a) Insert the clause at 52.222-36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed or are expected to exceed \$10,000, except when—

(1) Both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 33. Amend section 23.200 by revising paragraph (b) to read as follows:

23.200 Scope.

* * * * *

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

■ 34. Amend section 23.501 by revising the introductory paragraph and paragraphs (a), (b), and (c); and in paragraph (d) by removing "Contracts by" and adding "By" in its place. The revised text reads as follows:

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

* * * * *

■ 35. Revise section 23.505 to read as follows:

23.505 Contract clause.

Except as provided in 23.501, insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts.

- 36. Amend section 23.804 by revising the introductory paragraph to read as follows:

23.804 Contract clauses.

Except for contracts that will be performed outside the United States and its outlying areas, insert the clause at:

* * * * *

- 37. Amend section 23.903 by revising paragraph (b)(2) to read as follows:

23.903 Applicability.

* * * * *

(b) * * *

(2) Contractor facilities located outside the United States and its outlying areas.

- 38. Amend section 23.906 by revising paragraph (a)(2)(v) to read as follows:

23.906 Requirements.

(a) * * *

(2) * * *

(v) Are not located in the United States and its outlying areas.

* * * * *

- 39. Revise section 23.1002 to read as follows:

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

PART 25—FOREIGN ACQUISITION

- 40. Amend section 25.003 by removing the definition “Customs territory of the United States”; and revising the definition “United States” to read as follows:

25.003 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

- 41. Amend section 26.300 by revising paragraph (b) to read as follows:

26.300 Scope of subpart.

* * * * *

(b) This subpart does not pertain to contracts performed entirely outside the United States and its outlying areas.

PART 28—BONDS AND INSURANCE

28.202 [Amended]

- 42. Amend section 28.202 in paragraph (a)(1) by removing “, its possessions, or Puerto Rico” and adding “or its outlying areas” in its place.

- 43. Amend section 28.203–2 by revising the first sentence of paragraph (b)(4) and paragraph (c)(3)(i) to read as follows:

28.203–2 Acceptability of assets.

* * * * *

(b) * * *

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. * * *

* * * * *

(c) * * *

(3) * * *

(i) Real property located outside the United States and its outlying areas.

* * * * *

28.301 [Amended]

- 44. Amend section 28.301 in the introductory text by removing “be required to”; and in the third sentence of paragraph (b) by removing “, its possessions, and Puerto Rico” and adding “and its outlying areas” in its place.

- 45. Amend section 28.310 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

28.310 Contract clause for work on a Government installation.

(a) Insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts if a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the contract will require work on a Government installation, unless—

* * * * *

(2) All work on the Government installation will be performed outside the United States and its outlying areas.

* * * * *

PART 29—TAXES

- 46. Amend section 29.202 by revising paragraph (b) to read as follows:

29.202 General exemptions.

* * * * *

(b) Shipment for export to a foreign country or an outlying area of the United States. Shipment must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words “for export” must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR 48.4221–3).

* * * * *

- 47. Revise section 29.401–1 to read as follows:

29.401–1 Indefinite-delivery contracts for leased equipment.

Insert the clause at 52.229–1, State and Local Taxes, in solicitations and contracts for leased equipment when—

(a) A fixed-price indefinite-delivery contract is contemplated;

(b) The contract will be performed wholly or partly in the United States or its outlying areas; and

(c) The place or places of delivery are not known at the time of contracting.

- 48. Amend section 29.401–3 by revising paragraph (a)(1) to read as follows:

29.401–3 Federal, State, and local taxes.

(a) * * *

(1) The contract is to be performed wholly or partly in the United States or its outlying areas;

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–46 [Amended]

- 49. Amend section 31.205–46 in paragraph (a)(2)(i) by removing “conterminous 48” and adding “contiguous” in its place; and in paragraph (a)(2)(ii) by removing “The Commonwealth of Puerto Rico, and territories and possessions” and adding “and outlying areas” in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.014 [Amended]

- 50. Amend section 35.014 in paragraph (d)(1) by removing from the quoted text “States” and adding “States or its outlying areas” in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

- 51. Amend section 36.103 by revising paragraph (a) to read as follows:

36.103 Methods of contracting.

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in 6.401(a) apply, unless the contract will be performed outside the United States and its outlying areas. (See 6.401(b)(2).)

* * * * *

- 52. Revise section 36.609–4 to read as follows:

36.609–4 Requirements for registration of designers.

Insert the clause at 52.236–25, Requirements for Registration of Designers, in architect-engineer

contracts, except that it may be omitted when the design will be performed—

(a) Outside the United States and its outlying areas; or

(b) In a State or outlying area of the United States that does not have registration requirements for the particular field involved.

■ 53. Amend section 36.702 by revising paragraph (a) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

(a) Contracting officers must use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services will be performed in the United States or its outlying areas.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1402 Volume movements within the contiguous United States.

■ 54. Revise the heading of section 42.1402 to read as set forth above.

■ 55. Amend section 42.1404–1 by revising paragraph (c) to read as follows:

42.1404–1 Parcel post eligible shipments.

