

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAC 90-35; FAR Case 95-003]

RIN 9000-AG73

**Federal Acquisition Regulation;  
Impairment of Long-Lived Assets**

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

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to clarify the allowability of losses recognized when carrying values of impaired assets are written down for financial reporting purposes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** *Effective Date:* December 14, 1995.

*Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before February 12, 1996.

**ADDRESSES:** Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-35, FAR Case 95-003.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule is intended to clarify cost allowability rules concerning the recognition of gains and losses related to long-lived assets. The rule addresses a cost category which is the subject of a Financial Accounting Standards Board Statement of Financial Accounting Standards (SFAS), No. 121, dated March 1995, entitled "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets To Be Disposed Of."

The SFAS applies to long-lived assets (such as land, buildings, and equipment), identifiable intangibles, and related goodwill, and establishes guidance to recognize and measure impairment losses. If impaired assets are to be held for use, the SFAS requires a write-down to fair value when events or circumstances (e.g., environmental damage, idle facilities arising from declining business, etc.) indicate that carrying values may not be fully recoverable.

Impaired assets that are to be disposed of, however, would be reported (with certain exceptions) at the lower of cost or fair value less cost to sell. Once written down, the previous carrying amount of an impaired asset could not be restored if the impairment was subsequently removed.

In contrast to the SFAS provisions, Cost Accounting Standard (CAS) 9904.409, "Depreciation of Tangible Capital Assets", provides quite different criteria and guidance to recognize gains and losses for Government contract purposes. The language at 9904.409-40 (a)(4) and (b)(4), 9904.409-50(j), and related Promulgation Comment 10, "Gain or Loss," makes it clear that gains and losses are recognized only upon asset disposal; no other circumstances trigger such recognition.

FAR 31.205-16 reflects the CAS provisions that an asset be disposed of in order to recognize a gain or loss. The FAR rule applies to both CAS and non-CAS covered contracts. Consequently, for Government contract purposes, an impairment loss is recognized only upon disposal of the impaired asset. Like other losses, it is measured as the difference between the net amount realized and the impaired asset's undepreciated balance. Government contractors, therefore, recover the carrying values of impaired assets held for use by retaining pre-write-down depreciation or amortization schedules as though no impairment had occurred. The rule addresses the treatment of losses for impaired assets by adding a new paragraph (o) at 31.205-11, and revising the title and adding a new paragraph (g) at 31.205.16.

**B. Regulatory Flexibility Act**

The interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-35, Far case 95-003) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any reporting or record keeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary because the Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of, dated March 1995, requires all publicly owned firms to recognize impairment losses in their financial statements for fiscal years beginning after December 15, 1995. It is likely that Government contractors whose 1996 fiscal year begins after December 15, 1995, will recognize impairment losses for financial reporting and claim a portion of such losses either on current contracts or on those awarded after December 15, 1995. In order to ensure that contractors' impairment losses are not paid by the Federal Government, it is necessary to issue this clarification of existing cost principles expeditiously. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: December 8, 1995.

**Edward C. Loeb,**

*Acting Director, Office of Federal Acquisition Policy.*

**Federal Acquisition Circular**

Number 90-35

Federal Acquisition Circular (FAC) 90-35 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 90-35 is effective December 14, 1995.

Dated: December 1, 1995.

Eleanor R. Spector,  
Director, Defense Procurement.

Dated: December 6, 1995.

Ida M. Ustad,  
Associate Administrator, for Acquisition Policy.

Dated: December 7, 1995.

Tom Luedtke,  
Deputy Associate Administrator for Procurement, NASA.

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

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

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

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

2. Section 31.205-11 is amended at the end of paragraph (e) by adding the parenthetical “(but see paragraph (o) of this subsection).”; and by adding paragraph (o) to read as follows:

**31.205-11 Depreciation.**

\* \* \* \* \*

(o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, depreciation of the impaired assets shall not exceed the amounts established on depreciation

schedules in use prior to the write-down (see 31.205-16(g)).

3. Section 31.205-16 is amended by revising the section heading and adding paragraph (g) to read as follows:

**31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.**

\* \* \* \* \*

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be recognized for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). Depreciation or amortization on pre-write-down carrying value of impaired assets not yet disposed of shall continue to be recoverable under established depreciation or amortization schedules to the extent it is not otherwise unallowable under other provisions of the FAR.

[FR Doc. 95-30442 Filed 12-13-95; 8:45 am]

BILLING CODE 6820-EP-M

**48 CFR Part 31**

[Federal Acquisition Circular 90-35]

**Federal Acquisition Regulation; Rates of Inflation**

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

**ACTION:** Annual notice of rates of inflation.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of IR&D/B&P costs for major contractors under 31.205-18(c)(2)(i)(C)(2) during the first three contractor fiscal years beginning on or after October 1, 1992. The following rates of inflation are effective immediately, and shall remain in effect until superseded by the next publication, which is anticipated in January 1996:

Fiscal year	Annual percentage rate
1994 .....	2.5
1995 .....	2.9
1996 .....	3.0
1997 .....	3.0

The above rates are the Price Escalation Indices for the Research, Development, Test & Evaluation (RDT&E) Account, Total Obligation Authority (TOA), issued by the Principal Deputy Under Secretary of Defense (Comptroller) on January 10, 1995. These rates of inflation supersede those published in FAC 90-23, Item XL—Annual Notice of Rates of Inflation, in the **Federal Register** on December 28, 1994.

Dated: December 8, 1995.

