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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Ch. 1, Parts 4, 7, et al.
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–10; Introduction

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

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

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–10. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–10 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002–016	Nelson.
II	Executive Order 13202, Preservation of Open, Competition and Government Neutrality Towards Government Contractors' Labor Relations On Federal and Federally Funded Construction projects.	2001–016	Nelson.
III	Caribbean Basin Country End Products.	2000–306	Davis.
IV	Financing Policies	2000–007	Olson.
V	Technical Amendments		

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

FAC 2001–10 amends the FAR as specified below:

Item I—General Records Schedule (FAR Case 2002–016)

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, item IV, General Records Schedule (FAR case 1999–615) published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made in FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

• Revises the subsection title of FAR 4.705–2 to read "Pay administration records" instead of "Construction contract pay administration records," thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;

• Revises FAR 4.705–2(a) to change from a record retention period of 3 years after completion of contract unless contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97–18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000–306)

The interim rule published in the **Federal Register** as item V of FAC 2001–04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products

originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000–007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502–2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–10 are effective December 23, 2002, except for items II, III, and V, which are effective November 22, 2002.

Dated: November 1, 2002.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: October 28, 2002.

David A. Drabkin,

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

Dated: October 28, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–29088 Filed 11–21–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–10; FAR Case 2002–016; Item I]

RIN 9000–AJ49

Federal Acquisition Regulation; General Records Schedule

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise pay administration record retention requirements.

DATES: *Effective Date:* December 23, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–10, FAR case 2002–016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, item IV, General Records Schedule (FAR case 1999–615), published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made by FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the prior requirements published in FAC 97–18 is acceptable.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–10, FAR case 2002–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

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

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

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

2. Amend section 4.705–2 by revising the section heading and paragraph (a) to read as follows:

4.705–2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

* * * * *

[FR Doc. 02–29089 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17, 22, and 36

[FAC 2001–10; FAR Case 2001–016; Item II]

RIN 9000–AJ14

Federal Acquisition Regulation; Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

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

ACTION: Final rule; termination of stay of interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published in the **Federal Register** at 66 FR 27414, May 16, 2001, an interim rule implementing Executive Order (E.O.) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects. As a result of a permanent injunction against the E.O. and pending litigation to resolve the dispute, the Councils published an interim rule in the **Federal Register** at 67 FR 10527, March 7, 2002, staying the heart of the rule. The Federal Acquisition Regulatory (FAR) Council intended the stay would last until final judicial resolution of the dispute. The FAR Council requested comments on the FAR interim rule stay. This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change.

DATES: Effective November 22, 2002, the stay of 48 CFR 36.202(d) is terminated. As of November 22, 2002, the interim rule amending 48 CFR parts 17, 22, and 36 published on May 16, 2001 (66 FR 27414), is adopted as final without change.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–10, FAR case 2001–016.

SUPPLEMENTARY INFORMATION:

A. Background

On February 17, 2001, President George W. Bush signed Executive Order (E.O.) 13202 revoking E.O. 12836 of February 1, 1993, and Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects." The E.O. was published in the **Federal Register** at 66 FR 11225, February 22, 2001, and amended by E.O. 13208 published in the **Federal Register** at 66 FR 18717, April 11, 2001.

The E.O. 13202 is intended to improve the internal management of the Executive branch by—

- Promoting and ensuring open competition on Federal and federally funded or assisted construction projects;
- Maintaining Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects;
- Reducing construction costs to the Government and to the taxpayers;
- Expanding job opportunities, especially for small and disadvantaged businesses;
- Preventing discrimination against Government contractors or their employees based upon labor affiliation or lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects; and
- Preventing the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases.

To implement Executive Order 13202, as amended, an interim rule was published in the **Federal Register** on May 16, 2001, 66 FR 27414, as part of Federal Acquisition Circular 97–26. Consistent with Executive Order 13202, as amended, FAR 36.202(d) of that interim rule specified that agencies could not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permitted agency heads to exempt a project from the requirements of the Executive order under special circumstances, but specified that such an exemption could not be related to a possible or an actual labor dispute. FAR 36.202(d) also provided for the exemption of a project governed by a project labor agreement in place as of February 17, 2001, which had a construction contract awarded as of February 17, 2001.

In response to the interim rule, the Councils received 179 letters. All but one of the respondents supported the rule. The one respondent (Building and Construction Trades Department, AFL–CIO) that did not support the rule believed the Executive order in which the rule was based is unlawful; that the interim rule is based both on misapprehensions about the nature of Project Labor Agreements and on economic assumptions that lack any factual basis; and that the interim rule is so vague as to mislead affected parties about their ability to exercise their statutory rights. Since the rule mirrors the directives contained in the Executive orders, the Councils agreed that no change to the rule was necessary.

