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Part II

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48 CFR Chapter 1
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–88; Introduction

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

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–88. 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.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–88 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–88

Item	Subject	FAR case	Analyst
I	High Global Warming Potential Hydrofluorocarbons	2014–026	Gray.
II	Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations.	2015–020	Francis.
III	Basic Safeguarding of Contractor Information Systems	2011–020	Davis.
IV	Improvement in Design-Build Construction Process	2015–018	Glover.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–88 amends the FAR as follows:

Item I—High Global Warming Potential Hydrofluorocarbons (FAR Case 2014–026)

This final rule implements Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential—hydrofluorocarbons (HFCs). The rule also requires contractors to report annually the amount of HFCs contained in equipment delivered to the Government or added or taken out of Government equipment under service contracts. This will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693 on Planning for Sustainability in the Next Decade. This rule applies to small entities because about three-quarters of the affected contractors are small businesses and precluding them would undermine the overall intent of this policy. However, to minimize the impact this rule could have on all businesses, especially small businesses, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Item II—Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations (FAR Case 2015–020)

This final rule amends the FAR to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. When FAR Case 2003–022 was published as a rule in 2004, the definition for SAT at FAR 2.101 was changed, but the drafters of the rule also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. This rule reinstates the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Accordingly, this rule provides contracting officers with more flexibility when contracting in support of overseas humanitarian or peacekeeping operations. This final rule does not place any new requirements on small entities.

Item III—Basic Safeguarding of Contractor Information Systems (FAR Case 2011–020)

This final rule amends the FAR to add a new FAR subpart 4.19 and contract clause 52.204–21 for the basic safeguarding of covered contractor information systems, *i.e.,* that process, store, or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding controlled unclassified information (CUI) as established by Executive Order 13556. Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection. This rule will not have a significant economic impact on contractors (including small business concerns) or the Government.

Item IV—Improvement in Design-Build Construction Process (FAR Case 2015–018)

This final rule revises the FAR to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. When a two-phase design-build construction acquisition is valued at greater than $4 million, section 814 requires the head of the contracting

activity to approve a contracting officer determination to select more than five offerors to submit phase-two proposals. The approval level is delegable no lower than the senior contracting official within the contracting activity. This rule change does not place any new requirements on small entities.

Item V—Technical Amendments

Editorial changes are made at FAR 1.106.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–88 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 2005–88 is effective May 16, 2016 except for items I, II, III, and IV, which are effective June 15, 2016.

Dated: May 4, 2016.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2016.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: April 28, 2016.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2016–10995 Filed 5–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 11, 23, 25, and 52

[FAC 2005–88; FAR Case 2014–026; Item I; Docket No. 2014–0026; Sequence 1]

RIN 9000–AM87

Federal Acquisition Regulation: High Global Warming Potential Hydrofluorocarbons

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential (GWP) hydrofluorocarbons (HFCs). This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order on Planning for Sustainability in the Next Decade.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703–795–6328, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2014–026.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 80 FR 26883, on May 11, 2015, to implement Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high GWP HFCs. This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693, Planning for Federal Sustainability in the Next Decade, of March 25, 2015.

Sixteen respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

In response to public comments received, the final rule contains the following changes from the proposed rule:

- Clarified the definition of ''high global warming potential hydrofluorocarbons'' to make it specific to a particular end use.
- Included the use of reclaimed HFCs as products that minimize or eliminate the use, release, or emission of high GWP HFCs.
- Clarified that the clause prescription exception is for supplies that will be delivered outside the United States and its outlying areas as well as for contracts for services performed outside the United States and its outlying areas.
- Added in the clauses at 52.223–20 and 52.223–21 environmental, technical, and economic factors to consider when determining feasibility.

B. Analysis of Public Comments

1. General

a. Support the Objectives of the Rule

Comments: Many of the respondents expressed specific support for the objectives of the rule. Several respondents applauded DoD, GSA, and NASA in proposing that Federal agencies procure, when feasible, alternatives to high-GWP HFC refrigerants. Other respondents stated that the proposed rule is a step in the right direction and could have considerable impact on reducing the Government's greenhouse gas emissions and helping Federal agencies and departments meet several Executive actions and orders pertaining to HFCs.

Response: Noted.

b. Oppose the Objectives of the Rule

Comment: One respondent believed that global warming is a farce and that the Government should not be allowed to acquire anything because of global warming.

Response: The FAR Council is responsible for the implementation of the Executive orders and policies of the Administration. DoD, NASA, and GSA have prepared this rule to implement and facilitate compliance with Executive Order 13693, Planning for Sustainability in the Next Decade, and the President's Climate Action Plan.

2. Definition of ''high global warming potential hydrofluorocarbons''

Various respondents commented on the definition of ''high global warming potential hydrofluorocarbons.'' One of these respondents questioned whether the identification of a lower GWP HFC alternative pursuant to the SNAP program meant that the Government would be required to use the alternative.

Response: The Councils have further clarified in the final rule that the term ''high global warming potential hydrofluorocarbons'' means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives

is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap.* For every end use, the SNAP program lists include several different alternatives as acceptable for the same end use or application and provides information, including the GWPs of alternatives. The decision as to which of the SNAP-listed acceptable alternatives to select in a particular end use should emphasize the alternative with the lowest GWP that meets the needs of the user.

With regard to the required use of a lower GWP HFC product identified in the SNAP list of alternatives products, the Government's decision to do so must take into consideration the feasibility of moving on to an alternative. This decision will require the assessment of a number of factors, including lifecycle costs and the overall energy efficiency achieved through the substitution of a lower GWP HFC product.

Comment: One respondent criticized the SNAP program, upon which the proposed definition is based. Among other concerns, the respondent believes that the SNAP program has identified some substitutes that have significant drawbacks, including poor thermal efficiency, flammability issues, processing difficulties, and limited global availability. Similarly, another respondent did not agree that the definition of high GWP HFCs should be created by simple reference to the SNAP program, because other relevant factors need to be considered (see also section 3.d.). Another respondent commented that the term ''high global warming potential hydrofluorocarbons'' was defined solely in term of relative GWP (compared to alternatives approved under the EPA's SNAP program.) The respondent is concerned that the policies based on this definition fail to take into account other major causes of climate impact.

Response: In response to the concern raised by one respondent regarding significant drawbacks of some substitutes identified by SNAP, it is helpful to understand the SNAP program's framework for review and listings. EPA applies seven specific criteria for determining whether a substitute is acceptable or unacceptable. These criteria, which can be found at 40 CFR 82.180(a)(7), include atmospheric effects and related health and environmental effects, ecosystem risks, consumer risks, flammability, and cost and availability of the substitute. To enable EPA to assess these criteria, EPA requires submitters to include various information including ozone depletion potential (ODP), GWP, toxicity, flammability, and the potential for human exposure. The SNAP program does not review for a substitute's performance or efficacy. The SNAP list of alternatives evolves as new substitutes become available and substitutes that pose significantly greater risk than other available substitutes are determined to no longer be acceptable for use. These changes occur because of the changing availability of substitutes for a specific use as well as EPA's overall understanding of the environmental and human health impacts of substitutes already listed as compared with new substitutes. However, as changes are made to the SNAP lists, EPA assures users that multiple substitutes are available for any given end use and that end users continue to have options.

In its recent final rule, published at 80 FR 42869, on July 20, 2015, EPA modified the listings for certain HFCs and HFC blends in various end uses in the aerosols, foam blowing, and refrigeration and air conditioning sectors where other alternatives were available or potentially available that posed lower overall risk to human health and the environment. Pursuant to the guiding principles of the SNAP program, the action did not specify that any HFCs are unacceptable across all sectors and end uses. Consistent with section 612 of the Clean Air Act (42 U.S.C. 7671k) as EPA has historically interpreted it under the SNAP program, EPA made the modifications based on evaluation of the substitutes addressed in that action using the SNAP criteria for evaluation and considering the current suite of other available and potentially available substitutes.

For the refrigerant and foam blowing agent end uses, equipment design is critical. Thus, there is a range of thermal conductivity and insulation values among the acceptable alternatives, with some having lower values than the HFCs previously used (as well as ozone-depleting substances (ODS)) some having higher values, and others having comparable values. In EPA's recent rulemaking published at 80 FR 42869, on July 20, 2015, EPA noted that no information provided to EPA suggests that the alternatives that remain acceptable result in lower energy efficiency. In fact, as stated in the preamble to the rule, available information indicates that the opposite can be true, that the acceptable alternatives not subject to a status change have been used in equipment or used to produce insulating foam that provide for better energy efficiency.

In response to the respondent who disagreed that the definition of high GWP HFCs should refer just to the SNAP program, the Councils note that the definition does not bind the end user to select any specific alternative or to ignore assessment of the unique needs that end user may be facing. Rather, requiring activities can use the information provided by the SNAP list of alternatives, including information on the GWP of alternatives, in addition to other factors, in the selection of products and equipment that best meet their needs. Please see related response below regarding comments on the feasibility of moving to alternatives.

In response to the respondent who commented that the term ''high global warming potential hydrofluorocarbons'' was defined solely in terms of relative GWP (compared to other alternatives approved under the EPA's SNAP program) and was concerned that this failed to take into account other major causes of climate impact, the term is intended to reflect differences in GWP. This is consistent with how climate impacts are considered under the SNAP program (See section VII.A.3., GWP Considerations, in the preamble to the recent EPA SNAP final rule published at 80 FR 42870 at 42937, on July 20, 2015). Users may take into account additional factors, such as energy efficiency, in deciding which of the lower-GWP alternatives listed as acceptable under SNAP meet their needs. For clarification, please also see the response below that discusses other factors such as energy efficiency, which are related to the performance of the equipment, whereas GWP relates to the intrinsic characteristic and potential environmental impact of the chemical itself.

3. Policy.

a. Lower vs. lowest/climate-friendly

Comment: One respondent, primarily addressing refrigerants, recommended addition of the following definitions to the rule:

''Climate-friendly'' alternative means an alternative that is listed as acceptable under the EPA's SNAP program (40 CFR part 82, subpart G) that has a GWP of less than 150.

''Lowest GWP alternative'' means an alternative that is identified as acceptable under the EPA's SNAP program and has the lowest GWP compared to all other acceptable alternatives for the relevant end use and has a GWP under 150 for new equipment and a GWP at least 50 percent lower than the current refrigerant for retrofits.

The respondent further recommended a policy that would avoid procurement of mid-range GWP alternatives (from 300 to 1500 GWP) if truly low GWP alternatives have been proven and commercialized, because use of mid-range alternatives would set up a circumstance where a future phase-out in just a few years will be necessary to remove these mid-range GWP alternatives due to their impact on the climate. Consistent with the definition recommended by the respondent, the respondent also recommended that the Government should not purchase any new equipment or product unless it has a refrigerant with a GWP of less than 150 and for retrofits, higher GWP refrigerants can be used if they have GWPs of at least 50 percent less than the current refrigerant that will be replaced. Otherwise, the respondent recommended that the old system should be decommissioned and replaced.