**Edward C. Loeb,**  
Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 95-30443 Filed 12-13-95; 8:45 am]

BILLING CODE 6820-EP-M

# Federal Register

Friday  
December 20, 1996

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## Part III

Department of Defense  
General Services  
Administration

National Aeronautics and  
Space Administration

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48 CFR Chapter 1

Federal Acquisition Regulations; Final  
Rules

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Chapter 1

[Federal Acquisition Circular 90-43]

Federal Acquisition Regulation;  
Introduction of Miscellaneous  
AmendmentsAGENCIES: Department of Defense (DOD),  
General Services Administration (GSA),and National Aeronautics and Space  
Administration (NASA).ACTION: Summary presentation of final  
and interim rules.SUMMARY: This document serves to  
introduce and relate together the interim  
and final rule documents which follow  
and which comprise Federal  
Acquisition Circular (FAC) 90-43. The  
Civilian Agency Acquisition Council  
and the Defense Acquisition Regulations  
Council have agreed to issue FAC 90-  
43 to amend the Federal Acquisition  
Regulation (FAR) to implement changes  
in the areas listed below. All references,  
in this FAC, to the Federal AcquisitionReform Act of 1996 (FARA) also include  
the Clinger/Cohen Act which FARA was  
subsequently named.

Item	Subject	FAR case	Analyst
I	FASA and the Walsh-Healey Public Contracts Act (Interim) .....	96-601	O'Neill.
II	Individual and Class Deviations .....	96-004	O'Neill.
III	Use of Data Universal Numbering System as Primary Contractor Identification (Interim) .....	95-307	Klein.
IV	Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items .....	96-310	Olson.
V	Allowable Cost and Payment Clause .....	93-024	Olson.
VI	Mentor/Protégé Program .....	93-308	Klein.
VII	Minority Small Business and Capital Ownership (Interim) .....	95-028	Klein.
VIII	Extension of Small Business Competitiveness Demonstration Program .....	96-328	Moss.
IX	Morale, Health, Welfare Costs/Contractor Overhead Certification .....	92-613	Olson.
X	Impairment of Long-Lived Assets .....	95-003	Olson.
XI	Local Government Lobbying Costs (Interim) .....	96-663	Olson.
XII	Clause Flowdown .....	92-035	Olson.
XIII	Collection of FASA-Related Information within the Federal Procurement Data System .....	95-310	Klein.
XIV	Technical Amendments .....	N/A	N/A.

**DATES:** For effective dates and comment dates, see individual documents which appear elsewhere in this separate part.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405 (202) 501-4755. Please cite FAC 90-43 and FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 90-43 amends the Federal Acquisition Regulation (FAR) as specified below:

## Case Summaries

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.

## Item I—FASA and the Walsh-Healey Public Contracts Act (FAR Case 96-601)

This interim rule amends the Federal Acquisition Regulation (FAR) to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used

in the performance of the contract. Section 7201 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) amended the Walsh-Healey Public Contracts Act to repeal the "manufacturer" or "regular dealer" requirement.

## Item II—Individual and Class Deviations (FAR Case 96-004)

This final rule amends the FAR to eliminate the requirements for all agencies to submit copies of approved individual deviations to the FAR Secretariat and for DOD and NASA to submit copies of approved class deviations to the FAR Secretariat.

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

This interim rule amends the FAR by adding a new solicitation provision at 52.204-6, and revising Standard Forms 294 and 295 to replace the Contractor Establishment Code with the Data Universal Numbering System number as the means of identifying contractors in the Federal Procurement Data System.

## Item IV—Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items (FAR Case 96-310)

This final rule amends FAR Part 12 to implement Section 4205 of the Clinger-Cohen Act of 1996 (Pub. L. 104-106) (formerly Federal Acquisition Reform Act (FARA)). Section 4205 amends 41 U.S.C. 422(f) to provide that the statutory requirement for mandatory use of Cost Accounting Standards (CAS) need not apply to contracts or subcontracts for the acquisition of commercial items. While CAS generally will not apply to acquisitions of commercial items, CAS requirements may be invoked as a matter of policy by the CAS Board, pursuant to the authority provided in 41 U.S.C. 422.

## Item V—Allowable Cost and Payment Clause (FAR Case 93-024)

This final rule amends the FAR to clarify that reimbursement of subcontract costs under cost-type contracts generally will not be made to a large business contractor until the contractor has made payment to the subcontractor.

**Item VI—Mentor/Protégé Program (FAR Case 93-308)**

The interim rule published as Item X of FAC 90-37 is finalized with minor clarifying changes. The rule permits a mentor firm under the DOD Pilot Mentor/Protégé Program to be granted credit toward subcontracting goals for certain costs incurred in providing developmental assistance to its protégé firms, and to award subcontracts on a noncompetitive basis to its protégé firms.

**Item VII—Minority Small Business and Capital Ownership (FAR Case 95-028)**

This interim rule amends the FAR to reflect revisions to the Small Business Administration's regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) Program.

**Item VIII—Extension of Small Business Competitiveness Demonstration Program (FAR Case 96-328)**

This final rule amends FAR Subpart 19.10 to implement Section 108, Title I (Amendments to Small Business Administration Act), of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-208). Section 108 extends the Small Business Competitiveness Demonstration Program (15 U.S.C. 644 note) until September 30, 1997.

**Item IX—Morale, Health, Welfare Costs/Contractor Overhead Certification (FAR Case 92-613)**

This final rule amends the cost principle at FAR 31.205-1, Public Relations and Advertising Costs, by removing from paragraph (f)(5) the parenthetical reference to other cost principles to eliminate any confusion as to which cost principle governs.

**Item X—Impairment of Long-Lived Assets (FAR Case 95-003)**

This final rule amends the FAR to clarify the cost allowability rules concerning the recognition of losses when carrying values of impaired assets are written down for financial reporting purposes.

**Item XI—Local Government Lobbying Costs (FAR Case 96-003)**

This interim rule amends the FAR to make allowable the costs of lobbying activities to influence local legislation in order to directly reduce contract costs or to avoid material impairment of the contractor's authority to perform the contract.