This same respondent, along with other plaintiffs, commenced a lawsuit to enjoin the enforcement of the E.O. issued by the President. A permanent injunction against enforcement of Executive Order 13202 was issued November 7, 2001, by the U.S. District Court for the District of Columbia (*see* Building and Construction Trades Department, AFL–CIO v. Allbaugh, D.D.C., 172 F.Supp.2d 138, D.D.C. 2001). The Government submitted its appeal (No. 01–5436 (D.C. Cir.)). In order to comply with the court order, a stay of the heart of the interim rule with a request for comments was published in the **Federal Register** at 67 FR 10527, March 7, 2002, pending resolution of the litigation.

In response to the interim rule stay, one respondent (The Associated General Contractors of America (AGC)) submitted comments. AGC believed that the unresolved legal challenge to the Executive Order 13202 does not require a stay of the interim rule, and it is inappropriate for the Councils to impede the enforcement of the E.O. The Councils determined that the stay would remain pending resolution of the litigation.

A decision by the United States Court of Appeals for the District of Columbia Circuit on July 12, 2002, reversed the judgment of the District Court and vacated the injunction (295 F.3d 28, D.C. Cir. 2002). Accordingly, the Councils are terminating the stay and adopting the May 16, 2001, interim rule as final without change.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202 as amended on April 6, 2001 (E.O. 13208). The Executive orders require that any construction contract awarded after February 17, 2001, or any obligation of funds pursuant to such contract, must not require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related construction project(s); or otherwise discriminate against offerors, contractors, or subcontractors for becoming or refusing to become or remaining signatories or otherwise adhere to agreements with one or more organizations, on the same or other related construction projects. The rule primarily affects the internal operating procedures of Government agencies. The rule will apply to all large and small entities that seek award of construction contracts that are Federal and federally funded. During fiscal year 2001, there were over forty-seven thousand contract actions awarded to small businesses according to the Federal Procurement Data System. These actions were worth a total of over $6 billion. It is expected that the awarding offices neutrality toward Government contractors' and subcontractors labor relations regarding project labor agreements will expand job opportunities to small entities, specifically nonunion small businesses. This gives small businesses the ability to negotiate and establish business relationships to deliver efficient and cost effective high quality construction projects.

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

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 17, 22, and 36

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Stay Terminated; Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA terminate the interim rule stay published in the **Federal Register** at 67 FR 10527 on March 7, 2002, and further adopt as a final rule without change the interim rule amending 48 CFR parts 17, 22, and 36, which was published in the **Federal Register** at 66 FR 27414 on May 16, 2001.

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

[FR Doc. 02–29090 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001–10; FAR Case 2000–306; Item III]

RIN 9000–AJ27

Federal Acquisition Regulation; Caribbean Basin Country End Products

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to convert this FAR case from an interim rule to a final rule with changes. This interim rule amended the FAR to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–10, FAR case 2000–306.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amended the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under the Act.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 67 FR 6116, February 8, 2002, and no comments were received. However, on July 12, 2002 (67 FR 46239), the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this case. The Councils have agreed to convert this FAR case from an interim rule to a final rule with changes.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects a limited number of products from a few Caribbean Basin countries. The Berry Amendment (formerly at 10 U.S.C. 2241, note, but recently codified at 10 U.S.C. 2533a) still prohibits the Department of Defense from buying most of the textile and apparel articles receiving duty-free treatment under this Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 67 FR 6116, February 8, 2002, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

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

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

2. Amend section 25.003 in the definition "Caribbean Basin country" by adding "Honduras," after "Haiti,".

25.400 [Amended]

3. Amend section 25.400 in paragraph (a)(2) by removing ", Honduras,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–5 [Amended]

4. Amend section 52.225–5 in the clause heading by removing "(Feb 2002)" and adding "(Nov 2002)" in its place; and in paragraph (a) in the definition "Caribbean Basin country", by adding "Honduras," after "Haiti,".

[FR Doc. 02–29091 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2001–10; FAR Case 2000–007; Item IV]

RIN 9000–AI92

Federal Acquisition Regulation; Financing Policies

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit the use of performance-based payments type of financing on fixed-price contracts prior to definitization, and to revise the criteria governing when a prime contractor can bill the Government for costs incurred, but not yet paid, for supplies and services purchased directly for the contract and for associated subcontractor financing payment requests.

DATES: Effective Date: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–10, FAR case 2000–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 56454, September 18, 2000. The proposed rule—

- Revised the requirement at FAR 32.1003(b) to permit performance-based payments type of financing on fixed-price contracts prior to definitization;
- Completely removed the "paid cost rule" restriction from the payment clauses at FAR 52.216–26, Payments of Allowable Costs Before Definitization, and FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts. The "paid cost rule" is the requirement that a large business must actually pay (not just incur) costs for supplies and services purchased directly for the contract and financing payments to subcontractors before including the payments in its billings to the Government. A final rule under FAR case 1998–400 was published in the **Federal Register** at 65 FR 16274, March 27, 2000. The intent of that final rule was to remove this restriction from all the payment clauses if contractors met certain conditions. Inadvertently, this restriction was not removed in its entirety from FAR 52.216–26(d)(2) and FAR 52.232–7(b)(3). The proposed rule published under this FAR case 2000–007 corrected this oversight and the rule—
- Established, for both cost-reimbursement and fixed-price contracts, a standard time period of 30 days that contractors have to pay their subcontractors after the contractors have billed the Government for incurred subcontractor costs. As indicated in the previous paragraph, the final rule under FAR case 1998–400 amended the FAR to permit a large business to include, in its billings, certain costs that it had incurred but not actually paid, if the following conditions were met: The unpaid amounts were paid (1) in accordance with the terms and conditions of a subcontract or invoice; and (2) ordinarily prior to the submission of the contractor's next payment request to the Government. The second condition permitted a large business to submit cost vouchers on a cost-reimbursement contract every 14 days, but the large business could bill no more frequently than every 30 days when billing progress payments on a fixed-price contract. Therefore, contractors may need to maintain several systems and procedures to accommodate the timing differences for payments to subcontractors, depending on whether the costs are billed on a cost-reimbursement or fixed-price type prime contract. To eliminate the timing differences, the proposed FAR rule revised the second condition to establish a single standard time period of 30 days; and
- Made several editorial changes.