Response: While GWP is an important criterion, it should not be the sole criterion for consideration. The EPA SNAP program conducts comparative risk analyses for each end use and alternative, and has not set specific GWP limits for acceptable alternatives in a specific end use. For example, while an alternative refrigerant in one application might have a GWP that meets the respondent's proposed GWP limit of 150, there may be other human health or environmental considerations for the particular end use or application (*e.g.,* toxicity limits, flammability) that may lead the user to determine that another alternative is more suitable for that particular application. For this reason and others, Federal agency requiring activities and contractors need the flexibility to be able to evaluate the entire suite of lower GWP alternatives and to balance direct climate impacts, energy efficiency, safety, performance, and other user needs before selecting the one most appropriate for their specific use.

b. Timing

Various respondents commented on the timing of when the FAR rule should take effect.

Comment: Several respondents recommended that the enactment of this rule should be tied to the HFC conversion timelines within the EPA SNAP rule published at 80 FR 42870, on July 20, 2015, and that this rule is imposing use of lower GWP alternatives ''earlier than required.'' Unless otherwise noted, all references to a SNAP rule in this document are in reference to the final rule published at 80 FR 42870, on July 20, 2015. According to one of the respondents, the SNAP final rule specified that use of HFC–134a would be unacceptable for use in polystyrene extruded boardstock and billet as of January 1, 2021.

Response: It is not the intent of this rule to require conversion to alternatives on earlier timelines than in the SNAP final rule. Rather, as stated in the background section of the proposed FAR rule, the purpose of this final rule is to facilitate the purchase of cleaner alternatives to HFCs whenever feasible and transition over time to equipment that uses safer and more sustainable alternatives.

Comment: A respondent also recommended coordinating with Department of Energy rulemaking on energy efficiency and conservation standards. Companies are working to comply with these stringent new standards.

Response: The Councils are aware of the Department of Energy (DOE) rulemaking titled, ''Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings' Baseline Standards Update'', published at 80 FR 68749, on November 6, 2015, and have taken the DOE rules into account in drafting this final rules. The rule requires reduction in the use, release, and emissions of high GWP HFCs only when feasible. The clauses state that a determination of feasibility would include consideration of energy efficiency.

Comment: One respondent noted that there is a great range of speeds by which the sectors, and the companies within them, who use HFCs, can transition into lower GWP alternatives. Another respondent stated that a transition to low GWP blowing agents must be conducted over a timeline that allows individual manufacturers to identify suitable alternatives and conduct necessary product development and testing to fully commercialize new formulations. Another respondent recommended modifying the clause at FAR 52.223–12(c)(1) to require transitioning ''at the earliest feasible time'' from high GWP HFCs to acceptable alternatives.

Response: The President's Climate Action Plan specifically directs agencies to purchase cleaner alternatives to HFCs whenever feasible and transition over time to equipment that uses safer and more sustainable alternatives. The language used in the Climate Action Plan: (1) Recognizes that there are technical hurdles that must be overcome to identify suitable alternatives, conduct necessary product development and testing, and fully commercialize new formulations; and (2) envisions a transition ''over time.'' Accordingly, this final rule allows existing Government equipment to be utilized until the end of its useful life, thus minimizing stranded capital.

c. Acceptability and Feasibility

Comments: More than half of the respondents commented on the need to consider factors other than low GWP value in determining the acceptability and/or feasibility of using a lower GWP alternative. According to many respondents, lower GWP alternatives must be both environmentally and economically acceptable. One respondent stated that considering only the GWP of a compound may not be appropriate, depending on the circumstances of a particular use. This respondent also stated that GWP alone is an insufficient measure of a product's impact on human health and the environment. A few respondents stated the need for a definition of ''feasible.'' They noted that without a definition, contractors will have little guidance as to when adoption of low GWP substances would be appropriate and/or required and the rule will have little impact on procurement decisions.

i. Life Cycle/Energy Efficiency

Many of the respondents recommended consideration of the total life-cycle of an alternative product, such as in-use emission rates and energy efficiency benefits.

- With regard to refrigerants, a respondent commented that the majority of the climate impact from refrigerant used results from the energy consumed by the air conditioning system (*i.e.,* the indirect impact) and not from the GWP of the refrigerant itself (*i.e.,* the direct climate impact). According to the respondent, refrigerant selection has a substantial impact on the energy efficiency of the air conditioning system in which the refrigerant will be used.
- With regard to foam insulation, a respondent commented on the importance of the use of thermal insulation for increased energy efficiency to reduce global warming. Likewise, another respondent pointed out the need to consider the life-cycle benefits of products, because if less energy efficient insulation products are used in the construction of a building the result may be increased greenhouse gas emissions over the life of the building or facility.

ii. Safety—Flammability

Several respondents commented on the need to consider key product attributes that affect safety, such as

flammability. Another respondent mentioned that feasible alternatives should consider standards and codes compliance (such as safety standards).

iii. Technical Capability

Several respondents commented on the necessity to consider technical capability of the proposed alternative to avoid inadvertently selecting a product that will prove to be less energy efficient.

iv. Commercial Availability

Several respondents commented on the need for alternatives to be commercially available. One respondent recommended that absence of commercially available alternatives should constitute a viable exemption from the provisions of the rule. One respondent recommended that decisions on feasibility of low GWP alternatives need to be assessed based on available technologies.

v. Cost

Several respondents mentioned cost as another factor for consideration. One respondent asked whether the taxpayer should be forced to pay more than the general public, by adopting lower GWP products earlier than required.

vi. Definition

One of the respondents recommended defining ''feasibility'' as ''a commercially available alternative with a GWP lower than that of the currently used substance in the relevant application, that (1) is identified by EPA as an acceptable alternative under 40 CFR part 82, which increases the total cost of the installation or bid by not more than 10 percent more than would be the cost if high GWP substances were used.''

Response: The concerns raised by the respondents in paragraphs 3.c.i. through vi. of this analysis of the public comments are issues considered by EPA in making listing decisions under the SNAP program. Section 612 of the Clean Air Act provides that EPA must prohibit the use of a substitute where EPA has determined that there are other available substitutes that pose less overall risk to human health and the environment for that use. EPA reviews substitutes using a comparative risk framework and GWP is only one of several criteria EPA considers in its overall evaluation. EPA also considers factors such as ozone depletion potential, exposure assessments, flammability, toxicity, and other environmental impacts. In addition, in the recent change of status rule in which EPA changed the status of a number of high GWP substitutes from acceptable to unacceptable, EPA considered the technical challenges of a transition and the supply of other alternatives in establishing the transition date. As the term is used in this rule, ''feasible'' means not only capable of being accomplished, but capable of being accomplished successfully and suitably. All of the factors mentioned by respondents are relevant in the decision as to which acceptable alternative is preferable in a given application. Alternatives that have been determined acceptable by EPA under the SNAP Program should still be evaluated in each particular application in terms of environmental, technical, and economic feasibility. The FAR Council does not have a basis (such as statute or Executive Order) upon which to establish a specific cost differential that would constitute an unreasonable cost. An assessment of whether a cost is unreasonable depends partly on the benefits to be derived from use of the alternative and other economic factors. Therefore, the final rule does not define the term ''feasibility,'' but provides direction to the Federal user and contractor in terms of factors to be considered when determining the feasibility of using an acceptable lower GWP alternative (FAR 52.223–20, Aerosols, and 52.223–21, Foams).

d. Refrigerant Management

Comment: Many of the respondents commented on the need for better refrigerant management, including the recovery, reclamation, and reuse of refrigerant.

• *Leaks and accidental or intentional venting of refrigerant.* As stated by one respondent, refrigeration and air conditioning systems are prone to leaks during normal operations. Even with aggressive leak detection, these appliances and systems require servicing to maintain the proper refrigerant change and performance. Another respondent emphasized that air conditioning and refrigeration systems are actually non-emissive uses of HFCs since these are closed systems. The concern with HFCs, therefore, is not the use, but the misuse. According to the respondent, the vast amount of HFC emissions result from leaks and accidental or intentional venting of refrigerant.

• *Increase the use of reclaimed refrigerants.* According to one respondent, nearly all lost refrigerant is replaced with newly produced virgin refrigerant. Another respondent recommended that the benefits of the proposed rule could be significantly enhanced by defining acceptable low GWP alternatives to include reclaimed refrigerants. Rather than wait for low GWP alternatives to be deployed in retrofitted or newly installed equipment, the Federal Government can significantly reduce greenhouse gas emissions in the near-term by including reclaimed HFC refrigerant as part of the procurement priorities. Another respondent recommended that the Government should give preference to the use of reclaimed refrigerant to service existing Federal buildings and facilities, just like the Federal Government promotes recycled paper and other consumer goods.

• *Improved refrigerant management.* As stated by a respondent, a Federal program promoting reclaimed refrigerant will encourage better refrigerant management practices in the private sector, because companies will recognize that their used refrigerant has an economic value. Another respondent noted that the policy would provide incentive for recovery of HFC refrigerant from older end-of-life equipment (currently only approximately 10 percent is recovered and reclaimed).

• *Less production of virgin HFC refrigerants.* One respondent stated that the goal should be to limit production of all virgin refrigerants, including lower GWP HFCs. As stated by another respondent, use of reclaimed refrigerant displaces additional production of new HFC refrigerant, thereby preventing greenhouse gas emissions that would otherwise occur.

Response: The Councils recognize that refrigerant management is an important way to reduce climate-damaging and ozone-depleting emissions from equipment used for air-conditioning and refrigeration. While the existing EPA regulations prohibit any person from knowingly venting, releasing, or disposing into the environment any ozone-depleting or HFC refrigerant in the course of maintaining, servicing, repairing, or disposing of air-conditioning or refrigeration appliances, they do not establish requirements to repair leaks or specify other servicing requirements for equipment containing HFCs. EPA has recently proposed updating the existing refrigerant management requirements under section 608 of the Clean Air Act and extending them to cover servicing practices for HFCs (see 80 FR 69457, dated November 9, 2015).

There are also environmental benefits to promoting the use of reclaimed material over virgin production. Both newly-produced and reclaimed refrigerants must meet the same purity requirements and thus reclaimed refrigerant can be used instead of newly produced refrigerants. This final rule

provides use of reclaimed HFCs as an example of sustainable acquisition under FAR 11.002(d)(1) and encourages their use at FAR clause 52.223–12(c)(4).

4. Exceptions

a. Outside the United States

Various respondents commented on the exception in the proposed rule for contracts that will be performed outside the United States and its outlying areas.