**Item XII—Clause Flowdown (FAR Case 92-035)**

This final rule amends the FAR by eliminating requirements for prime contractors to flow down clause provisions to their subcontractors or suppliers from FAR clauses 52.215-26, 52.216-5, 52.216-6, 52.216-16, 52.216-17, 52.222-1, 52.236-21, 52.244-2(i), 52.246-23, 52.246-24, and 52.246-25.

**Item XIII—Collection of FASA-Related Information Within the Federal Procurement Data System (FAR Case 95-310)**

This final rule amends the FAR to change the Standard Form 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and Standard Form 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less), to incorporate new information categories required by the Federal Acquisition Streamlining Act of 1994.

**Item XIV—Technical Amendments**

These technical amendments have been made to correct typographical errors, FAR citations, and clause dates.

Dated: December 11, 1996.

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

Federal Acquisition Circular  
Number 90-43

Federal Acquisition Circular (FAC) 90-43 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.

FAR cases 96-601, 93-308, 95-307, 96-328, 95-310, 95-028 and 96-003 are effective December 20, 1996. FAR case 96-310 is effective January 1, 1997. FAR cases 96-004, 93-024, 92-613, 95-003 and 92-035 are effective February 18, 1997.

Dated: December 10, 1996.

Eleanor R. Spector,  
*Director, Defense Procurement.*

Dated: December 10, 1996.

Ada M. Ustad,  
*Deputy Associate Administrator, Office of Acquisition Policy.*

Dated: December 10, 1996.

Tom Luedtke,  
*Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 96-32000 Filed 12-19-96; 8:45 am]  
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**48 CFR Parts 1, 9, 14, 19, 22, 33, and 52**

[FAC 90-43, FAR Case 96-601, Item I]  
RIN 9000-AH31

**Federal Acquisition Regulation; FASA and the Walsh-Healey Public Contracts Act**

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Section 7201 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) amended the Walsh-Healey Public Contracts Act to repeal the "manufacturer" or "regular dealer" requirement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.  
**DATES:** *Effective Date:* December 20, 1996.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-43, FAR case 96-601, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-601.

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

On August 5, 1996 (61 FR 40714), the Department of Labor (DOL) published a final rule implementing the changes

made by the Federal Acquisition Streamlining Act of 1994 (FASA) to the Walsh-Healey Public Contracts Act (PCA). The FAR is being revised at this time, consistent with the DOL final rule.

#### B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR to conform to revisions to DOL regulations reflecting repeal of the "manufacturer" and "regular dealer" requirements under the PCA. DOL has determined that the revisions to its regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, these conforming FAR amendments are not expected to have a significant economic impact. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 96-601), in correspondence.

#### C. Paperwork Reduction Act

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

#### D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment, because implementation of this change is required by Section 7201 of the Federal Acquisition Streamlining Act of 1994 and Department of Labor regulations. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

List of Subjects in 48 CFR Parts 1, 9, 14, 19, 22, 33, and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 9, 14, 19, 22, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 9, 14, 19, 22, 33, and 52 continues to read as follows:

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

#### PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

##### 1.106 [Amended]

2. The table in section 1.106 is amended under the "FAR Segment" and "OMB Control Number" columns by removing the entry for "22.606-2(b)".

#### PART 9—CONTRACTOR QUALIFICATIONS

##### 9.103 [Amended]

3. Section 9.103 paragraph (b) is amended in the third sentence by removing "and Determinations of Eligibility".

##### 9.104-1 [Amended]

4. Section 9.104-1 is amended in paragraphs (a), (e), and (f) by revising the citation "9.104-3(b)" to read "9.104-3(a)"; and in paragraph (c) by revising the citation "9.104-3(c)" to read "9.104-3(b)".

##### 9.104-3 [Amended]

5. Section 9.104-3 is amended by removing paragraph (a), and by redesignating paragraphs (b) through (e) as (a) through (d), respectively.

##### 9.702 [Amended]

6. Section 9.702 is amended by removing paragraph (d), and by redesignating paragraphs (e) and (f) as (d) and (e), respectively.

#### PART 14—SEALED BIDDING

##### 14.205-1 [Amended]

7. Section 14.205-1(d)(2) is amended by removing "(the manufacturer or regular dealer)".

#### PART 19—SMALL BUSINESS PROGRAMS

##### 19.001 [Amended]

8. Section 19.001 is amended by removing the definition for "Determination of eligibility".

##### 19.102 [Amended]

9. Section 19.102(f)(1) is amended by removing the fifth sentence, and in the last sentence by removing "regular dealer" and inserting "nonmanufacturer" in its place.

#### Subpart 19.6—Certificates of Competency

10. The subpart heading for Subpart 19.6 is revised to read as set forth above.

##### 19.601 [Amended]

11. Section 19.601 is amended by removing paragraph (c) and by redesignating paragraph (d) as (c).

##### 19.803 [Amended]

12. Section 19.803(a)(3) is amended by removing the last sentence.

#### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

##### 22.601 [Reserved]

13. Section 22.601 is removed and reserved.

14. Section 22.602 is revised to read as follows:

##### 22.602 Statutory requirements.

Except for the exemptions at 22.604, all contracts subject to the Walsh-Healey Public Contracts Act (the Act) (41 U.S.C. 35-45) and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding \$10,000, shall include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

##### 22.604-2 [Amended]

15. Section 22.604-2 is amended by removing paragraph (b) and by redesignating paragraph (c) as (b).

##### 22.606 [Reserved]

##### 22.606-1 and 22.606-2 [Removed]

16. Section 22.606 and subsections 22.606-1 and 22.606-2 are removed and 22.606 is reserved.

##### 22.607 [Reserved]

17. Section 22.607 is removed and reserved.

18. Section 22.608 is revised to read as follows:

**22.608 Procedures.**

(a) *Award.* When a contract subject to the Act is awarded, the contracting officer, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, shall furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation.* In the event of a violation of a stipulation required under the Act, the contracting officer shall, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 22.609), and furnish any information available.