* * * * *

(c)(1) When a contractor uses its own label to ship to a post office servicing military and other agency consignees outside the customs territory of the United States, the contractor shall stamp or imprint the parcel immediately above the label in ¼-inch block letters with the—

(i) Name of the agency; and
(ii) Words “Official Mail—Contents for Official Use—Exempt from Customs Requirements.”

(2) This marking permits identification and expedites handling within the postal system, but the contractor must pay postage if—

(i) Required by the contract; or
(ii) The contract provides for reimbursement for the cost of postage.

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 56. Amend section 45.601 by revising the definition “Public body” to read as follows:

45.601 Definitions.

* * * * *

Public body means any State, any outlying area of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

PART 47—TRANSPORTATION

47.001 [Amended]

■ 57. Amend section 47.001 by removing the definition “CONUS” or “Continental United States”.

47.302 [Amended]

■ 58. Amend section 47.302 in the first sentence of paragraph (a) by removing “Continental” and adding “Contiguous” in its place.

47.304–1 [Amended]

■ 59. Amend section 47.304–1 in paragraphs (g)(1) and (g)(2) by removing “the continental United States” and adding “CONUS” in their place.

47.304–3 [Amended]

■ 60. Amend section 47.304–3 in the introductory text of paragraph (a) by removing “the United States” and adding “CONUS” in its place.

■ 61. Amend section 47.401 by revising the definitions “United States” and “U.S.-flag air carrier” to read as follows:

47.401 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas of the United States.

U.S.-flag air carrier means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 41102).

■ 62. Revise section 47.402 to read as follows:

47.402 Policy.

Federal employees and their dependents, consultants, contractors, grantees, and others must use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, if available (section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 63. Amend section 52.203–12 by revising the date of the clause; and in paragraph (a) by revising the definition “State” to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

Limitation on Payments to Influence Certain Federal Transactions (June 2003)

(a) * * *

State, as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an

agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

* * * * *

■ 64. Amend section 52.212–3 by revising the date of provision, the introductory text of paragraph (c), (f)(1), and (g)(1)(i) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (June 2003)

* * * * *

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

* * * * *

(f) * * *

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

* * * * *

(g)(1) * * *

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act.”

* * * * *

■ 65. Amend section 52.213–4 by revising the date of clause and paragraphs (a)(1)(i), (a)(1)(iv) and the introductory text of paragraph (b)(1)(viii) 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) (June 2003)

(a) * * *

(1) * * *

(i) 52.222–3, Convict Labor (June 2003) (E.O. 11755).

* * * * *

(iv) 52.225–13, Restrictions on Certain foreign Purchases (June 2003) (E.O.'s 12722, 12724, 13059, 13067, 13121, 13129).

* * * * *

(b) * * *

(1) * * *

(viii) 52.225–1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a–10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

* * * * *

■ 66. Amend section 52.219–5 by revising the date of the clause, paragraph (c), and Alternate II to read as follows:

52.219–5 Very Small Business Set-Aside.

* * * * *

Very Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas.

(End of clause)

* * * * *

Alternate II (June 2003). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States or its outlying areas.

■ 67. Amend section 52.219–6 by revising the date of the clause and paragraph (c) to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 68. Amend section 52.219–7 by revising the date of clause and paragraph (c) to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 69. Amend section 52.219–18 by revising the date of clause and paragraph (d)(1) to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Notification of Competition Limited to Eligible 8(a) Concerns (June 2003)

* * * * *

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

* * * * *

■ 70. Amend section 52.219–23 by revising the date of clause; removing from paragraph (a) the definition “United States”; and by revising paragraph (d)(2) and Alternate I to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003)

* * * * *

(d) * * *

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

* * * * *

■ 71. Revise section 52.222–3 to read as follows:

52.222–3 Convict Labor.

As prescribed in 22.202, insert the following clause:

Convict Labor (June 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

■ 72. Revise section 52.222–29 to read as follows:

52.222–29 Notification of Visa Denial.

As prescribed in 22.810(g), insert the following clause:

Notification of Visa Denial (June 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any

applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.
(End of clause)

- 73. Amend section 52.223-13 by revising the date of the provision and paragraph (b)(2)(v) to read as follows:

52.223-13 Certification of Toxic Chemical Release Reporting.

* * * * *

Certification of Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) * * *

(2) * * *

[] (v) The facility is not located in the United States or its outlying areas.

(End of provision)

- 74. Amend section 52.223-14 by revising the date of the clause, and the introductory text of paragraph (b) and paragraph (b)(5) to read as follows:

52.223-14 Toxic Chemical Release Reporting.

* * * * *

Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

* * * * *

(5) The facility is not located in the United States or its outlying areas.

* * * * *

- 75. Amend section 52.225-1 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-1 Buy American Act—Supplies.

* * * * *

Buy American Act—Supplies (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

- 76. Amend section 52.225-2 by revising the date of the provision and paragraph (a) to read as follows:

52.225-2 Buy American Act Certificate.