Comment: One respondent requested clarification of what ''performed outside the United States and its outlying areas'' means for the acquisition of supplies. Another respondent stated that the rule should apply to both domestic and foreign procurement decisions, because limiting the scope to domestic acquisitions misses an opportunity to further reduce greenhouse gas emissions. Other respondents stated that an effective means of reducing the future climate change contribution of HFCs must be global in nature. One respondent recommended that that application to contracts outside to United States and its outlying areas should be excepted only if proven to be unfeasible.

Response: The clause prescription at FAR 23.804 has been clarified by specifying that the exception to use of the clause is for contracts for supplies to be delivered outside the United States and its outlying areas, or contracts for services to be performed outside the United States and its outlying areas. This rule only applies to contracts for supplies to be delivered within the United States or its outlying areas or to services to be performed within the United States or its outlying areas.

b. Military and Space Activities

Comment: One respondent asked whether DoD, GSA, and NASA would be prohibited from taking advantage of the SNAP exemptions provided for military and space activities.

Response: Nothing in this rule precludes Federal agencies from taking advantage of the exemptions to the SNAP requirements, as currently provided in the SNAP final rule for military and space- and aeronautics-related applications. However, this rule, unlike the SNAP Program, requires transitioning in advance of the SNAP deadlines, only when feasible. Therefore, an exception for military and space activities is unnecessary. In accordance with the overall construction of the rule, exemptions for military and space activities would fall under the general exemption as infeasible.

In addition, the FAR clauses state that a contractor shall transition to lower GWP alternatives ''unless otherwise specified in the contract.'' In those cases where a Federal agency has critical uses where only qualified high GWP HFCs may be used, these would be specified in a contract and unqualified lower GWP alternatives would not be allowed.

c. Low Temperature Refrigeration Systems

Comment: One respondent recommended an exemption for low temperature refrigeration systems operating below −50 °C. The respondent stated that in both the EU and Canada, similar low GWP initiatives have allowed such an exemption. According to the respondent, due to issues of flammability, energy efficiency, and technical capability, the respondent does not know of any low GWP solutions that meet the needs of ultra-low temperature refrigeration systems.

Response: There is no need for a special exemption for a low temperature refrigeration system. The concept of feasibility is addressed and an exemption arises if use of lower GWP alternatives is found to be infeasible. If low GWP alternatives do not meet the needs of ultra-low temperature refrigeration systems, then transition is not feasible and, therefore, not required by this rule.

5. Other

a. Labeling

Comment: One respondent recommended that contractors should also be required to label products which contain or are manufactured with HFCs.

Response: The labeling requirement for products that contain or are manufactured with Ozone-Depleting Substances (ODS) at paragraph (b) of FAR clause 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, is required by statute (42 U.S.C. 7671j) and EPA regulations (40 CFR part 82, subpart E). There is not a comparable requirement for high GWP HFCs.

b. Buildings With Multiple Systems

Comment: With regard to the reporting requirement in FAR 52.223–12(d), the respondent recommended changing ''50 or more pounds'' to ''25 or more pounds'' and that a building containing multiple systems that each contain individually less than 25 pounds of HFCs or refrigerant blends containing HFCs should be assessed as the entire building's refrigerant use and not on an individual system level.

Response: When drafting the proposed rule, the 50-pound threshold was chosen in order to eliminate tracking and reporting on thousands of pieces of smaller equipment, thereby minimizing administrative burden and costs to contractors, including many small businesses; and also recognizing that larger systems such as building chillers, commissary/large commercial refrigeration systems, and industrial process refrigeration systems likely contribute the largest percentage of total HFC emissions. This 50-pound threshold is also consistent with other existing regulatory requirements for refrigerants imposed under the Clean Air Act and 40 CFR part 82. Recognizing that EPA has proposed (see 80 FR 69457, dated November 9, 2015) updating and expanding the coverage of the refrigerant management requirements established under section 608 of the Clean Air Act, if those requirements are amended, they would be applicable to the public and private sectors.

c. Foreign Acquisition

Comment: One respondent recommended that the rule should clarify that if certain products identified as acceptable under the EPA SNAP program are available in other markets but not available or not available at commercial levels in the U.S., then the products may be acquired under the nonavailability exception to the Buy American statute (see FAR 25.103).

Response: FAR part 25, Foreign Acquisition, addresses domestic source restrictions, including the Buy American Act. However, not all acquisitions are subject to the Buy American Act (*e.g.,* when the acquisition is covered by the World Trade Organization Government Procurement Agreement). Other domestic source restrictions may also apply, and there are sanctions against purchases from certain countries. FAR part 23 must be read in conjunction with FAR part 25.

d. Ozone-Depleting Substances

Comment: One respondent is concerned that the proposed clause at FAR 52.223–12, Maintenance, Service, Repair, Recycling, or Disposal of Refrigeration Equipment and Air Conditioners, does not include ODS within its scope.

Response: This rule is not intended to suggest that users revert to an ODS in lieu of a high-GWP HFC. The language in the rule leaves the current ODS regulatory language, currently at FAR subpart 23.8, in place and only adds language dealing with high GWP HFCs. The definition of ''ozone-depleting substance'' as any substance designated by the EPA in 40 CFR part 82 also

remains in FAR part 2. The language also maintains the current FAR 23.803(a)(2) preference to the procurement of substances that reduce overall risks to human health and the environment by the depletion of ozone in the upper atmosphere.

e. Specific Refrigerants, Foams, and Aerosols

Comments: Several respondents commented on specific refrigerants, foams, or aerosols and lower GWP alternatives.

- One respondent sent information on a low GWP substitute for HFC–134a.
- One respondent included a list of some examples of available low GWP replacements for high GWP HFCs by application (*i.e.,* refrigerants, foam, and aerosols).
- Another respondent was concerned that the rule does not require an alternative to the most commonly used refrigerant, HCFC–22, which is both an ODS and has a high GWP, because it is determined to be acceptable by EPA under SNAP.

Response: The information on the low GWP alternatives is noted. While the revised FAR subpart 23.8 makes no explicit mention of HCFC–22, or any other specific substance, the regulation refers to EPA's SNAP program for the list of acceptable alternatives. HCFC–22 remains acceptable as a refrigerant under SNAP. However, existing regulations effectively prohibit the use of virgin HCFC–22 to manufacture a new appliance or retrofit an existing appliance (see 40 CFR 82.15(g)(2)). This restriction does not affect the use of used, recovered, and recycled HCFC–22. Regulations also effectively prohibit the manufacture or import of appliances and appliance components that are pre-charged with HCFC–22 (see 40 CFR 82.304).

Comment: One respondent recommended an additional clause to address clean agent fire suppression.

Response: The suggested clause is outside the scope of this case and could not be included in the final rule without publishing for public comment.

III. Applicability

This rule will apply to all acquisitions inside the United States and its outlying areas of products or services containing or using high GWP HFCs, including—

- Acquisitions that do not exceed the simplified acquisition threshold; and
- Commercial items (including commercially available off-the-shelf items) that use FAR part 12 procedures.

A majority of the acquisitions involving high GWP HFCs do not exceed the simplified acquisition threshold. Applicability of the requirements below the simplified acquisition threshold is necessary to be effective and to cover a significant number of actions and dollars that fall below this threshold. However, the reporting requirement applies only for delivery of, or maintenance, service, repair and disposal of, equipment or appliances normally containing 50 pounds or more of HFCs or refrigerant blends containing HFCs.

Likewise, a majority of the acquisitions involving high GWP HFCs involve the acquisition of commercial items. Applicability of the requirements to commercial items is necessary to be effective and include a significant number of actions and dollars for commercial item acquisitions.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is necessary to implement Executive branch policy stated in the President's Climate Action Plan. The objective of this rule is to require Federal agencies to procure climate-friendly chemical alternatives to high global warming potential (GWP) hydrofluorocarbons (HFCs) and allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of Executive Order 13693, Planning for Sustainability in the Next Decade.

There were no issues raised by the public comments in response to the initial regulatory flexibility analysis.

Based on FPDS data for Fiscal Year 2015, this rule will apply to approximately 1400 small business contractors that provide certain supplies (including equipment and appliances) that contain HFCs to the Federal Government and about 347 small business contractors that provide maintenance, service, repair, or disposal of refrigeration equipment or air conditioners. In addition, although the clauses at 52.223–20, Aerosols, and 52.223–21, Foams, do not contain any reporting requirements, these clauses also apply respectively to solicitations and contracts that involve repair or maintenance of electronic or mechanical devices and construction of buildings and facilities.

DoD, GSA, and NASA estimate an average reporting burden of about 8 hours per year for each small business providing supplies that contain high GWP HFCs or maintenance, repair, or disposal of refrigeration equipment or air conditioners.

DoD, GSA, and NASA did not identify any significant alternatives to the rule that would accomplish the stated objectives of the President's Climate Action Plan and the Executive Order.

It is necessary for the rule to apply to small entities, because about three-quarters of the affected contractors are small businesses and excluding them would minimize the importance of this policy and may prevent the Government from meeting the objective of this policy. Every effort has been made to minimize the burdens imposed. For example, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0191, titled: ''High Global Warming Potential Hydrofluorocarbons.''

List of Subjects in 48 CFR Parts 1, 2, 7, 11, 23, 25, and 52

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA and NASA amend 48 CFR parts 1, 2, 7, 11, 23, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 11, 23, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by adding to the table, in numerical order, FAR segments ''52.223–11'' and ''52.223–12'' with their corresponding OMB control number ''9000–0191''.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definitions ''Global warming potential'', ''High global warming potential hydrofluorocarbons'', ''Hydrofluorocarbons'', ''Manufactured end product'', and ''Products'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

* * * * *

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap/*).

* * * * *

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

* * * * *

Manufactured end product means any end product in product and service codes (PSC) 1000–9999, except—

(1) PSC 5510, Lumber and Related Basic Wood Materials;

(2) Product or service group (PSG) 87, Agricultural Supplies;

(3) PSG 88, Live Animals;

(4) PSG 89, Subsistence;

(5) PSC 9410, Crude Grades of Plant Materials;

(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

* * * * *

Products has the same meaning as *supplies.*

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by revising paragraph (p)(2) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(p) * * *

(2) Comply with the policy in 11.002(d) regarding procurement of biobased products, products containing recovered materials, environmentally preferable products and services (including Electronic Product Environmental Assessment Tool (EPEAT®)-registered electronic products, nontoxic or low-toxic alternatives), ENERGY STAR® and Federal Energy Management Program-designated products, renewable energy, water-efficient products, non-ozone-depleting products, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons;

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 5. Amend section 11.002 by revising paragraph (d)(1)(vi) to read as follows:

11.002 Policy.

* * * * *

(d)(1) * * *

(vi) Non-ozone-depleting substances, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons (subpart 23.8).