**22.608-1 through 22.608-6 [Removed]**

19. Subsections 22.608-1 through 22.608-6 are removed.

**22.609 [Amended]**

20.-21. Section 22.610 is revised to read as follows:

**22.610 Contract clause.**

The contracting officer shall insert the clause at 52.222-20, Walsh-Healey Public Contracts Act, in solicitations and contracts covered by the Act (see 22.603, 22.604, and 22.605).

**PART 33—PROTESTS, DISPUTES, AND APPEALS**

22. Section 33.102(a) is amended by revising the last sentence to read as follows:

**33.102 General.**

(a) \* \* \* (See 19.302 for protests of small business status.)

\* \* \* \* \*

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

**52.219-14 [Amended]**

23. Section 52.219-14 is amended by revising the clause date to read "(DEC 1996)" and in paragraph (b)(2) by removing "regular dealer in" and inserting "nonmanufacturer of" in its place.

**52.222-19 [Reserved]**

24. Section 52.222-19 is removed and reserved.

**52.222-20 [Amended]**

25. Section 52.222-20 is amended in the introductory text by revising "22.610(b)" to read "22.610", by revising the clause date to read "(DEC 1996)", and in paragraph (a) by twice removing "representations and".

[FR Doc. 96-32001 Filed 12-19-96; 8:45 am]

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**48 CFR Part 1**

[FAC 90-43; FAR Case 96-004; Item II]

RIN 9000-AH32

**Federal Acquisition Regulation; Individual and Class Deviations**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to eliminate the requirements for all agencies to submit copies of approved individual deviations to the FAR Secretariat, and for DOD and NASA to submit copies of approved class deviations to the FAR Secretariat. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-004.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DOD and NASA monitor approved deviations to the FAR and recommend revisions to the regulation as appropriate. Accordingly, collection of their deviations by the FAR Secretariat is no longer considered necessary. Furthermore, collection of individual deviations approved by all agencies is no longer considered necessary and is being deleted from the regulation.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR part will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-43, FAR case 96-004), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 1**

Government procurement.

Dated: December 11, 1996.

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

Therefore, 48 CFR Part 1 is amended as set forth below:

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

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

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

2. Section 1.403 is amended by revising the last sentence to read as follows:

**1.403 Individual deviations.**

\* \* \* The justification and agency approval shall be documented in the contract file.

3. Section 1.404 is amended by revising the last sentence of the introductory text to read as follows:

**1.404 Class deviations.**

\* \* \* For civilian agencies other than NASA, a copy of each approved class deviation shall be furnished to the FAR Secretariat.

\* \* \* \* \*

4. Section 1.405 is amended by revising paragraphs (d) and (e) to read as follows:

**1.405 Deviations pertaining to treaties and executive agreements.**

\* \* \* \* \*

(d) For civilian agencies other than NASA, a copy of the text deviation authorized under paragraph (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point.

(e) For civilian agencies other than NASA, if a deviation required to comply with a treaty or an executive agreement is not authorized by paragraph (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the Civilian Agency Acquisition Council.

[FR Doc. 96-32002 Filed 12-19-96; 8:45 am]

BILLING CODE 6820-EP-P

**48 CFR Parts 4, 52, and 53****[FAC 90-43, FAR Case 95-307, Item III]****RIN 9000-AH33****Federal Acquisition Regulation; Use of Data Universal Numbering System as Primary Contractor Identification**

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule which amends the FAR by adding a new solicitation provision at 52.204-6, and by revising Standard Forms 294 and 295, to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** *Effective Date:* December 20, 1996.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-43, FAR case 95-307, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 95-307.

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

This interim rule amends FAR Parts 4, 52, and 53 (*i.e.*, block 2 of Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report). Federal agencies report data to the Federal Procurement Data Center, which collects, processes, and disseminates official statistical data on Federal contracting.

**B. Regulatory Flexibility Act**

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely replaces the CEC with the DUNS number to identify contractors in the Federal Procurement Data System. It is estimated that it will take each contractor only 5 minutes to request a DUNS number from Dun and Bradstreet. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 95-307), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains information collection requirements. Contractors will now have to obtain/report a contractor identification number (*i.e.*, DUNS number). Accordingly, a request for approval of a new information collection requirement has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. The Federal Procurement Data System (FPDS) reporting requirements are currently being revised to conform to the requirements of Section 10004 of the Federal Acquisition Streamlining Act of 1994 (FASA). This rule implements a determination made by the Office of Federal Procurement Policy to use the DUNS number for FPDS reporting purposes in place of the CEC and to identify vendors in the Federal Acquisition Computer Network (FACNET) vendor registration database. Agencies may begin reporting the DUNS number with FY 1996 first quarter submissions to the Federal Procurement Data Center. For this reason, and because of the interrelationship of this revision and the FASA-related changes

to the FPDS, publication of an interim rule is considered necessary. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

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

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 52, and 53 are amended as set forth below:

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

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

**PART 4—ADMINISTRATIVE MATTERS**

2. Section 4.602(d) is revised to read as follows:

**4.602 Federal Procurement Data System.**

\* \* \* \* \*

(d) The contracting officer shall report a Contractor Identification Number for each successful offeror. A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors. The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract. The contracting officer shall ask the offeror to provide its DUNS number by using the provision prescribed at 4.603(a). If the successful offeror does not provide its number, the contracting officer shall contact the offeror and obtain the DUNS number.