* * * * *

Buy American Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

* * * * *

- 77. Amend section 52.225-3 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

- 78. Amend section 52.225-4 by revising the date of the provision and paragraph (a) to read as follows:

52.225-4 Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act."

* * * * *

- 79. Amend section 52.225-5 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-5 Trade Agreements.

* * * * *

Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

- 80. Amend section 52.225-9 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-9 Buy American Act—Construction Materials.

* * * * *

Buy American Act—Construction Materials (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

- 81. Amend section 52.225-11 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

52.225-13 [Amended]

- 82. Amend section 52.225-13 by revising the date of the clause to read "(June 2003)"; and in the first sentence of paragraph (a) by removing "States" and adding "States and its outlying areas" in its place.

- 83. Amend section 52.228-3 by revising the introductory paragraph to read as follows:

52.228-3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause:

* * * * *

- 84. Amend section 52.228-4 by revising the introductory paragraph to read as follows:

52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause:

* * * * *

- 85. Amend section 52.229-1 by revising the introductory text to read as follows:

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause:

- * * * * *
- 86. Amend section 52.229-6 by—
 - a. Revising the date of the clause;
 - b. Revising paragraph (a);
 - c. Removing the designation of paragraph (b);
 - d. Adding a new paragraph (b) introductory text; and
 - e. Removing “, as used in this clause,” from the definition “Contract date”; revising the definition “Country concerned”; and removing “, as used in this clause,” from the definitions “Tax” and “taxes”, “All applicable taxes and duties”, “After-imposed tax”, “After-relieved tax”, and “Excepted tax”. The added and revised text reads as follows:

52.229-6 Taxes—Foreign Fixed-Price Contracts.

* * * * *

Taxes—Foreign Fixed-Price Contracts (June 2003)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

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

* * * * *

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

* * * * *

- 87. Revise section 52.236-25 to read as follows:

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause:

Requirements for Registration of Designers (June 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

- 88. Revise section 52.242-12 to read as follows:

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause:

Report of Shipment (REPSHIP) (June 2003)

(a) *Definition.* Domestic destination, as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, classes A and B;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic destination (other than a port for export);

(2) Transmit the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the Government bill of lading, commercial bill of lading or letter or other document containing the following information and prominently identified as a “Report of Shipment” or “REPSHIP FOR T.O.”

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540
CTNS MENS COTTON TROUSERS, 30,240
LB, 1782 CUBE, VIA XX-YY*
IN CAR NO. XX 123456**—GBL***—
C98000031**** CONTRACT DLA
ETA*****—JUNE 5 JONES & CO., JERSEY
CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)

- 89. Amend section 52.245-2 by revising the date and paragraph (1) of the clause; revising the date of Alternate I and amending paragraph (c)(5) of Alternate II by removing “States” and adding “States or its outlying areas” in its place. The revised text reads as follows:

52.245-2 Government Property (Fixed-Price Contracts).

* * * * *

Government Property (Fixed-Price Contracts) (June 2003)

* * * * *

(1) *Overseas contracts.* If this contract is to be performed outside of the United States and its outlying areas, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be

construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

* * * * *

Alternate II (June 2003) * * *

* * * * *

- 90. Amend section 52.245-4 by revising the date of the clause and paragraph (e) to read as follows:

52.245-4 Government-Furnished Property (Short Form).

* * * * *

Government-Furnished Property (Short Form) (June 2003)

* * * * *

(e) If this contract is to be performed outside the United States and its outlying areas, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

- 91. Amend section 52.245-5 by revising the date of the clause; amending paragraph (1) by removing “of America, its territories, or possessions” and adding “and its outlying areas” in its place; by revising the date of Alternate I; and amending paragraph (c)(5) of Alternate I by removing “States” and adding “States or its outlying areas” in its place. The revised text reads as follows:

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

* * * * *

Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (June 2003)

* * * * *

(End of clause)

Alternate I (June 2003)

* * * * *

52.245-11 [Amended]

- 92. Amend section 52.245-11 by revising the date of Alternate I to read “(June 2003)”; and amending paragraph (c)(6) of Alternate I by removing “States” and adding “States or its outlying areas” in its place.

52.245-15 [Amended]

- 93. Amend section 52.245-15 by revising the date of the clause to read “(June 2003)”; and amending paragraph (b) by removing “States” and adding “States or its outlying areas” in its place.

52.246-17 [Amended]

- 94. Amend section 52.246-17 by revising the date of the clause to read

“(June 2003)” and amending paragraph (c)(3)(ii)(C) by removing “continental” and adding “contiguous” in its place.

■ 95. Revise section 52.247–47 to read as follows:

52.247–47 Evaluation—F.o.b. Origin.

As prescribed in 47.305–3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; e.g., air, pipeline, barge, or ocean tanker, modify the provision accordingly.

Evaluation—F.o.b. Origin (June 2003)

(a) The Government normally uses land methods of transportation by regulated common carrier for shipment within the contiguous United States.

(b) To evaluate offers, the Government will consider only these methods to establish the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the contiguous United States.