* * * * *

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

■ 6. Amend section 23.000 by revising paragraph (d) to read as follows:

23.000 Scope.

* * * * *

(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable (including EPEAT®-registered, and non-toxic and less toxic) products, products containing recovered materials, biobased products, non-ozone-depleting products, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons;

* * * * *

■ 7. Revise the heading of subpart 23.8 to read as follows:

Subpart 23.8—Ozone-Depleting Substances and Hydrofluorocarbons

■ 8. Revise section 23.800 to read as follows:

23.800 Scope of subpart.

This subpart sets forth policies and procedures for the acquisition of items that—

(a) Contain, use, or are manufactured with ozone-depleting substances; or

(b) Contain or use high global warming potential hydrofluorocarbons.

■ 9. Revise section 23.801 to read as follows:

23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Section 706 of division D, title VII of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(c) Executive Order 13693 of March 25, 2015, Planning for Federal Sustainability in the Next Decade.

(d) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

23.802 [Removed]

■ 10. Remove section 23.802.

23.803 [Redesignated as 23.802 and Amended]

■ 11. Redesignate section 23.803 as 23.802 and revise newly redesignated 23.802 to read as follows:

23.802 Policy.

It is the policy of the Federal Government that Federal agencies—

(a) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone and/or result in the use, release or emission of high global warming potential hydrofluorocarbons; and

(b) Give preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to

human health and the environment by minimizing—

(1) The depletion of ozone in the upper atmosphere; and

(2) The potential use, release, or emission of high global warming potential hydrofluorocarbons.

■ 12. Add new section 23.803 to read as follows:

23.803 Procedures.

In preparing specifications and purchase descriptions, and in the acquisition of products and services, agencies shall—

(a) Comply with the requirements of title VI of the Clean Air Act, section 706 of division D, title VII of Public Law 111–8, Executive Order 13693, and 40 CFR 82.84(a)(2), (3), (4), and (5);

(b) Substitute acceptable alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(n);

(c) Unless a particular contract requires otherwise, specify that, when feasible, contractors shall use another acceptable alternative in lieu of a high global warming potential hydrofluorocarbon in products and services in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential; and

(d) Refer to EPA's SNAP program for the list of alternatives, found at 40 CFR part 82, subpart G, as well as supplemental tables of alternatives (available at *http://www.epa.gov/snap*).

■ 13. Revise section 23.804 to read as follows:

23.804 Contract clauses.

Except for contracts for supplies that will be delivered outside the United States and its outlying areas, or contracts for services that will be performed outside the United States and its outlying areas, insert the following clauses:

(a) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, in solicitations and contracts for—

(1) Refrigeration equipment (in product or service code (PSC) 4110);

(2) Air conditioning equipment (PSC 4120);

(3) Clean agent fire suppression systems/equipment (*e.g.,* installed room flooding systems, portable fire extinguishers, aircraft/tactical vehicle fire/explosion suppression systems) (in PSC 4210);

(4) Bulk refrigerants and fire suppressants (in PSC 6830);

(5) Solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 6850);

(6) Corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 8030);

(7) Fluorocarbon lubricants (primarily aerosols) (in PSC 9150); and

(8) Any other manufactured end products that may contain or be manufactured with ozone-depleting substances.

(b) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, in solicitations and contracts that include the maintenance, service, repair, or disposal of—

(1) Refrigeration equipment, such as refrigerators, chillers, or freezers; or

(2) Air conditioners, including air conditioning systems in motor vehicles.

(c) 52.223–20, Aerosols, in solicitations and contracts—

(1) For products that may contain high global warming potential hydrofluorocarbons as a propellant, or as a solvent; or

(2) That involve maintenance or repair of electronic or mechanical devices.

(d) 52.223–21, Foams, in solicitations and contracts for—

(1) Products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent, such as building foam insulation or appliance foam insulation; or

(2) Construction of buildings or facilities.

PART 25—FOREIGN ACQUISITION

25.1101 [Amended]

■ 14. Amend section 25.1101 by removing from paragraph (f) '', as defined in the provision at 52.225–18''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (b)—

■ i. Redesignating paragraphs (b)(36) through (54) as paragraphs (b)(38) through (56), respectively;

■ ii. Adding new paragraphs (b)(36) and (37);

■ iii. Further redesignating newly redesignated paragraphs (b)(43) through (56) as paragraphs (b)(45) through (58), respectively; and

■ iv. Adding new paragraphs (b)(43) and (44).

The revision and additions reads 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, 2016)

* * * * *

(b) * * *

____(36) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016) (E.O. 13693).

____(37) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016) (E.O. 13693).

* * * * *

____(43) 52.223–20, Aerosols (June, 2016) (E.O. 13693).

____(44) 52.223–21, Foams (June, 2016) (E.O. 13693).

* * * * *

■ 16. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (b)(1)—

■ i. Redesignating paragraphs (b)(1)(xi) through (xvi) as (b)(1)(xiii) through (xviii), respectively;

■ ii. Adding new paragraphs (b)(1)(xi) and (xii);

■ iii. Further redesignating newly redesignated paragraphs (b)(1)(xiv) through (xviii) as paragraphs (b)(1)(xvi) through (xx), respectively; and

■ iv. Adding new paragraphs (b)(1)(xiv) and (xv).

The revision and additions 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, 2016)

* * * * *

(b) * * *

(1) * * *

(xi) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016)

(E.O. 13693)(applies to contracts for products as prescribed at FAR 23.804(a)).

(xii) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016) (E.O. 13693) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

* * * * *

(xiv) 52.223–20, Aerosols (June, 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices).

(xv) 52.223–21, Foams (June, 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities.

* * * * *

■ 17. Amend section 52.223–11 by revising the section heading, clause heading, and clause to read as follows:

52.223–11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.

* * * * *

Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016)

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

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (*http://www.epa.gov/snap/*).

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning: Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(c) *Reporting.* For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by—

(i) Type of hydrofluorocarbon (*e.g.,* HFC–134a, HFC–125, R–410A, R–404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to *www.sam.gov,* for FY17 and after—

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at *http://www.epa.gov/snap*) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap.*

(End of clause)

■ 18. Amend section 52.223–12 by revising the section heading, clause heading, and clause to read as follows:

52.223–12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.

* * * * *

Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016)

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

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (*http://www.epa.gov/snap/*).

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) The Contractor shall comply with the applicable requirements of sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(c) Unless otherwise specified in the contract, the Contractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this contract by—

(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service and as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be maintained, serviced, repaired, or disposed under this contract, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this contract by—

(i) Type of hydrofluorocarbon (*e.g.,* HFC–134a, HFC–125, R–410A, R–404A, *etc.*);

(ii) Contract number;

(iii) Equipment/appliance; and

(2) Report that information to the Contracting Officer for FY16 and to *www.sam.gov,* for FY17 and after—

(i) No later than November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(e) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap/.*

(End of clause)

■ 19. Add section 52.223–20 to read as follows:

52.223–20 Aerosols.

As prescribed in 23.804(c), insert the following clause:

Aerosols (June, 2016)

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

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap/*).

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, or emissions of high global warming

potential hydrofluorocarbons, when feasible, from aerosol propellants or solvents under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

(1) In-use emission rates, energy efficiency;

(2) Safety, such as flammability or toxicity;

(3) Ability to meet technical performance requirements; and

(4) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap/.*

(End of clause)

■ 20. Add section 52.223–21 to read as follows:

52.223–21 Foams.

As prescribed in 23.804(d), insert the following clause:

Foams (June, 2016)

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

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap/.*

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, and emissions of high global warming potential hydrofluorocarbons and refrigerant blends containing hydrofluorocarbons, when feasible, from foam blowing agents, under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

(1) In-use emission rates, energy efficiency, and safety;

(2) Ability to meet performance requirements; and

(3) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap/.*

(End of clause)

[FR Doc. 2016–10998 Filed 5–13–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 13, 18, and 19

[FAC 2005–88; FAR Case 2015–020; Item II; Docket No. 2015–0020; Sequence No. 1]

RIN 9000–AN09

Federal Acquisition Regulation: Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of U.S. Code which establishes a higher simplified acquisition threshold for overseas acquisitions in support of humanitarian or peacekeeping operations.

DATES: Effective June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2015–020.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 60832 on October 8, 2015, soliciting public comments on this rule, drafted to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. FAR Case 2003–022 was published in the **Federal Register** as an interim rule at 69 FR 8312, on February 23, 2004, and as a final rule published at 69 FR 76350, on December 20, 2004. Drafters of that rule had revised the definition for SAT contained at FAR 2.101: Definitions, but had also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. The civilian statute at the time was numbered 41 U.S.C. 259(d)(1); it is now at 41 U.S.C. 153. The purpose of this rule is to reinstate the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Conforming changes are made in FAR parts 4, 13, 18, and 19.

One public comment was received.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in development of the final rule.

A. Summary of Significant Changes

There were no changes made to the rule as a result of the comment received. There were no comments on the Initial Regulatory Flexibility Analysis.

B. Analysis of Public Comments

Comment: One respondent stated that the FAR definition of simplified acquisition needed to clarify that construction is included as part of supplies or services in a contingency environment, noting that construction projects are very important to contingency operations. The respondent indicated that contracting professionals generally understand that the FAR covers two broad categories of acquisition: Supplies and services. Services include everything that is not a commodity (supplies), and is therefore inclusive of construction, which is a type of service.

Response: The Councils appreciate the comment and acknowledge the broad understanding that services are inclusive of construction services.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory

Flexibility Act 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The final rule, in order to implement 41 U.S.C. 153, sets forth a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

The rule applies only to overseas acquisitions in support of humanitarian or peacekeeping operations. In Fiscal Year 2014, 1545 awards were made in support of humanitarian or peacekeeping operations, and 585 (37.86 percent) of those were to small businesses. Additionally, only 81 (5.24 percent) of the awards were valued between the former threshold of $150,000 and the new threshold of $300,000. Therefore, it is not anticipated that this rule will have a significant economic impact on small businesses.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 4, 13, 18, and 19

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 2, 4, 13, 18, and 19 as set forth below:

■ 1. The authority citation for FAR parts 2, 4, 13, 18, and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by revising the definition ''Simplified acquisition threshold'' to read as follows:

2.101 Definitions.

* * * * *

Simplified acquisition threshold means $150,000, except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 1903), the term means—

(i) $300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $1 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means $300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.1102 [Amended]

■ 3. Amend section 4.1102 by removing from paragraph (a)(3)(i) ''peacekeeping operations as defined in 10 U.S.C. 2302(7)'' and adding ''peacekeeping operations as defined in 10 U.S.C. 2302(8)'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

■ 4. Amend section 13.003 by removing from paragraph (b)(1) ''described in paragraph (1)'' and adding ''described in paragraph (1)(i)'' in its place.