3. Section 4.603 is revised to read as follows:

**4.603 Solicitation provisions.**

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

(b) The contracting officer shall insert the provision at 52.204-5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, when the contract

is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

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

4. Section 52.204-5, introductory text, is revised to read as follows:

**52.204-5 Women-Owned Business.**

As prescribed in 4.603(b), insert the following provision:

\* \* \* \* \*

5. Section 52.204-6 is added to read as follows:

**52.204-6 Contractor Identification Number—Data Universal Numbering System (DUNS) Number.**

As prescribed in 4.603(a), insert the following provision:

**CONTRACTOR IDENTIFICATION NUMBER—DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (DEC 1996)**

(a) *Contractor Identification Number*, as used in this provision, means "Data Universal Numbering System (DUNS) number," which is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.

- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.

(8) Company affiliation.  
(d) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.dbisna.com/dbis/customer/custlist.htm>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@dbisma.com](mailto:globalinfo@dbisma.com).

(End of provision)

**PART 53—FORMS**

**53.219 [Amended]**

6. Section 53.219 is amended in paragraphs (a) and (b) by revising "(Rev Oct 1995)" to read "(REV. 10/96)".

7. Section 53.301-294 is revised to read as follows:

**53.301-294 Subcontracting Report for Individual Contracts**

BILLING CODE 6820-EP-P

**SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS**  
*(See Instructions on reverse)*

 OMB No.: 9000-0006  
 Expires: 03/31/98

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

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30    YEAR		
b. STREET ADDRESS					
c. CITY	d. STATE	e. ZIP CODE	5. TYPE OF REPORT		
2. CONTRACTOR IDENTIFICATION NUMBER			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
<input type="checkbox"/> ARMY <input type="checkbox"/> NAVY <input type="checkbox"/> AIR FORCE		<input type="checkbox"/> GSA <input type="checkbox"/> DOE <input type="checkbox"/> DEFENSE LOGISTICS AGENCY		<input type="checkbox"/> NASA <input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>	
7. REPORT SUBMITTED AS <i>(Check one and provide appropriate number)</i>			8. AGENCY OR CONTRACTOR AWARDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUBCONTRACTOR			a. AGENCY'S OR CONTRACTOR'S NAME		
PRIME CONTRACT NUMBER			b. STREET ADDRESS		
SUBCONTRACT NUMBER			c. CITY		
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:			d. STATE		
<input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			e. ZIP CODE		

**SUBCONTRACT AWARDS**

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)</i>				
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
10c. TOTAL <i>(Sum of 10a and 10b.)</i>				
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI) (Dollar Amount and Percent of 10c.)</i>				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	14b. TELEPHONE NUMBER	
	AREA CODE	NUMBER

 AUTHORIZED FOR LOCAL REPRODUCTION  
 Previous edition is not usable

 STANDARD FORM 294 (REV. 10-96)  
 Prescribed by GSA-FAR (48 CFR) 53.219(a)

**GENERAL INSTRUCTIONS**

1. This report is not required from small businesses.
2. This report is not required for commercial products for which a company-wide annual plan (i.e., a Commercial Products Plan) has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.
3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.
5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

**SPECIFIC INSTRUCTIONS**

- BLOCK 2:** For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.
- BLOCK 4:** Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.
- BLOCK 5:** Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.
- BLOCK 6:** Identify the department or agency administering the majority of subcontracting plans.
- BLOCK 7:** Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.
- BLOCK 8:** Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.
- BLOCK 9:** Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contrac-

tor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

**BLOCKS 10a through 12:** Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

**BLOCK 10a:** Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

**BLOCK 10b:** Report all subcontracts awarded to large businesses (LBs).

**BLOCK 10c:** Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

**BLOCKS 11 and 12:** Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).

**BLOCK 11:** Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

**BLOCK 12:** Report all subcontracts awarded to Women-Owned firms (including SDBs owned by women).

**BLOCK 13:** Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

**SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS****DEFINITIONS**

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.
2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
4. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

**DISTRIBUTION OF THIS REPORT****For the Awarding Agency or Contractor:**

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

**For the Small Business Administration (SBA):**

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

STANDARD FORM 294 (REV. 10-95) BACK



**GENERAL INSTRUCTIONS**

1. This report is not required from small businesses.
2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Products Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.
10. See special instructions in right-hand column for Commercial Products Plans.

**SPECIFIC INSTRUCTIONS**

**BLOCK 2:** For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

**BLOCK 4:** Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period, (i.e., Mar

**BLOCK 5:** Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

**BLOCK 6:** Identify the department or agency administering the majority of subcontracting plans.

**BLOCK 7:** This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

**BLOCK 8:** Check only one. Check "Commercial Products Plan" only if this report is under an approved Commercial Products Plan. For a Commercial Products Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

**BLOCK 9:** Identify the major product or service lines of the reporting organization.

**BLOCKS 10a through 13:** These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial Products" is checked in Block 8 (see Special Instructions for Commercial Products Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

**BLOCK 10a:** Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

**BLOCK 10b:** Report all subcontracts awarded to large businesses (LBs).

**BLOCK 10c:** Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

**BLOCKS 11 and 13:** Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 13 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

**BLOCK 11:** Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

**BLOCK 12:** Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

**BLOCK 13** (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

**SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS**

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.
2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall include all subcontracting activity under commercial products plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial products, if any.
3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Products Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Products Plan were received.

**DEFINITIONS**

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.
2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

**SUBMITTAL ADDRESSES FOR ORIGINAL REPORT**

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HQC), Washington, DC 20548
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSD/BU Director unless otherwise provided for in instructions by the Department or Agency.