(c) This transportation cost will be added to the offer price to determine the Government's overall cost.

(d) When tentative destinations are indicated, the Government will use them only for evaluation purposes. The Government has the right to use any other means of transportation or any other destination at the time of shipment.
(End of provision)

■ 96. Amend section 52.247–55 by revising the introductory text, the date of the clause, and paragraphs (a) and (b) of the clause to read as follows:

52.247–55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305–12(a)(2), insert the following clause:

F.o.b. Point for Delivery of Government-Furnished Property (June 2003)

(a) Unless otherwise specified in this solicitation, the Government will deliver any Government-furnished property for use within the contiguous United States or Canada to a point specified by the Contractor in the offer. If the Government makes delivery by railroad, the f.o.b. point will be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point will be railroad cars in the same or nearest city having rail service. The Government may choose the mode of transportation and the carriers and will bear the cost of all line-haul transportation to the specified destination.

(b) If the destination of the Government-furnished property is a Contractor's plant located outside the contiguous United States or Canada, the f.o.b. point for Government delivery of Government-furnished property will be a Contractor-specified location in the contiguous United States. If the Contractor fails to name a point, the Government will select as the f.o.b. point the port-city in the contiguous United States nearest to the Government-furnished property that has regular commercial water transportation services to the offshore port nearest the Contractor's plant.

* * * * *

■ 97. Amend section 52.247–63 by revising the date of the clause and paragraphs (a) and (c) to read as follows:

52.247–63 Preference for U.S.—Flag Air Carriers.

* * * * *

Preference for U.S.—Flag Air Carriers (June 2003)

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

International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-flag air carrier means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

* * * * *

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

* * * * *

PART 53—FORMS

53.228 [Amended]

■ 98. Amend section 53.228 in paragraph (e) by removing “(Rev. 6/96)” and adding “(Rev. 6/03)” in its place.

■ 99. Revise section 53.301–28 to read as follows:

53.301–28 Affidavit of Individual Surety.

BILLING CODE 6820-EP-P

AFFIDAVIT OF INDIVIDUAL SURETY
(See instructions on reverse)

OMB No.: 9000-0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (MVA), Office of Acquisition Policy, GSA, Washington, DC 20405.

STATE OF

COUNTY OF

SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)

2. HOME ADDRESS (Number, Street, City, State, ZIP Code)

3. TYPE AND DURATION OF OCCUPATION

4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)

5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any)
(Number, Street, City, State, ZIP Code)

6. TELEPHONE NUMBER

HOME -

BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE

11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED

MONTH DAY YEAR

b. CITY AND STATE (Or other jurisdiction)

c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH

(Type or print)

d. SIGNATURE

e. MY COMMISSION
EXPIRESOfficial
SealAUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable**STANDARD FORM 28** (REV. 6/2003)
Prescribed by GSA-FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts must complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety must have the completed form notarized.
2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety. Likewise, members of a partnership are not acceptable as sureties on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond that this affidavit supports.
3. United States citizenship is a requirement for individual sureties for contracts and bonds when the contract is awarded in the United States. However, when the Contracting Officer is located in an outlying area or a foreign country, the individual surety is only required to be a permanent resident of the area or country in which the contracting officer is located.
4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person must sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of a firm, partnership, or joint venture, or an officer of the corporation involved.

STANDARD FORM 28 (REV. 6/2003) BACK

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 31, 47, and 52**

[FAC 2001-14; FAR Case 2001-029; Item II]

RIN 9000-AJ33

**Federal Acquisition Regulation;
Miscellaneous Cost 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 delete the cost principle concerning transportation costs and to revise the cost principles concerning cost of money, other business expenses, and deferred research and development costs.

DATES: *Effective Date:* June 23, 2003.

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. Edward Loeb at (202) 501-1224. Please cite FAC 2001-14, FAR case 2001-029.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 67 FR 13072, March 20, 2002, with request for comments. Two respondents submitted public comments. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with the following changes to the proposed rule:

1. Revise the language at FAR 31.205-10(b)(1) to state that cost of money "is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable."

2. Change the word "cost" in paragraph 31.205-10(b)(3) to "cost of money" to maintain clarity and consistency at FAR 31.205-10. A

discussion of the comments is provided below:

Comment: Respondent recommends that paragraph (a)(2) of FAR 31.205-10 be revised to state that cost of money "shall be treated like an incurred cost for cost-reimbursement purposes."

Councils' response: Do not concur. The Councils believe FAR 31.205-10(a)(1) of the proposed rule clearly specifies that cost of money is an imputed cost (as opposed to an incurred cost). Paragraph (a)(2) further states that, for cost-reimbursement purposes, this imputed cost is an "incurred cost." The Councils do not believe this language would permit a contractor to argue that cost of money is not an imputed cost. In fact, the cost principle at FAR 31.205-10 has referred to cost of money as being, for cost-reimbursement purposes, an "incurred cost" since at least as early as 1984, but has also always specifically stated that it is actually an "imputed cost."