PART 18—EMERGENCY ACQUISITIONS

18.204 [Redesignated as 18.205]

■ 5. Redesignate section 18.204 as section 18.205.

■ 6. Add a new section 18.204 to read as follows:

18.204 Humanitarian or peacekeeping operation.

(a) A humanitarian or peacekeeping operation is defined in 2.101.

(b) *Simplified acquisition threshold.* The threshold increases when the head of the agency determines the supplies or services are to be used to support a humanitarian or peacekeeping operation. (See 2.101.)

PART 19—SMALL BUSINESS PROGRAMS

19.203 [Amended]

■ 7. Amend section 19.203 by removing from paragraph (b) ''described in paragraph (1)'' and adding ''described in paragraph (1)(i)'' in its place.

19.502–2 [Amended]

■ 8. Amend section 19.502–2 by removing from paragraph (a) ''paragraph (1) of the Simplified Acquisition Threshold'' and adding ''paragraph (1)(i) of the simplified acquisition threshold'' in its place.

[FR Doc. 2016–10999 Filed 5–13–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 7, 12, and 52

[FAC 2005–88; FAR Case 2011–020; Item III; Docket No. 2011–0020, Sequence No. 1]

RIN 9000–AM19

Federal Acquisition Regulation; Basic Safeguarding of Contractor Information Systems

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add a new subpart and contract clause for the basic safeguarding of contractor information systems that process, store or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding Controlled Unclassified Information (CUI) as established by Executive Order (E.O.). Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2011–020.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule has basic safeguarding measures that are generally employed as part of the routine course of doing business. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 77 FR 51496 on August 24, 2012, to address the safeguarding of contractor information systems that contain or process information provided by or generated for the Government (other than public information). This proposed rule had been preceded by DoD publication of an Advance Notice of Proposed Rulemaking (ANPR) and notice of public meeting in the **Federal Register** at 75 FR 9563 on March 3, 2010, under Defense Federal Acquisition Regulation Supplement (DFARS) Case 2008–D028, Safeguarding Unclassified Information. The ANPR addressed basic and enhanced safeguarding procedures for the protection of DoD unclassified information. Resulting public comments on the DFARS rule were considered in drafting a proposed FAR rule under FAR case 2009–030, which focused on the basic safeguarding of unclassified Federal information contained within information systems. On June 29, 2011, the contents of FAR case 2009–030 were merged into FAR case 2011–020, Basic Safeguarding of Contractor Information Systems.

This rule, which focuses on ensuring a basic level of safeguarding for any contractor system with Federal information, reflective of actions a prudent business person would employ, is just one step in a series of coordinated regulatory actions being taken or planned to strengthen protections of information systems. Last summer, OMB issued proposed guidance to enhance and clarify cybersecurity protections in Federal acquisitions related to CUI in systems that contractors operate on behalf of the Government as well as in systems that are not operated on behalf of an agency but are used incidental to providing a product or service for an agency with particular focus on security controls, incident reporting, information system assessments, and information security continuous monitoring. DOD, GSA, and NASA will be developing FAR changes to implement the OMB guidance when it is finalized.

In addition, we plan to develop regulatory changes for the FAR in coordination with National Archives and Records Administration (NARA) which is separately finalizing a rule to implement E.O. 13556 addressing CUI. The E.O. established the CUI program to standardize the way the executive branch handles information (other than classified information) that requires safeguarding or dissemination controls.

All of these actions should help, among other things, clarify the application of the Federal Information Security Management Act (FISMA) and the National Institute of Standards and Technology (NIST) information systems requirements to contractors and, by doing so, help to create greater consistency, where appropriate, in safeguarding practices across agencies. Prior to all of these actions occurring, DOD has updated a DFARS rule addressing enhanced safeguarding for certain sensitive DOD information in those systems.

Sixteen respondents submitted comments on this proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

1. Safeguarding of Covered Contractor Information System

- Provides for safeguarding the contractor information system, rather than specific information contained in the system.
- Revises the title of the case and throughout the final rule to add the term ''covered'' to ''contractor information system,'' thus indicating that the policy applies only to contractor information systems that contain Federal contract information.

2. Safeguarding Requirements

- Deletes the safeguarding requirements and procedures in the clause that relate to transmitting electronic information, transmitting voice and fax information, and information transfer limitations.
- Replaces the other safeguarding requirements with comparable security requirements from NIST SP 800–171.

3. Definitions

- Adds definitions of ''covered contractor information system'' and ''Federal contract information.''
- Deletes definitions of ''public information'' and all other proposed definitions in the clause, except ''information,'' ''information system,'' and ''safeguarding.''

4. Applicability

Makes the final rule—

- Applicable below the simplified acquisition threshold.
- Not applicable to the acquisition of commercially available off-the-shelf (COTS) items.

5. Other Safeguarding Requirements

Clarifies that the clause does not relieve the contractor from complying with any other specific safeguarding requirements and procedures specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal requirements for safeguarding CUI as established by E.O. 13556.

B. Analysis of Public Comments

1. Scope and Applicability

a. Information Provided by or Generated for the Government (Other Than Public Information)

Comments: About half the respondents commented on the scope and applicability of the proposed rule, which required safeguarding of information provided by or generated for the Government (other than public information). The proposed rule included the statutory definition of ''public information'' from 44 U.S.C. 3502. The respondents generally commented on the breadth of the scope or a lack of clarity.

One respondent urged the FAR Council to withhold release of a final rule until NARA implements E.O. 13556, Controlled Unclassified Information. Without such coordination, contractors may be required to establish conflicting protections that may later conflict or be revised by the Governmentwide NARA program.

Several respondents were also concerned about the broad potential scope of the information subject to these requirements. One respondent stated that the rule would cover nearly all information and all information systems of any company that holds even a single Government contract. One respondent questioned whether ''generated for the Government'' just applied to information that is part of a contract deliverable, or whether it also covered information about the contractor's own proprietary practices that is submitted to the Government. Another respondent was concerned that agencies have tended to broadly expand FISMA requirements to information developed under Federal contracts, regardless of whether the information is a deliverable under the contract (*e.g.,* data exchanged among researchers). One respondent recommended limiting the covered

information to ''information provided by or delivered to the Government.'' Another respondent urged narrowing the rule to the type of information for which safeguards are warranted, based on a reasoned risk assessment and cost-benefit analysis. One respondent recommended that the rule should exclude contractor proprietary or trade secret data from the scope of information generated for the Government, so that the responsibility for protecting such information remains with the contractor.

One respondent is concerned that the Government may send non-public information to a recipient, who may be unaware that it is in their possession on any device, in any form. The information could be temporarily exposed, even if transferred and not retained.

Further, respondents were concerned about interpretation of the definition of ''public information.'' Several respondents considered that the definition of ''public information'' was too narrow, because it requires the actual disclosure, dissemination, or disposition of information. One respondent stated that the Government has significant volumes of data that have not yet been made public, but that may be subject to obligations for disclosure under a variety of statutes. Several respondents stated that contractors cannot readily determine what information is categorized as public information, because it is almost impossible for contractors to keep track of what information has been released to the public.

One respondent stated that the Government should proactively mark protected materials.

Response: The intent is that the scope and applicability of this rule be very broad, because this rule requires only the most basic level of safeguarding. However, applicability of the final rule is limited to covered contractor information systems, *i.e.,* systems that are owned or operated by a contractor that process, store, or transmit Federal contract information. ''Federal contract information'' means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments. The final rule has been coordinated with NARA. The focus of the final rule is shifted from the safeguarding of specific information to the basic safeguarding of certain contractor information systems. Therefore, it is not necessary to draw a fine line as to what information was ''generated for the Government,'' when the information is received, or whether the information is marked. The requirements pertain to the information system itself. The type of analysis required to narrow the rule to the type of information for which safeguards are warranted, based on risk-assessment and cost-benefit analysis, is appropriate for CUI and the enhanced safeguarding that would be required for such information consistent with law, Federal regulation, and Governmentwide policy. A prudent business person would employ this most basic level of safeguarding, even if not covered by this rule. This rule is intended to provide a basic set of protections for all Federal contract information, upon which other rules, such as a forthcoming FAR rule to protect CUI, may build.

Since the safeguarding applies to the contractor information system, not to specific information within the system, it is irrelevant whether there is also contractor information in the system. However, if the contractor stores pre-existing proprietary data or trade secrets in a separate information system, the contractor can decide how to protect its own information.

The definition of ''public information'' has been deleted, as it is no longer necessary.

b. Information Residing in or Transiting Through a Contractor Information System

Comment: One respondent requested clarification of the statutory definition of ''information system,'' *i.e.,* what would be the limitation for a system interfacing with another system. The respondent requested that the rule specifically identify the medium of communication, the mechanism for delivering the communication, and the disposition.

Response: Generally, separately accredited information systems that interface through loosely coupled mechanisms, such as email or Web services, are not considered direct connections, even if they involve dynamic interaction between software systems in different organizations that are designed to interact with each other (*e.g.,* messaging, electronic commerce/electronic data interchange transactions). It would not be practical to specify all the possible mechanisms for interaction among systems, since they are constantly evolving.

Comment: Another respondent requested a definition of ''resides on or transits through'' an information system. The respondent is concerned that much of the focus of information security efforts is directed at protecting perimeter devices and may overlook the necessity of protecting the host servers.

Response: Information ''residing on'' a system means information being processed by or stored on the information system. ''Transiting through'' the system means simple transport of the data through the system to another destination (*i.e.,* no local storage or processing). All of the controls listed are focused on protection of the information system (*e.g.,* the host servers, workstations, routers). None of the controls are devoted to protection of ''perimeter devices'' although several (particularly paragraphs (b)(1)(x) and (xi)) are applied at the perimeter of the system.

c. Solicitations

Comment: One respondent was concerned that the requirements of the rule were applied to solicitations, thus imposing this requirement as a barrier to even bidding on Government work. Another respondent commented that the FAR rule would affect not only companies that receive Government contracts, but also companies soliciting Government contracts.

Response: This was not the intent of the proposed rule. The final rule has revised the applicability section to address ''acquisitions'' rather than ''solicitations and contracts.'' Of course, the clause prescription still requires inclusion of the clause in solicitations, so that offerors are aware of the clause that will be included in the resultant contract. The clause does not take effect until the offeror is awarded a contract containing the clause.

d. Fundamental Research

Comment: Two respondents requested exclusion of contracts for fundamental research from the requirements of the rule. One respondent noted that the prior proposed DFARS rule included an exception for solicitations and contracts for fundamental research, while also noting that most of the respondent's member institutions have at least first level information technology security measures in place within their systems, which appear to meet most of the basic safeguarding requirements. Another respondent, while recognizing that some level of protection should be afforded, seeks regulations that will provide an appropriate level of protection without creating unwieldy compliance burdens or creating a chilling effect on academic

activity, including fundamental research.