**FOR ALL CONTRACTORS:**

**SMALL BUSINESS ADMINISTRATION (SBA):** Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 10-86) BACK

**48 CFR Part 12**

[FAC 90-43; FAR Case 96-310; Item IV]

RIN 9000-AH01

**Federal Acquisition Regulation; Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4205 of the Clinger-Cohen Act of 1996 (Public Law 104-106) (formerly the Federal Acquisition Reform Act (FARA)). Section 4205 amends Section 26(f) of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 422(f)) by noting the current applicability of Cost Accounting Standards (CAS) to contracts and subcontracts for commercial items. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-310.

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

This final rule amends FAR Part 12 to implement Section 4205 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4205 amends Section 26(f) of the OFPP Act (41 U.S.C. 422(f)), making the application of CAS to commercial items "nonmandatory". Therefore, the new coverage at FAR 12.214 indicates that CAS generally will not apply to commercial items unless so indicated at 48 CFR 9903.201. A cross-reference to FAR 12.214 is added at 12.503(c) and 12.504(c), to further clarify the effect of Section 4205.

A proposed rule was published in the Federal Register on June 21, 1996 (61 FR 32312). Three sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from Cost Accounting Standards requirements.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 12**

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 12 is amended as set forth below:

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

1. The authority citation for 48 CFR Part 12 continues to read as follows:

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

2. Section 12.214 is added to read as follows:

**12.214 Cost Accounting Standards.**

Cost Accounting Standards (CAS) generally will not apply to commercial items. If CAS does apply pursuant to 48 CFR 9903.201 (FAR Appendix B), the contracting officer shall insert the appropriate provisions and clauses as prescribed in that section.

3. Section 12.503(c)(3) is revised to read as follows:

**12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.**

\* \* \* \* \*

(c) \* \* \*

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

\* \* \* \* \*

4. Section 12.504(c)(3) is revised to read as follows:

**12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

\* \* \* \* \*

(c) \* \* \*

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

[FR Doc. 96-32004 Filed 12-19-96; 8:45 am]  
BILLING CODE 6820-EP-P

**48 CFR Parts 16 and 52**

[FAC 90-43; FAR Case 93-024; Item V]

RIN 9000-AG74

**Federal Acquisition Regulation; Allowable Cost and Payment Clause**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify that reimbursement of subcontract costs under cost-type contracts generally will not be made to a large business contractor until the contractor has made payment to the subcontractor. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 93-024.

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

The Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting, in its report of December 3, 1992, entitled "Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts", recommended several FAR revisions which were viewed to have Government-wide benefit. One area identified for clarification was the payment provisions in FAR clauses 52.216-7, Allowable Cost and Payment, and 52.232-7, Payments under Time-and-Materials and Labor-Hour

Contracts. The SWAT team concluded that these clauses did not clearly convey the Government's intent that payments to subcontractors by large business prime contractors were not billable to the Government until the contractor had actually paid the subcontractors.

This final rule amends FAR 52.216-7, Allowable Cost and Payment, and FAR 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, to clarify that payments to subcontractors by large business prime contractors are not billable until the contractors have actually paid the subcontractors. The rule exempts, however, contractors who are awarded construction contracts that include the clauses at FAR 52.216-7, Allowable Cost and Payment, and FAR 52.232-27, Prompt Payment for Construction Contracts. Alternate I of FAR 52.216-7 provides for reimbursement of construction prime contractors for subcontract costs prior to the subcontractors actually being paid, as long as the prime contractor has included a provision in its subcontracts that requires that the subcontractor be paid within seven days of the prime contractor's receipt of payment from the Government.

A proposed rule was published in the Federal Register on December 21, 1995 (60 FR 66472). Five sources submitted public comments. All comments were considered in developing the final rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to large business prime contractors under time-and-materials, labor-hour, and cost-reimbursement type contracts.

**C. Paperwork Reduction Act**

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

List of Subjects in 48 CFR Parts 16 and 52

Government procurement.

Dated: December 11, 1996.  
Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 16 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 16 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 16—TYPES OF CONTRACTS**

2. Section 16.307(a) is amended by redesignating the text as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

**§ 16.307 Contract clauses.**

(a)(1) \* \* \*

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216-7 with its Alternate I.

\* \* \* \* \*

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

3. Section 52.216-7 is amended by revising the clause date and paragraph (b)(1)(iii), and by adding Alternate I to read as follows:

**52.216-7 Allowable Cost and Payment.**

\* \* \* \* \*

**ALLOWABLE COST AND PAYMENT (FEB 1997)**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The amount of progress and other payments that have been paid by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

\* \* \* \* \*

(End of clause)

Alternate I (FEB 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

4. Section 52.232-7 is amended by revising the clause date and the second sentence of paragraph (b)(2) 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 (FEB 1997)**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. \* \* \*

\* \* \* \* \*

[FR Doc. 96-32005 Filed 12-19-96; 8:45 am]

BILLING CODE 6820-EP-P

**48 CFR Parts 19 and 52**

[FAC 90-43; FAR Case 93-308; Item VI]

RIN 9000-AG70

**Federal Acquisition Regulation; Mentor Protégé Program**

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

ACTION: Interim rule adopted as final with a change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule continuing an interim rule which amended the FAR. The interim rule published as Item X of FAC 90-37 is finalized with minor clarifying revisions. This final rule permits a mentor firm under the DOD Pilot Mentor-Protégé Program to be granted credit toward subcontracting goals for certain costs incurred in providing developmental assistance to its Protégé firms and to award subcontracts on a noncompetitive basis to its Protégé firms. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 93-308.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This rule implements Section 814(c) of Public Law 102-190, which amended

the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by mentor firms under the DOD Pilot Mentor-Protégé Program to be credited toward subcontracting goals for awards to small disadvantaged businesses. This rule also further implements Section 831(f)(2) of Public Law 101-510, which permits mentor firms to award subcontracts on a noncompetitive basis to its Protégés under DOD or other contracts. An interim rule was published in the Federal Register on January 26, 1996 (61 FR 2637). One comment was received in response to the interim rule. As a result, in the second sentence of 19.702(d), the word "firms" was revised to read "Protégé agreement", and the address and telephone number were corrected. The clause at 52.244-5 is adopted as final without change.

#### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to participants in the DOD Pilot Mentor-Protégé Program. Presently, approximately 100 mentor firms and 240 protégé firms are enrolled in the program.

#### C. Paperwork Reduction Act

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

#### List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Accordingly, the interim rule amending 48 CFR Parts 19 and 52 and published at 61 FR 2637, January 26, 1996, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 19 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 19—SMALL BUSINESS PROGRAMS

2. Section 19.702 is amended by revising the last sentence of paragraph (d) to read as follows:

##### § 19.702 Statutory requirement.

\* \* \* \* \*

(d) \* \* \* However, the mentor-Protégé agreement must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs) DUSD(I&CP)SADBU, Room 2A338, 3061 Defense Pentagon, Washington, DC 20301-3061, (703) 697-9383, before developmental assistance costs may be credited against subcontract goals.

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

##### § 52.244-5 [Amended]

3. The clause date for 52.244-5 is revised to read "(DEC 1996)".

[FR Doc. 96-32006 Filed 12-19-96; 8:45 am]

BILLING CODE 6820-EP-P

#### 48 CFR Parts 19 and 52

[FAC 90-43, FAR Case 95-028, Item VII]

RIN 9000-AH34

#### Federal Acquisition Regulation; Minority Small Business and Capital Ownership

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule that amends the Federal Acquisition Regulation (FAR) to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) Program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: December 20, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the

address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-43, FAR case 95-028, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 95-028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On June 7, 1995, SBA published changes in their regulations at 13 CFR Parts 121 and 124, which cover the Minority Small Business and Capital Ownership Development Program (60 FR 29969). As a result of these modifications, the FAR has some inconsistencies regarding who is eligible for a particular 8(a) procurement. Amended FAR sections include: 19.801, 19.804-2, 19.804-3, 19.805-1, 19.805-2, 19.808-1, 19.809, 19.811-1, 19.811-3, 52.219-1, 52.219-11 (Alternate I), 52.219-12 (Alternate I), 52.219-17, and 52.219-18 (Alternate II).

##### B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule does not impose any new requirements on contractors. The rule amends the FAR to reflect changes at 13 CFR 121 and 124 designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on Program Participants. The FAR is changed to eliminate inconsistencies with respect to who is eligible for particular 8(a) procurements; to eliminate obsolete definitions; and to eliminate coverage on certain aspects of the 8(a) program that are obsolete. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C.

601, *et seq.* (FAR case 95-028), in correspondence.

#### C. Paperwork Reduction Act

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

#### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement the changes in the Small Business Administration (SBA) Minority Small Business and Capital Ownership Development Program that are applicable for all 8(a) requirements accepted by the SBA on or after August 7, 1995. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

#### List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 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 19—SMALL BUSINESS PROGRAMS

##### 19.801 [Reserved]

2. Section 19.801 is removed and reserved.

3. Section 19.804-2 is amended by revising paragraph (b) and adding (c) to read as follows:

##### 19.804-2 Agency offering.

(b)(1) An agency offering a construction requirement should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be sent to SBA Headquarters, Office of Minority and Capital Ownership Development, 409 3rd Street, SW, Washington, DC 20416.

(c) In order to ensure consistency and uniformity, all requirements for 8(a) competition shall be offered to and processed by the Division of Business Development, SBA Headquarters. All requirements, including construction, shall be synopsisized in the Commerce Business Daily by the cognizant procuring agency. For construction, the synopsis shall include the geographical area of the competition as determined by the Assistant Administrator, Division of Business Development, in consultation with the local SBA district office where the work is to be performed.

##### 19.804-3 [Amended]

4. Section 19.804-3 is amended by removing paragraph (c).

5. Section 19.805-1 is amended by redesignating paragraph (c) as (d) and revising the last sentence, and by adding a new paragraph (c). The added and revised text reads as follows:

##### 19.805-1 General.

\* \* \* \* \*

(c) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm.

(d) \* \* \* Agency recommendations for competition below the threshold may be included in the offering letter or may be submitted by separate correspondence to the SBA Headquarters.

6. Section 19.805-2 is amended by revising the introductory text of paragraph (c) to read as follows:

##### 19.805-2 Procedures.

\* \* \* \* \*

(c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.

\* \* \* \* \*

7. Section 19.808-1(b) is revised to read as follows:

##### 19.808-1 Sole source.

\* \* \* \* \*

(b) The SBA should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

8. Section 19.809 is amended by revising the fourth sentence to read as follows:

##### 19.809 Preaward considerations.

\* \* \* Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA local district office that services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. \* \* \*

##### 19.811-1 [Amended]

9. Section 19.811-1 is amended by removing paragraph (b)(5).

10. Section 19.811-3 is amended by revising paragraphs (a), (b), and (d)(1); by removing (d)(2); and by redesignating (d)(3) as (d)(2), and in newly-designated (d)(2) by revising "Alternate III" to read "Alternate II". The revised text reads as follows:

##### 19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

\* \* \* \* \*

(d) \* \* \*

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to 19.804-2.