Comment: Respondent recommends revising the language in the proposed rule at FAR 31.205-10(b)(1) for cost of money that states "it is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or 48 CFR 9904.417, as applicable." Respondent notes that 48 CFR 9904.417—Cost of Money as an Element of the Cost of Capital Assets under Construction (CAS 417), addresses the measurement of cost of money attributable to assets being constructed rather than contract costs.

Councils' response: Concur. The Councils revised the rule at paragraph (b)(1) to state that cost of money "is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable."

Comment: Respondent recommends revising FAR 31.205-10(b)(1) by changing the word "cost" to "imputed cost" or "cost of money," to make it consistent with the other language in the cost principle.

Councils' response: Concur. The Councils changed the word "cost" in paragraph (b)(3) to "cost of money."

This is not a significant regulatory action and, therefore, was not subject to 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles discussed in this rule.

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 2, 31, 47, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 31, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 31, 47, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 2—DEFINITIONS OF WORDS
AND TERMS**

■ 2. In section 2.101, add the definition "Facilities capital cost of money", in alphabetical order, to read as follows:

2.101 Definitions.

* * * * *

Facilities capital cost of money means "cost of money as an element of the cost of facilities capital" as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

* * * * *

**PART 31—CONTRACT COST
PRINCIPLES AND PROCEDURES****31.001 [Amended]**

■ 3. In section 31.001, remove the definitions "Cost of capital committed to facilities" and "Facilities capital."

■ 4. Revise section 31.205-10 to read as follows:

31.205-10 Cost of money.

(a) *General.* Cost of money—

(1) Is an imputed cost that is not a form of interest on borrowings (see 31.205-20);

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided—

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of 31.205–52, which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

■ 5. In section 31.205–28, revise the introductory text to read as follows:

31.205–28 Other business expenses.

The following types of recurring costs are allowable:

* * * * *

31.205–45 [Reserved]

■ 6. Remove and reserve section 31.205–45.

31.205–48 Research and development costs.

■ 7. Amend section 31.205–48 by revising the section heading to read as set forth above; and in the first sentence by removing the word "section" and adding "subsection" in its place.

PART 47—TRANSPORTATION

47.300 [Amended]

■ 8. Amend section 47.300 in the introductory text of paragraph (b) by removing "(see 31.205–45)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.215–16 by revising the date of the provision and paragraph (a) to read as follows:

52.215–16 Facilities Capital Cost of Money.

* * * * *

Facilities Capital Cost of Money (June 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated

contract, if the criteria for allowability in FAR 31.205–10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

* * * * *

[FR Doc. 03–12302 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2, 32, and 52

[FAC 2001–14; FAR Case 2000–308; Item III]

RIN 9000–AJ17

**Federal Acquisition Regulation;
Prompt Payment Under Cost-
Reimbursement Contracts for 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 adopt, as final, the interim rule published at 66 FR 53485, October 22, 2001. This rule requires an agency to pay an interest penalty whenever it makes an interim payment under a cost reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* May 23, 2003.

Applicability Date: This final rule applies to cost-reimbursement contracts for services, irrespective of award date, if interim payments requests under such contracts are due on or after December 15, 2000. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 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. Edward Loeb at (202) 501–0650. Please cite FAC 2001–14, FAR case 2000–308.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 53485, October 22, 2001, with request for comments. This FAR amendment eliminated the prior policy and contract clause prohibition on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It added new policy and a contract clause, Alternate I to the FAR clause at 52.232–25, to provide for those penalty payments.

The interim FAR rule implemented section 1010 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 1010 requires an agency to pay an interest penalty, in accordance with regulations issued by the Office of Management and Budget (OMB), whenever an interim payment under a cost reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from the contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000. OMB published an interim rule in the **Federal Register** at 65 FR 78403, December 15, 2000, and a final rule at 67 FR 79515, December 30, 2002. OMB's rule revised the prompt payment regulations at 5 CFR part 1315 to implement section 1010 of Public Law 106–398.

The Councils received no public comments to the interim FAR rule and have agreed to convert the interim rule to a final rule without change. The applicability date, however, has changed as explained below. The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *." (66 FR 53485, October 22, 2001.) This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000. For this reason, the applicability of the rule has been revised to reflect this change.

This is not a significant regulatory action and, therefore, was not subject to 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 applies to the very limited number of contractors that are awarded cost-reimbursement service contracts and that are paid more than 30 days after the agency receives a proper invoice.

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 2, 32, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 32, and 52 which was published in the **Federal Register** at 66 FR 53485, October 22, 2001, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03-12303 Filed 5-22-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001-14; FAR Case 2000-304; Item IV]

RIN 9000-AI94

Federal Acquisition Regulation; Electronic Signatures

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 clarify that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DATES: *Effective Date:* June 23, 2003.