Response: The final rule does not focus on the protection of any specific type of information, but requires basic elements for safeguarding an information system. These requirements should not have any chilling effect on fundamental research.

e. Policies and Procedures

Comment: One respondent stated that the scope statement that the subpart provides policies and procedures is inaccurate, because the subpart just defines terms and prescribes the use of a contract clause.

Response: The scope section has been deleted in the final rule.

2. Basic Safeguarding Requirements

a. General

Comment: According to one respondent, some of the safeguarding requirements are too basic and rudimentary to achieve the rule's intended purpose.

Response: The intended purpose of the rule is to provide basic safeguarding of covered contractor information systems. This rule is not related to any specific information categories other than the broad and basic safeguarding.

Comment: Various respondents were of the opinion that the rule should hold contractors to NIST and FISMA requirements.

• One respondent stated that the proposed rule severely downgrades existing recommendations in place by NIST regarding the proper procedures and controls for protection of Federal information systems. According to the respondent, the rule should require contractors to adhere to same standards required of Federal agencies by the NIST SP 800 x series and the FISMA.

• Another respondent noted that Federal agencies are required to adhere to information security standards and guidelines published by NIST in Federal Information Processing Standards (FIPS) and Special Publications (SP). These publications explicitly state that the same standards apply to outsourced external service providers. Agencies and their contractors are also required to implement the configuration control settings at a ''bits and bytes'' level contained in the security configuration control checklists found in the National Security Program (NSP), which is co-hosted by NIST and the Department of Homeland Security (DHS).

Response: This rule establishes the basic, minimal information system safeguarding standards which Federal agencies are already required to follow internally and most prudent businesses already follow as well. The rule makes clear that Federal contractors whose information systems process, store, or transmit Federal contract information must follow these basic safeguarding standards. When contractors will be processing CUI or higher-level sensitive information, additional safeguarding standards, not covered by this rule will apply.

Comment: One respondent stated that the requirements are not specific enough from a technological standpoint to encompass the current state of information security technology.

Response: The final rule replaces the requirements in the proposed rule with requirements from NIST guidelines (NIST SP 800–171), which are appropriate to the level of technology, and are updated as technology changes. Flexibility is provided for specific implementation.

Comment: Another respondent recommended that the Councils should consider adopting a performance standard for protecting specific types of information from unauthorized disclosure rather than the ''design standard'' in the proposed rule.

Response: The standards in the proposed rule and in the final rule are not design standards; they are performance standards.

Comment: One respondent requested clarification of the meaning of ''safeguarding.'' According to the respondent, the definition of ''safeguarding'' neither refers to nor incorporates the definition of ''information security.'' The respondent questions whether the rule intends to distinguish between information security and safeguarding.

Response: There is a basic distinction between ''safeguarding'' and ''information security.'' ''Safeguarding'' is a verb and expresses required action and purpose. The term ''safeguarding'' is common in Executive orders relating to information systems. Although safeguarding has some commonality with ''information security'' the focus of information security is narrower. Safeguarding the contractor's information system will promote confidentiality and integrity of data, but is not specifically concerned with data availability.

Comment: One respondent recommended that the rule should just require the contractor to protect information provided to or generated for the Government ''at a level no less than what the company provides for its own confidential and proprietary business information.''

Response: There would be no need for a FAR clause if that is all it required. That would provide no advantage over the current status. FISMA requires this protection of Federal contract information.

b. Specific Requirements

i. Protecting Information on Public Computers or Web sites

Comment: One respondent commented on the requirement in the proposed rule (FAR 52.204–21(b)(1)) to protect information on public computers or Web sites. The respondent recommended focusing on covered contractor information systems. If retaining the term ''public computers,'' the respondent recommended defining the term, taking into consideration that some contractors have a contractual obligation to use ''public computers'' in performance of a contract, and removing the restriction on the use of public computers if the use has implemented a secure means of accessing the covered Government information.

Response: The heading in the proposed rule in FAR paragraph 52.204–21(b)(1), ''Protecting information on public computers or Web sites,'' misstated the intent of the requirement. The requirement was to not process information provided by the Government on public computers or Web sites. In the final rule, this heading has been removed and the requirement has been restated to be consistent with NIST 800–171.

ii. Transmitting Electronic Information

Comment: Many respondents commented on the requirement in the proposed rule (FAR 52.204–21(b)(2)) regarding transmitting electronic information. The primary concern of all of these respondents was the requirement for ''the best level of security and privacy available given facilities, conditions, and environment.'' As one respondent stated, this is not consistent with the objective of the rule to require basic safeguarding, is not a defined term of art, and may not be consistent with the cost-effective standards and risk-based approach established by FISMA. Another respondent noted that requiring contractors to use the best level for all data, would prevent businesses from upgrading communications security for the transmission of more sensitive data. Another respondent pointed out that changes in technology would cause frequent changes in what would constitute the ''best level.'' One respondent recommended replacing

''best'' with ''adequate,'' or ''commercially reasonable.''

Response: After evaluating the public comments, the requirement regarding transmitting electronic information was removed from the coverage in the final rule because transmission of email, text messages, and blogs are outside the scope of the final rule, which deals with safeguards for the contractor's information system, not protection of information.

iii. Transmitting Voice and Fax Information

Comment: More than half the respondents commented on the requirement in the proposed rule (FAR 52.204–21(b)(3)) relating to transmitting voice and fax information. A primary concern of respondents was the requirement that covered information can be transmitted orally only when the sender has ''reasonable assurance'' that access is limited to authorized recipients. The respondents found this requirement to be too vague. According to one respondent, there is further concern that the term ''voice information'' could arguably apply to any oral communication, such as telephone conversations. One respondent recommended the adoption of strict, clear policies in securing the voice communications of contractor systems, including encryption requirements for all transmissions. One respondent questioned whether the rule covered voice communication over CDMA [code-division multiple access], GSM [Global System for Mobile], and VOIP [voice-over-Internet-Protocol], or some combination of the three.

Response: After evaluation of public comments, the requirement regarding transmission by phone and fax are outside the scope of the final rule, which deals with safeguards for the contractor's information system not protection of information.

iv. Physical and Electronic Barriers

Comment: Several respondents commented on the requirement in the proposed rule (FAR 52.204–21(b)(4)) regarding physical and electronic barriers to protect Federal contract information. There was general concern that for certain devices it would not be practicable to always have both a physical barrier and an electronic barrier, when not under direct individual control. One respondent was concerned that NIST does not mention the specific types of locks or keys that will provide acceptable protection. Another respondent questioned what ''direct individual control'' means. Another respondent was concerned about the potential need to protect the information itself, when in hard copy. One respondent considered that this requirement may philosophically conflict with Government and commercial efforts to create and accommodate a mobile workforce.

Response: The requirements at FAR 52.204–21(b)(4) in the proposed rule have been replaced by multiple security controls in paragraph (b)(1) of the clause 52.204–21. There is no longer a specific requirement to have both a physical barrier and an electronic barrier in all instances. The rule now clearly addresses the protection of the information system as a whole, rather than just the protection of the Federal contract information. The requirement for a basic level of safeguarding for covered contractor information systems is not in philosophical conflict with accommodation of a mobile work force. For example, it is common practice not to leave a smart phone with access to Federal contract information unattended in a public place and without any password protection.

v. Sanitization

Comment: One respondent commented on the requirement for data sanitization in the proposed rule (FAR 52.204–21(b)(5)). The respondent stated that the proposed rule did not adequately address data sanitization, because some media are unable to be cleared due to format or a lack of compatible equipment, and would require purging or destruction for proper sanitization. The respondent also noted that the URL for NIST 800–88 was incorrect.

Response: The requirement in the final rule is covered by paragraph (b)(1)(vii) of FAR 52.204–21, which includes destruction as a possible sanitization technique. The URL for NIST 800–88 is not included in the final rule.

vi. Intrusion Protection

Comment: Several respondents commented on the requirement for intrusion protection in the proposed rule (FAR 52.204–21(b)(6)).

- One respondent stated that the only proposed intrusion-protection safeguards relate to malware protection services and security-relevant software upgrades. According to the respondent, these types of safeguards are generally not considered sufficient to provide a reasonable level of protection in a sophisticated enterprise environment.
- One respondent recommended that if hardware reaches its end of life and is no longer supported by the manufacturer, there should be a clause imposing a 6 month to 1 year deadline to upgrade the security system.

Response: The proposed requirements for intrusion protection have been replaced with paragraphs (b)(1)(xii)–(xiv) of FAR 52.204–21 to provide basic intrusion protection. The recommendation for imposing a 6-month to 1-year deadline to upgrade the security system is outside the scope of this rule.

vii. Transfer Limitations

Comment: Various respondents commented on the transfer limitations in the proposed rule (FAR 52.204–21(b)(7)), which limited transfer of Federal contract information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause. The primary concern of the respondents was whether the prime contractors might be held responsible for reviewing or approving a subcontractor's safeguards.

Response: This requirement has been deleted. The final rule no longer focuses on the safeguarding of information, but of information systems. The requirement to flow the clause down to subcontractors accomplishes the objectives of the rule to require safeguarding of covered contractor information systems at all tiers.

c. Other Recommended Requirements

Comment: Some respondents recommended additional requirements for inclusion in the final rule:

- Training. One respondent recommended that contractor information security employees be required to obtain the same levels of certification and training as provided in the DOD 8570 guidelines. Another respondent recommended security awareness training, as required by 44 U.S.C. 3544(b)(4).
- Penetration or vulnerability testing, evaluation, and reporting. Several respondents recommended a requirement for periodic testing of the effectiveness of information security policies in accordance with 44 U.S.C. 3544(c).
- Detecting, reporting, and responding to security incidents. One respondent stated that under FISMA it is mandatory for contractors to report security incidents to law enforcement if Federal contract information is resident on or passing through the contractor information system. This respondent also expressed concern about how personally identifiable information (PII) notifications would be properly made, without reporting requirements.

• DFARS rule. One respondent recommended that this FAR rule should include procedures similar to those in the draft DFARS rule 2011–D039, Safeguarding Unclassified DoD Information.

• Encryption at rest. One respondent recommended that data be stored in an encrypted manner, rather than encrypting exclusively for the purpose of transit.

• Cyber security insurance. One respondent also recommended requiring Government contractors to carry insurance that specifically covers the protection of intangible property such as data. Another respondent thought that the rule would already require small businesses to maintain cyber liability insurance.