Four respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule which differs from the proposed rule with regard to when a contractor can bill the Government for supplies and services purchased directly for the contract and associated financing payment requests received from their subcontractors that have not yet been paid for by the prime contractors. As amended by this final rule, the contractor can bill the Government when contractor payment

for the amount determined due the supplier or subcontractor is scheduled to be made within 30 days of the submission of the contractor's current payment request to the Government. The Councils believe that a 30-day float period for the prime contractor represents a reasonable time period and do not believe it would be in the best interests of the Government or subcontractors to effectively encourage float periods in excess of 30 days.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment or performance-based payment type of financing. In addition, the "paid cost rule" restriction does not apply to small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

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

PART 32—CONTRACT FINANCING

2. Amend section 32.504 by revising the introductory text of paragraph (b) and paragraph (b)(2) to read as follows:

32.504 Subcontracts under prime contracts providing progress payments.

* * * * *

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts determined due and that the contractor will pay—

* * * * *

(2) Ordinarily within 30 days of the submission of the contractor's progress payment request to the Government.

* * * * *

3. Amend section 32.1003 by revising the introductory text and paragraph (b) to read as follows:

32.1003 Criteria for use.

The contracting officer may use performance-based payments only if the following conditions are met:

* * * * *

(b) The contract is a fixed-price type contract; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.216–7 by revising the date of the clause; and by revising the introductory text of paragraph (b)(1)(ii)(A) and paragraph (b)(1)(ii)(A)(*2*) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Alowable Cost and Payment (Dec. 2002)

* * * * *

(b) *Reimbursing costs.* (1) * * *

(ii) * * *

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

* * * * *

(*2*) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

* * * * *

5. Amend section 52.216–26 by revising the date of the clause, the introductory text of paragraph (d)(2)(i), and paragraph (d)(2)(i)(B) to read as follows:

52.216–26 Payments of Allowable Costs Before Definitization.

* * * * *

Payments of Allowable Costs Before Definitization (Dec 2002)

* * * * *

(d) * * *

(2) * * *

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

* * * * *

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

* * * * *

6. Amend section 52.232–7 by revising the date of the clause, and paragraphs (b)(3) and (b)(4)(ii) to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Dec 2002)

* * * * *

(b) * * *

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor—

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(4)(i) * * *

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

* * * * *

7. Amend section 52.232–16 by revising the date of the clause, the introductory text of paragraph (a)(2), and paragraph (a)(2)(ii) to read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (Dec 2002)

* * * * *

(a) * * *

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors—

* * * * *

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

* * * * *

[FR Doc. 02–29092 Filed 11–21–02; 8:45 am]

BILLING CODE 6820–EP–P

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 7 and 19 as set forth below:

1. The authority citation for 48 CFR parts 7 and 19 continues to read as follows:

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

PART 7—ACQUISITION PLANNING

2. Amend section 7.105 by adding a sentence to the end of paragraph (b)(4)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) * * * Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed-price basis (see 37.102(a) and 16.505(a)(3)).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.502–2 [Amended]

3. Amend section 19.502–2 in the first sentence of paragraph (a) by removing "13.202(g))" and adding "13.201(g))" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 19

[FAC 2001–10; Item V]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

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

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–10, Technical Amendments.

List of Subjects in 48 CFR Parts 7 and 19

Government procurement.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–10 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–10 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

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

LIST OF RULES IN FAC 2001–10

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002–016	Nelson
II	Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal And Federally Funded Construction Projects.	2001–016	Nelson
III	Caribbean Basin Country End Products	2000–306	Davis
IV	Financing Policies	2000–007	Olson
V	Technical Amendments.		

Item I—General Records Schedule (FAR Case 2002–016)

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, Item IV, General Records Schedule (FAR case 1999–615) published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made in FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705–2 to read "Pay administration records" instead of "Construction contract pay administration records," thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;
- Revises FAR 4.705–2(a) to change from a record retention period of 3 years after completion of contract unless

contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97–18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000–306)

The interim rule published in the **Federal Register** as Item V of FAC 2001–04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000–007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502–2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–29094 Filed 11–21–02; 8:45 am]

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