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. Laura Smith, Procurement Analyst, at (202) 501-7279. Please cite FAC 2001-14, FAR case 2000-304.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1998, the Government Paperwork Elimination Act (Title XVII of Division C of Public Law 105-277) was enacted. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E-SIGN) (Pub. L. 106-229) was enacted. These laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. The Office of Management and Budget (OMB) has issued guidance on both of these laws. See Memorandum M-00-15, "OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act," dated September 25, 2000, and Memorandum M-00-10, "OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act," dated April 25, 2000. These memoranda are available on the OMB Homepage at <http://www.omb.gov>.

This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 65698, November 1, 2000. In addition to proposing a policy statement recognizing the use of electronic signatures, the proposed rule would have revised the current FAR definitions of "in writing" and "signature" at FAR 2.101 to clarify that these terms include electronic, in addition to paper, transactions. It also would have made minor changes to the definition of electronic commerce. Twenty-five sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

Several surety companies expressed support for greater use of electronic technologies for the filing of bid, performance, and payment bonds and associated powers of attorney. They noted that such technologies will "streamline the procurement process, reduce costs, and increase efficiency for all trading partners." However, they cautioned that FAR coverage should not result in reliance on a single proprietary system for electronic signatures for the entire Federal government. They further recommended a phase-in period so sureties that are not yet automated have alternative means of transacting with the Government in the near term.

With respect to the choice of technology, the final rule simply states, "agencies may accept electronic signatures and records in connection with Government contracts." The choice of technology for implementing electronic signatures is left to each agency. As for the execution of bonds and powers of attorney, the rule does not require that these documents be submitted electronically, which will allow time for parties to effectively transition to electronic transactions.

One commenter made several recommendations regarding the definitions. In particular, the commenter asserted that—

- A definition for "electronic commerce" is unnecessary and should be removed from the FAR;
- The current FAR definition of "signature" should be replaced by the E-SIGN definition of "electronic signature"; and
- The E-SIGN definition of electronic record should be substituted for the

current and proposed definitions of "in writing," "writing," and "written," because the latter definitions are too narrow. The Councils disagree with the recommended changes to the definitions.

The current FAR definition of "electronic commerce" is consistent with that set forth in section 30 of the Office of Federal Procurement Policy Act. The Councils believe the statutory definition should be reflected in the FAR. At the same time, the Councils recognize the value in evaluating the continued need for, and appropriateness of this definition as electronic commerce continues to become more institutionalized in the Government.

The commenter's proposed definition of electronic signature does not reflect intention to authenticate. This concept is important to contracting-related transactions, electronic or otherwise. As noted in a September 12, 1951, Comptroller General decision (B-104590), courts have held that "a signature consists of the writing of one's name and of the intention that it *authenticate* the instrument, and, therefore, any symbol adopted as one's signature when affixed with his knowledge and consent is a binding and legal signature * * *". This was reiterated in a September 20, 1984, Comptroller General decision (B-216035). Consistent with this reasoning, FAR case 91-104 incorporated the concept of authentication into the definition of "signature." That case established the premise that either hand scribed or other format signatures indicate an intent to authenticate (or be bound).

Similarly, the Councils believe that the proposed definition for "electronic record" is insufficient. The Councils maintain that the definition of "in writing" should reflect the requirement to store because agencies ask for information in writing when they intend to keep it as a record. Therefore, storage, reproduction, and later retrieval are all salient characteristics of a record. After further deliberation and consideration of the public comments regarding the proposed changes to the definitions, the Councils have determined that the current FAR definitions are sufficient and appropriately capture the necessary salient characteristics required of a "writing" and a "signature." Likewise, the Councils concluded that there was no significant value achieved through the proposed change to the definition of "electronic commerce."

Therefore, this final rule makes no changes to the current FAR definitions.

This is not a significant regulatory action and, therefore, was not subject to

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 does not change the procedures for award or administration of contracts, but rather, clarifies that the use of electronic signatures and electronic methods are permitted in Government procurement.

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 13, 2003.

Laura G. Smith,

Director, 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 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 4.502 by adding paragraph (d) to read as follows:

4.502 Policy.

* * * * *

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

[FR Doc. 03-12304 Filed 5-22-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001-14; FAR Case 2003-001; Item V]

RIN 9000-AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

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 increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries (FPI) by Federal agencies. By increasing this threshold to \$2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500.

DATES: *Effective Date:* May 22, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before June 23, 2003 to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to—farcase.2003-001@gsa.gov. Please submit comments only and cite FAC 2001-14, FAR case 2003-001, 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 2001-14, FAR case 2003-001.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Prison Industries (FPI) Board of Directors recently adopted a resolution increasing the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies. The resolution adopted by the FPI Board increases the FPI clearance exception threshold at 8.606(e) from \$25 to \$2,500 and eliminates the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to \$2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies would still be required to purchase products on FPI's Schedule from FPI above the \$2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

This is not a significant regulatory action and, therefore, was not subject to 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 does not apply to this rule. This interim 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 part 8, 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 2001-14, FAR case 2003-001), 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

There is no requirement to publish this rule for public comment, as it is not a significant FAR revision. This rule only covers very-small-dollar supply purchases now being made from Federal

Prison Industries, part of the Department of Justice, another Federal executive agency. FPI will continue to be a source, but optional rather than mandatory, for these very-small-dollar purchases. This change does not originate from the FAR regulation, but is only an update to show a change in policy made by the Federal Prison Industries itself. No public comments are required under 41 U.S.C. 418b(a), and under (a) and (d) therefore no determination either for compelling circumstances, or for urgent and compelling circumstances needs to be made in order for the case to go into effect immediately. Even though not required to do so, the Councils would, nevertheless, like to obtain public comments. No determination of urgent and compelling circumstances is necessary under the statute to obtain optional public comments.