Response: This rule establishes minimum standards for contractors' information systems that process, store, or transmit Federal contract information where the sensitivity/impact level of the Federal contract information being protected does not warrant a level of protection necessitating training, penetration or vulnerability testing, evaluation, and reporting, detecting, reporting, and responding to security incidents, encryption at rest, or cybersecurity insurance. Such standards would be needed if contract performance involved the contractor accessing CUI or classified Federal information systems. The final rule under DFARS Case 2011–D039, retitled ''Safeguarding Unclassified Controlled Technical Information'' (published in the **Federal Register** at 78 FR 69273 on November 18, 2013), provided for enhanced levels of safeguarding because that case addressed a more sensitive level of information. Requiring cybersecurity insurance is outside the scope of this case.

d. Order of Precedence

Comment: One respondent commented on the order of precedence in the proposed rule at FAR 52.204–21(d), which stated that if any restrictions or authorizations in this clause are inconsistent with a requirement of any other such clause in the contract, the requirement of the other clause takes precedence over the requirements of this clause.

Response: The proposed paragraph at FAR 52.204–21(d) has been deleted from the final rule, and replaced by a new paragraph (b)(2). The basic safeguarding provisions should not conflict with any requirement for more stringent control if handling of more sensitive data is required. Paragraph (b)(2) of the FAR 52.204–21 clause states that there may be other safeguarding requirements for CUI.

e. Noncompliance Consequences

Comment: One respondent was concerned that any inadvertent release of information could be turned into not only an information security issue but also a potential breach of contract.

Response: The refocus of the final rule on the safeguarding requirements applicable to the system itself should allay the respondent's concerns. Generally, as long as the safeguards are in place, failure of the controls to adequately protect the information does not constitute a breach of contract.

3. Clause

a. Prescription

Comment: Several respondents commented on the prescription for use of clause 52.204–21.

• One respondent was concerned that it would be difficult to know when to use the clause because contracting officers have limited insight into offerors' existing information systems.

• One respondent recommended incorporating the clause into the list of clauses at FAR 52.212–5 instead of separately prescribing it at 12.301 for use in solicitations and contracts for the acquisition of commercial items.

Response: The clause is prescribed for inclusion in the solicitation when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system. This does not require any specific knowledge of the contractor's existing information system. Generally, the person drafting the contract requirements/statement of work would know if contract performance will involve Federal contract information residing in or transiting through its information system. The contracting officer may not have the technical expertise to make this determination.

It is not possible to include FAR clause 52.204–21 in 52.212–5 because the clause is not necessary to implement statute or E.O.

b. Flowdown

Comment: One respondent was concerned about the scope of the flowdown obligation, because it would be co-extensive with the definition of information. According to the respondent, the flowdown requirement would likely extend to all subcontracts for commercial items and COTS items, and even to small dollar value subcontracts.

Response: The clause only flows down to covered contractor information systems. The Councils have revised the final rule to exclude applicability to COTS items, at both the prime and subcontract level. However, there may be subcontracts for commercial items (especially services, *e.g.,* a consultant) at lower dollar values that would involve covered contractor information systems. In such instances, it is still necessary to apply basic safeguards to such covered contractor information system.

4. Acquisition Planning

Comment: One respondent was concerned that the acquisition planning requirement in the proposed rule at FAR 7.105(b)(18) could lead to varying security standards rather than uniform Governmentwide standards.

Response: The intent of the proposed requirement, which included a cross reference to the new subpart on basic safeguarding, was that the acquisition plan should address compliance with the requirements of the new subpart, not that each plan would invent a new set of requirements. The final rule has rewritten this requirement to make the requirement for compliance with FAR subpart 4.19 clearer.

5. Contract Administration Functions

Comment: One respondent commented on the requirement in the proposed rule (FAR 42.302(a)(21)) regarding the contract administration function to ''ensure that the contractor has protective measures in place, consistent with the requirements of the clause at 52.204–21.'' The respondent noted that the term ''protective measures'' was not used in the clause.

Response: This requirement has been deleted from the final rule.

6. Impact of Rule

Comment: Various respondents were concerned with the general impact of the rule and, in particular, the impact of the rule on small business concerns. One respondent stated disagreement with the Government's assessment that the cost of implementing the rule would be insignificant because it requires first-level protective matters that are typically employed as part of the routine course of doing business.

Some respondents were concerned that the lack of clarity imposes significant risks of disputes, and increases costs, since a contractor must design to the most stringent standard in an attempt to assure compliance. For example, several respondents were concerned that the potentially broad definition of ''information'' would significantly increase the compliance burden for contractors. Another respondent noted that the vagueness

and subjective nature of some of the requirements (*e.g.,* ''best available'' standard at 52.204–21(b)(2)) would place an incredible financial burden on businesses, creating an inequitable burden upon many small businesses.

Response: The final rule has been amended in response to the public comments (see section II.A. of this preamble), such that the particular requirements that were mentioned as imposing a greater burden have been clarified or deleted. As a result, the burden on all businesses, including small businesses, should not be significant.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This action is being implemented to revise the Federal Acquisition Regulation (FAR) to safeguard contractor information systems that process, store, or transmit Federal contract information. The objective of this rule is to require contractors to employ basic security measures, as identified in the clause, for any covered contractor information system.

Various respondents were concerned with the general impact of the rule and, in particular, the impact of the rule on small business concerns. The final rule has been amended in response to the public comments, such that the particular requirements that were mentioned as imposing a greater burden have been clarified or deleted. As a result, the burden on all businesses, including small businesses, should not be significant.

This final rule applies to all Federal contractors and appropriate subcontractors, including those below the simplified acquisition threshold, if the contractor has Federal contract information residing in or transiting through its information system. The final rule is not applicable to the acquisition of commercially available off-the-shelf (COTS) items. In FY 2013, the Federal Government awarded over 250,000 contracts to almost 40,000 unique small business concerns. Of those awards, about half were for commercial items awarded to about 25,000 unique small business concerns. It is not known what percentage of those awards were for COTS items.

There are no reporting or recordkeeping requirements associated with the rule. The other compliance requirements will not have a significant cost impact, since these are the basic safeguarding measures (*e.g.,* updated virus protection, the latest security software patches, etc.). This final rule has basic safeguarding measures that are generally employed as part of the routine course of doing business. It is recognized that the cost of not using basic information technology system protection measures would be an enormous detriment to contractor and Government business, resulting in reduced system performance and the potential loss of valuable information. It is also recognized that prudent business practices to protect an information technology system are generally a common part of everyday operations. As a result, requiring basic safeguarding of contractor information systems, if Federal contract information resides in or transits through such systems, offers enormous value to contractors and the Government by reducing vulnerabilities to covered contractor information systems.

There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities and still meet the objectives of the rule. DoD, GSA, and NASA considered excluding acquisitions below the simplified acquisition threshold, but rejected this alternative because there are many acquisitions below the simplified acquisition threshold where the Government nevertheless has a significant interest in requiring basic safeguarding of the contractor information system (*e.g.,* a consulting contract with an individual).

This final rule does not apply to the acquisition of COTS items, because it is unlikely that acquisitions of COTS items will involve Federal contract information residing in or transiting through the contractor information system. Excluding acquisitions of COTS items reduces the number of small entities to which the rule will apply.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 7, 12, and 52

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 7, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 7, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

■ 2. Add subpart 4.19 to read as follows:

Subpart 4.19—Basic Safeguarding of Covered Contractor Information Systems

Sec.

Subpart 4.19—Basic Safeguarding of Covered Contractor Information Systems

4.1901 Definitions.

As used in this subpart—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as that on public Web sites) or simple transactional information, such as that necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

4.1902 Applicability.

This subpart applies to all acquisitions, including acquisitions of commercial items other than commercially available off-the-shelf items, when a contractor's information system may contain Federal contract information.

4.1903 Contract clause.

The contracting officer shall insert the clause at 52.204–21, Basic Safeguarding of Covered Contractor Information Systems, in solicitations and contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising paragraph (b)(18) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(18) *Security considerations.* (i) For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see subpart 4.4).

(ii) For information technology acquisitions, discuss how agency information security requirements will be met.

(iii) For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system, discuss how agency requirements for personal identity verification of contractors will be met (see subpart 4.13).

(iv) For acquisitions that may require Federal contract information to reside in or transit through contractor information systems, discuss compliance with subpart 4.19.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by redesignating paragraphs (d)(3) through (7) as paragraphs (d)(4) through (8) and adding a new paragraph (d)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the clause at 52.204–21, Basic Safeguarding of Covered Contractor Information Systems, in solicitations and contracts (except for acquisitions of COTS items), as prescribed in 4.1903.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 52.204–21 to read as follows:

52.204–21 Basic Safeguarding of Covered Contractor Information Systems.

As prescribed in 4.1903, insert the following clause:

Basic Safeguarding of Covered Contractor Information Systems (June, 2016)

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

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) *Safeguarding requirements and procedures.* (1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (*i.e.,* information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

■ 6. Amend section 52.213–4 by—

■ a. Revising the date of the clause and paragraph (a)(2)(viii);

■ b. Redesignating paragraphs (b)(2)(i) through (iv) as paragraphs (b)(2)(ii) through (v); and

■ c. Adding a new paragraph (b)(2)(i).

The revisions and addition 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, 2016)

(a) * * *
(2) * * *
(viii) 52.244–6, Subcontracts for Commercial Items (June, 2016).
* * * * *
(b) * * *
(2) * * *
(i) 52.204–21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016) (Applies to contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

* * * * *

■ 7. Amend section 52.244–6 by—
■ a. Revising the date of the clause and in paragraph (a) the definition ''Commercial item'';
■ b. Redesignating paragraphs (c)(1)(iii) through (xiv) as paragraphs (c)(1)(iv) through (xv); and
■ c. Adding a new paragraph (c)(1)(iii).

The revisions and addition read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items

(June, 2016)

(a) * * *
Commercial item and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.
* * * * *
(c)(1) * * *
(iii) 52.204–21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204–21.
* * * * *

[FR Doc. 2016–11001 Filed 5–13–16; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 36

[FAC 2005–88; FAR Case 2015–018; Item IV; Docket No. 2015–0018; Sequence No 1]

RIN 9000–AN10

Federal Acquisition Regulation; Improvement in Design-Build Construction Process

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 that requires the head of the contracting activity to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than $4 million.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2015–018.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 60833 on October 8, 2015, to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon NDAA for FY 2015, Public Law 113–291. Section 814 requires the head of the contracting activity, delegable to a level no lower than the senior contracting official, to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than $4 million. Five respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. One change was made to the rule as a result of those comments. A discussion of the comments is provided as follows:

Comment: One respondent requested that the maximum number of offerors allowed to submit phase-two proposals be limited to three of the most highly qualified offerors.

Response: The scope of this rule is limited to the implementation of Section 814 of the FY 2015 NDAA, which requires a higher approval authority when selecting more than five offerors to participate in Phase 2 of a design-build acquisition. Identifying the ideal number of contractors for participation in Phase 2 is beyond the scope of the case and the statute that is being implemented.

Comment: Two respondents recommended that the rule be revised to add a reporting requirement for those instances when more than five offerors are selected to submit phase-two proposals.