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 Part 8

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 8.606 by revising paragraph (e) to read as follows:

8.606 Exceptions.

* * * * *

(e) Orders are for listed items totaling \$2,500 or less.

[FR Doc. 03-12305 Filed 5-21-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 42

[FAC 2001-14; FAR Case 2001-035; Item VI]

RIN 9000-AJ45

Federal Acquisition Regulation; Past Performance Evaluation of Federal Prison Industries Contracts

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 require evaluation of Federal Prison Industries (FPI) contract performance.

DATES: *Effective Date:* June 23, 2003.

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. Laura Smith, Procurement Analyst, at (202) 208-7279. Please cite FAC 2001-14, FAR case 2001-035.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subparts 8.6 and 42.15 to require agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically. While the change does not negate the requirements of FAR 8.602 or 8.605, it will allow the information to be used to support a clearance request per FAR 8.605.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 67 FR 55680, August 29, 2002. Ten respondents submitted public comments. The Councils considered the

public comments before agreeing to convert the proposed rule to a final rule with minor changes. A summary of the comments is provided below:

Comment: To avoid potential misinterpretation, the rule should more clearly call attention to the mandatory source requirement for purchase of FPI products and more clearly point out that a negative past performance evaluation may be used as a basis for a waiver request.

Response: We agree. The intent of the rule is to ensure contracting officers understand that the waiver process is still in effect and that performance evaluations may be used to support future award decisions. Therefore, the final rule amends FAR 8.607 and 42.1503(b) to more clearly articulate that the waiver requirement, referred to at FAR 8.605 as a clearance, still applies and that a negative performance evaluation can be used to support clearance requests.

Comment: There is no basis for an assessment of FPI's past performance. FPI's past performance is irrelevant to whether an agency is required to obtain goods from FPI because of its mandatory source status. Therefore, the collection of data is a patent waste of Government resources since it cannot be used for source selection purposes.

Response: We believe that there is benefit to assessing FPI's performance. The May 2000 Office of Federal Procurement Policy (OFPP) guide "Best Practices for Collecting and Using Current and Past Performance Information" states that the active dialog that results from assessing a contractor's current performance results in better performance on the instant contract, and that such assessments are a basic best practice for good contract administration. As previously stated, this information can also be used to support FPI clearance requests.

Comment: What is the relationship between this rule and Section 811 of the National Defense Authorization Act of FY 2002? Section 811 does not apply to agencies outside of DoD.

Response: This rule has no relationship to Section 811 of the FY 2002 National Defense Authorization Act. The genesis of this case was a memorandum from FPI requesting past performance evaluations on their contracts.

This is not a significant regulatory action and, therefore, was not subject to 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 extending the collection of past performance data to include FPI contracts can be accomplished within our normal means of performing business and further serves to promote competition among offerors.

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 42

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 42 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Add section 8.607 to read as follows:

8.607 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with subpart 42.15. Performance evaluations do not negate the requirements of 8.602 and 8.605, but they may be used to support a clearance request in accordance with 8.605.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1502 [Amended]

■ 3. Amend section 42.1502 in the first sentence of paragraph (b) by removing "subparts 8.6 and" and adding "subpart" in its place.

■ 4. Amend section 42.1503 in paragraph (b) by adding a new seventh sentence to read as follows:

42.1503 Procedures.

* * * * *

(b) * * * Evaluation of Federal Prison Industries (FPI) performance may be used to support a clearance request (see 8.605) when FPI is a mandatory source in accordance with subpart 8.6. * * *

* * * * *

[FR Doc. 03-12306 Filed 5-21-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001-14; FAR Case 2000-009; Item VII]

RIN 9000-AJ34

Federal Acquisition Regulation; Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items

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 update the clause regarding commercial items contract terms and conditions required to implement statute or Executive orders.

DATES: Effective Date: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-14, FAR case 2000-009.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355). The regulations became effective on October 1, 1995. Several areas have been identified that need updating and clarification. This rule addresses some of those changes.

The list of contract terms and conditions required to implement statutes or Executive orders in the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, is amended to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13076, March 20, 2002. The 60-day comment period ended May 20, 2002. Two sources submitted comments on the proposed rule. Both comments suggested revisions to paragraph 52.212-5(e) to clarify flow-down requirements. Accordingly, paragraph 52.212-5(e) is revised in the final rule to flow down clauses that are applicable to the subcontract and required to implement statute or Executive order.

This is not a significant regulatory action and, therefore, was not subject to 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 does not impose a new policy requirement on small entities. The changes made by the rule update clause references, clarify language, and do not change existing policy.

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 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.212-5 by revising the date of the clause and paragraphs (a), (b), (c), and (e) 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 (June 2003)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

—(1) 52.203-6, Restrictions on Subcontract Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

—(2) 52.219-3, Notice of Total HUBZone Set-Aside (JAN 1999) (15 U.S.C. 657a).

—(3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

—(4)(i) 52.219-5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

—(ii) Alternate I (MAR 1999) of 52.219-5.

—(iii) Alternate II (JUNE 2003) of 52.219-5.

—(5)(i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

—(ii) Alternate I (OCT 1995) of 52.219-6.

—(6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

—(ii) Alternate I (OCT 1995) of 52.219-7.

—(7) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)).

—(8)(i) 52.219-9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637(d)(4)).

—(ii) Alternate I (OCT 2001) of 52.219-9.

—(iii) Alternate II (OCT 2001) of 52.219-9.

—(9) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).

—(10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

—(ii) Alternate I (JUNE 2003) of 52.219-23.

—(11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

—(12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

—(13) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).

—(14) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (SEP 2002) (E.O. 13126).

—(15) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).

—(16) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

—(17) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

—(18) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

—(19) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

—(20)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

—(ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

—(21) 52.225-1, Buy American Act—Supplies (JUNE 2003) (41 U.S.C. 10a-10d).

—(22)(i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (JUNE 2003) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

—(ii) Alternate I (MAY 2002) of 52.225-3.

—(iii) Alternate II (MAY 2002) of 52.225-3.

—(23) 52.225-5, Trade Agreements (JUNE 2003) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

—(24) 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2003) (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

—(25) 52.225-15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).

—(26) 52.225-16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).

—(27) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

—(28) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

—(29) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

—(30) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

—(31) 52.232–36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).

—(32) 52.239–1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

—(33)(i) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

—(ii) Alternate I (APR 1984) of 52.247–64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

—(1) 52.222–41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, *et seq.*).

—(2) 52.222–42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

—(3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

—(4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

—(5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to PreDecemberessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, *et seq.*).

* * * * *

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219–8, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222–41, Service Contract Act of 1965, as Amended (May 1989), flow down

required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

* * * * *

[FR Doc. 03–12307 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–14; Item VIII]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* June 23, 2003.

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. Please cite FAC 2001–14, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.213–4 [Amended]

■ 2. Amend section 52.213–4 in paragraph (a)(2)(vi) by removing “(Dec 2001)” and adding “(Apr 2003)” in its place.

52.244–6 Subcontracts for Commercial Items.

■ 3. In section 52.244–6, revise the section heading to read as set forth above; and in the clause heading, remove the words “and Commercial Components”.

52.247–64 [Amended]

■ 4. Amend section 52.247–64 in the first parenthetical in the introductory text of paragraph (a) by adding “Appx” after “U.S.C.”.

[FR Doc. 03–12308 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001–14 which amends the FAR. An asterisk (*) next to a rule 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 2001–14 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.

LIST OF RULES IN FAC 2001-14

Item	Subject	FAR case	Analyst
I	Geographic Use of the Term "United States"	1999-400	Davis
II	Miscellaneous Cost Principles	2001-029	Loeb
III	Prompt Payment Under Cost-Reimbursement Contracts for Services	2000-308	Loeb
IV	Electronic Signatures	2000-304	Smith
V	Increased Federal Prison Industries, Inc. Waiver Threshold (Interim)	2003-001	Nelson
VI	Past Performance Evaluation of Federal Prison Industries Contracts	2001-035	Smith
VII	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items	2000-009	Moss
VIII	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.

FAC 2001-14 amends the FAR as specified below:

Item I—Geographic Use of the Term "United States" (FAR Case 1999-400)

This final rule amends the FAR to clarify the use of the term "United States," when used in a geographic sense. The term "United States" is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of "outlying areas" of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands.

Item II—Miscellaneous Cost Principles (FAR Case 2001-029)

This final rule amends the FAR by deleting the cost principle at FAR 31.205-45, Transportation costs, and streamlining the cost principles at FAR 31.205-10, Cost of money; FAR 31.205-28, Other business expenses; and FAR 31.205-48, Deferred research and development costs. The rule will only affect contracting officers that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contract costs.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services (FAR Case 2000-308)

The interim rule published in the **Federal Register** at 66 FR 53485, October 22, 2001, is converted to a final

rule, without change, to implement statutory and regulatory changes related to late payment of an interim payment under a cost-reimbursement contract for services. The rule is of special interest to contracting officers that award or administer these type of contracts.

The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * * ." This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107-107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000.

Item IV—Electronic Signatures (FAR Case 2000-304)

Recent laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

Item V—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003-001)

This interim rule revises the Federal Acquisition Regulation to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at

8.606(e) from \$25 to \$2,500 and eliminates the criterion that delivery is required within 10 days. Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001-035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2000-009)

This final rule amends the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR

52.213-4(a)(2)(vi), 52.244-6 section and clause headings, and 52.247-64(a).

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

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