Response: The scope of this rule is limited to the implementation of Section 814 of the FY 2015 NDAA. Adding a public reporting requirement is beyond the scope of the case and the statute that is being implemented.

Comment: One respondent recommended that the rule be revised to include a requirement that the senior contracting official's approval be documented in the contract file.

Response: The requirement to document the contract file was in the proposed rule at FAR 36.303–1(a)(4). In civilian agencies, for paragraph (a)(4) of FAR section 36.303–1, the senior contracting official is the advocate for competition for the procuring activity, unless the agency designates a different position in agency procedures. The approval shall be documented in the contract file.

Comment: One respondent recommended that the FAR be revised to limit the use of single-step design-build procurements by requiring the use of two-step design-build procurement process for all design-build procurements above $4 million.

Response: The recommendation is beyond the scope of the case and the statute that is being implemented.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule implements section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. Section 814 is entitled Improvement in Defense Design-Build Construction Process. Section 814 requires the head of the contracting activity, delegable to a level no lower than the senior contracting official, to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than $4 million.

No comments were received by the public comments in response to the initial regulatory flexibility analysis. The number of design-build construction awards is not currently tracked by the Federal government's business systems. In Fiscal Year 2014, the Federal Government awarded 3,666 construction awards to 2,239 unique small business vendors. It is unknown what percentage of these contracts involved design-build construction services.

This rule does not impose new recordkeeping or reporting requirements. The new approval requirement for advancing more than five contractors to phase two of a two-phase design-build selection procedure only affects the internal operating procedures of the Government. For acquisitions valued over $4 million, the head of the contracting activity (HCA) is required to now make a determination that it is in the best interest of the Government to select more than five offerors to proceed to phase two. Any burden caused by this rule is expected to be minimal and will not be any greater on small businesses than it is on large businesses.

No alternative approaches were considered. The new approval requirement for advancing more than five contractors to phase two of a two-phase design-build selection procedure only affects the internal operating procedures of the Government. It is not anticipated that the proposed rule will have a significant economic impact on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 36

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 36 as set forth below:

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR part 36 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 36.303–1 by revising paragraph (a)(4) to read as follows:

36.303–1 Phase One.

(a) * * *

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified in the solicitation shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The contracting officer shall document this determination in the contract file. For acquisitions greater than $4 million, the determination shall be approved by the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity. In civilian agencies, for this paragraph (a)(4), the senior contracting official is the advocate for competition for the procuring activity, unless the agency designates a different position in agency procedures. The approval shall be documented in the contract file.

* * * * *

[FR Doc. 2016–11003 Filed 5–13–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 2005–88; Item V; Docket No. 2016–0052; Sequence No. 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: 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 make editorial changes.

DATES: *Effective:* May 16, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Hada Flowers, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755. Please cite FAC 2005–88, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR part 1 this document makes editorial changes to the FAR.

List of Subject in 48 CFR Part 1

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 1 continues to read as follow:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by—

■ a. Removing FAR segment ''3.4'' and its corresponding OMB Control No. ''9000–0003'';

■ b. Removing from FAR segment 3.11, the OMB Control No. ''9000–0181'' and adding ''9000–0183'' in its place;

■ c. Removing from FAR segment 9.2, the OMB Control No. ''9000–0020'' and adding ''9000–0083'' in its place;

■ d. Removing FAR segment ''14.214'' and its corresponding OMB Control No. ''9000–0105'';
■ e. Adding in numerical sequence, FAR segment ''22.5'' and its corresponding OMB Control No. ''9000–0175'';
■ f. Removing from FAR segment 22.16, the OMB Control No. ''1215–0209'' and adding ''1245–0004'' in its place;
■ g. Removing FAR segment ''32'' and its corresponding OMB Control No. ''9000–0035'';
■ h. Adding in numerical sequence, FAR segment ''42.15'' and its corresponding OMB Control No. ''9000–0142'';
■ i. Adding in numerical sequence, FAR segments ''44.305'' and ''52.244–2(i)'' and their corresponding OMB Control No. ''9000–0132'';
■ j. Removing from FAR segment 52.203–16, the OMB Control No. ''9000–0181'' and adding ''9000–0183'' in its place;
■ k. Adding in numerical sequence, FAR segments ''52.207–4'', ''52.209–1'', ''52.209–2'', ''52.209–5'', ''52.209–6'', ''52.211–7'', ''52.212–3(h)'', and ''52.212–5'', and their corresponding OMB Control Nos., ''9000–0082'', ''9000–0083'', ''9000–0190'', ''9000–0094'', ''9000–0094'', ''9000–0153'', ''9000–0094'', and ''9000–0034'', respectively;
■ l. Removing from FAR segment 52.222–4, the OMB Control No. ''1215–0119'' and adding ''1235–0023'' in its place;
■ m. Removing from FAR segment 52.222–6, the OMB Control No. ''1215–0140'' and adding ''1235–0023'' in its place;
■ n. Removing FAR segment ''55.222–17'' and its corresponding OMB Control Nos. ''1235–0007 and 1235–0025'';
■ o. Adding in numerical sequence, FAR segment ''52.222–17'' and its corresponding OMB Control Nos. ''1235–0007 and 1235–0025'';
■ p. Removing from FAR segment 52.222–18, the OMB Control No. ''9000–0127'' and adding ''9000–0155'' in its place;
■ q. Removing from FAR segment 52.222–40, the OMB Control No. ''1215–0209'' and adding ''1245–0004'' in its place;
■ r. Adding in numerical sequence, FAR segments ''52.222–54'' and ''52.223–7'', and their corresponding OMB Control Nos. ''1615–0092'' and ''9000–0107'', respectively;
■ s. Removing from FAR segment 52.225–4, the OMB Control No. ''9000–0130'' and adding ''9000–0024'' in its place;
■ t. Removing from FAR segment 52.225–6, the OMB Control No. ''9000–0025'' and adding ''9000–0024'' in its place;
■ u. Removing from FAR segment 52.225–9, the OMB Control No. ''9000–0141'' and adding ''9000–0024'' in its place;
■ v. Adding in numerical sequence, FAR segment ''52.225–10'' and its corresponding OMB Control No. ''9000–0024'';
■ w. Removing from FAR segment 52.225–11, the OMB Control No. ''9000–0141'' and adding ''9000–0024'' in its place;
■ x. Adding in numerical sequence, FAR segment ''52.225–12'' and its corresponding OMB Control No. ''9000–0024'';
■ y. Removing from FAR segment 52.225–21, the OMB Control No. ''9000–0141'' and adding ''9000–0024'' in its place;
■ z. Removing from FAR segment 52.225–23, the OMB Control No. ''9000–0141'' and adding ''9000–0024'' in its place;
■ aa. Adding in numerical sequence, FAR segment ''52.225–26'' and its corresponding OMB Control No. ''9000–0184'';
■ bb. Adding in numerical sequence, FAR segments ''52.227–11'' and ''52.227–13'', and their corresponding OMB Control No. ''9000–0095'';
■ cc. Removing from FAR segment 52.232–5, the OMB Control No. ''9000–0070'' and adding ''9000–0102'' in its place;
■ dd. Adding in numerical sequence, FAR segments ''52.232–33'' and ''52.232–34'' and their corresponding OMB Control No. ''9000–0144'';
■ ee. Removing FAR segment ''52.233–7'' and its corresponding OMB Control No. ''9000–0117'';
■ ff. Removing from FAR segment 52.236–13, the OMB Control No. ''1220–0029 and'';
■ gg. Adding in numerical sequence, FAR segments ''52.237–10'' and ''52.242–13'' and their corresponding OMB Control Nos. ''9000–0152'' and ''9000–0108'', respectively;
■ hh. Removing FAR segment ''52.246–10'' and its corresponding OMB Control No. ''9000–0077'';
■ ii. Adding in numerical sequence, FAR segments ''52.247–6'' and ''52.247–52'' and their corresponding OMB Control No. ''9000–0061'';
■ jj. Removing FAR segment ''52.249–11'' and its corresponding OMB Control No. ''9000–0028'';
■ kk. Adding in numerical sequence, FAR segment ''52.251–2'' and its corresponding OMB Control No. ''9000–0032''; and
■ ll. Adding in numerical sequence, FAR segments ''SF 294'' and ''SF 295'' and their corresponding OMB Control Nos. ''9000–0006'' and ''9000–0007'', respectively.

[FR Doc. 2016–11004 Filed 5–13–16; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–88; Small Entity Compliance Guide

AGENCY: 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 DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–88, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–88, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: May 16, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–88 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC

Item	Subject	FAR Case	Analyst
*I	High Global Warming Potential Hydrofluorocarbons	2014–026	Gray.
*II	Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations.	2015–020	Francis.
*III	Basic Safeguarding of Contractor Information Systems	2011–020	Davis.
*IV	Improvement in Design-Build Construction Process	2015–018	Glover.
*V	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–88 amends the FAR as follows:

Item I—High Global Warming Potential Hydrofluorocarbons (FAR Case 2014–026)

This final rule implements Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential-hydrofluorocarbons (HFCs). The rule also requires contractors to report annually the amount of HFCs contained in equipment delivered to the Government or added or taken out of Government equipment under service contracts. This will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693 on Planning for Sustainability in the Next Decade. This rule applies to small entities because about three-quarters of the affected contractors are small businesses and precluding them would undermine the overall intent of this policy. However, to minimize the impact this rule could have on all businesses, especially small businesses, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Item II—Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations (FAR Case 2015–020)

This final rule amends the FAR to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. When FAR Case 2003–022 was published as a rule in 2004, the definition for SAT at FAR 2.101 was changed, but the drafters of the rule also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. This rule reinstates the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Accordingly, this rule provides contracting officers with more flexibility when contracting in support of overseas humanitarian or peacekeeping operations. This final rule does not place any new requirements on small entities.

Item III—Basic Safeguarding of Contractor Information Systems (FAR Case 2011–020)

This final rule amends the FAR to add a new FAR subpart 4.19 and contract clause 52.204–21 for the basic safeguarding of covered contractor information systems, *i.e.,* that process, store, or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding controlled unclassified information (CUI) as established by Executive Order 13556. Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection. This rule will not have a significant economic impact on contractors (including small business concerns) or the Government.

Item IV—Improvement in Design-Build Construction Process (FAR Case 2015–018)

This final rule revises the FAR to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. When a two-phase design-build construction acquisition is valued at greater than $4 million, section 814 requires the head of the contracting activity to approve a contracting officer determination to select more than five offerors to submit phase-two proposals. The approval level is delegable no lower than the senior contracting official within the contracting activity. This rule change does not place any new requirements on small entities.

Item V—Technical Amendments

Editorial changes are made at FAR 1.106.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–11005 Filed 5–13–16; 8:45 am]

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