\* \* \* \* \*

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

11. Section 52.219-1 is amended by revising the provision date, and in paragraph (c) by adding, in alphabetical order, the definition for "Joint venture" to read as follows:

**52.219-1 Small Business Program Representations.**

\* \* \* \* \*

SMALL BUSINESS PROGRAM REPRESENTATIONS (DEC 1996)

\* \* \* \* \*

(c) *Definitions. Joint venture*, for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more business concerns and is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract. The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture. The percentage of the ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

\* \* \* \* \*

(End of provision)

**52.219-11 [Amended]**

12. Section 52.219-11 is amended by removing Alternate I.

**52.219-12 [Amended]**

13. Section 52.219-12 is amended by removing Alternate I.

14. Section 52.219-17 is amended by revising the clause date and by adding paragraphs (a)(5) and (c) to read as follows:

**52.219-17 Section 8(a) Award.**

\* \* \* \* \*

SECTION 8(a) AWARD (DEC 1996)

(a) \* \* \*

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

\* \* \* \* \*

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the \_\_\_\_\_ [insert name of contracting agency].

(End of clause)

**52.219-18 [Amended]**

15. Section 52.219-18 is amended by removing Alternate II and by redesignating Alternate III as Alternate II.

[FR Doc. 96-32007 Filed 12-19-96; 8:45 am]  
BILLING CODE 6820-EP-P

**48 CFR Part 19**

[FAC 90-43; FAR Case 96-328; Item VIII]

RIN 9000-AH40

**Federal Acquisition Regulation; Extension of Small Business Competitiveness Demonstration Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 108 of the Small Business Programs Improvement Act of 1996 (Public Law 104-208, Division D). Section 108 extends the Small Business Competitiveness Demonstration Program (15 U.S.C. 644 note) until September 30, 1997. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Victoria Moss at (202) 501-4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-328.

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

This final rule amends the FAR to extend the Small Business Competitiveness Demonstration Program through September 30, 1997. The program consists of two major components: a test of unrestricted competition in four designated industry groups, and a test of enhanced small business participation in 10 agency targeted industry categories. The rule implements section 108, Title I (Amendments to Small Business Administration Act), of Public Law 104-208. Section 108 was effective upon enactment (September 30, 1996).

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not

apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must cite 5 U.S.C. 601, *et seq.* (FAC 90-43, FAR case 96-328), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 19**

Government procurement.

Dated: December 11, 1996.

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

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

**PART 19—SMALL BUSINESS PROGRAMS**

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

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

**19.1001 [Amended]**

2. Section 19.1001 is amended in the second sentence by revising the date "1996" to read "1997".

**19.1006 [Amended]**

3. Section 19.1006(b)(1) is amended by revising the date "1996" to read "1997".

[FR Doc. 96-32008 Filed 12-19-96; 8:45 am]  
BILLING CODE 6820-EP-P

**48 CFR Part 31**

[FAC 90-43; FAR Case 92-613; Item IX]

RIN 9000-AG85

**Federal Acquisition Regulation; Morale, Health, Welfare Costs/ Contractor Overhead Certification**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) cost principle for public relations and

advertising costs to eliminate confusion as to which cost principle governs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 92-613.

SUPPLEMENTARY INFORMATION:

A. Background

The General Accounting Office (GAO), in its report GAO/NSIAD-93-79, "CONTRACT PRICING: Unallowable Costs Charged to Defense Contracts", dated November 20, 1992, recommended that the cost principles at FAR 31.205-1, 31.205-13, and 31.205-14 be revised to eliminate confusion as to which cost principle was controlling. The December 1992 OMB SWAT summary report on civilian agency contracting practices also recommended these cost principles be made more explicit.

Revisions to FAR 31.205-13 and 31.205-14, based on recommendations of the GAO and OMB SWAT, and implementation of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, were published as a final rule in the Federal Register (60 FR 42662) on August 16, 1995.

This final rule amends the third cost principle cited in the GAO and the OMB SWAT reports. The rule amends the cost principle at FAR 31.205-1, Public relations and advertising costs, by removing from paragraph (f)(5) the parenthetical reference to other cost principles to eliminate any confusion as to which cost principle governs. A proposed rule was published in the Federal Register on March 29, 1996 (61 FR 14216). Two sources submitted public comments. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

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

awarded on a competitive, fixed-price basis, and do not require application of the FAR cost principles.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205-1(f)(5) is revised to read as follows:

31.205-1 Public relations and advertising costs.

\* \* \* \* \*

(f) \* \* \*

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

\* \* \* \* \*

[FR Doc. 96-32009 Filed 12-19-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 31

[FAC 90-43; FAR Case 95-003; Item X]

RIN 9000-AG73

Federal Acquisition Regulation; Impairment of Long-Lived Assets

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

ACTION: Interim rule adopted as a final rule with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a final rule to amend the Federal Acquisition Regulation (FAR) to clarify the cost allowability rules

concerning the recognition of losses when carrying values of impaired assets are written down for financial reporting purposes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 95-003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule clarifies that impairment losses recognized for financial accounting purposes under the Financial Accounting Standards Board Statement of Financial Accounting Standards (SFAS), No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of, dated March 1995, are not allowable for Government contract costing.

The SFAS applies to long-lived assets (such as land, buildings, and equipment), certain identifiable intangibles, and related goodwill. If impaired assets are to be held for use, the SFAS requires a write-down to fair value when events or circumstances (e.g., environmental damage, idle facilities arising from declining business, etc.) indicate that carrying values may not be fully recoverable. Once written down, the previous carrying amount of an impaired asset could not be restored if the impairment were subsequently removed.

In contrast to the SFAS provisions, Cost Accounting Standard (CAS) 9904.409, Depreciation of Tangible Capital Assets, provides quite different criteria and guidance to recognize gains and losses for Government contract purposes. The language at CAS 9904.409-40 (a)(4) and (b)(4), CAS 9904.409-50(j), and related Promulgation Comment 10, Gain or Loss, makes it clear that gains and losses are recognized only upon asset disposal; no other circumstances trigger such recognition. The language at CAS 9904.409-50(i) makes it clear that changes in depreciation may result from other permissible causes, e.g., changes in estimated service life, consumption of services, and residual value.

This final rule amends FAR 31.205-11, Depreciation, and 31.205-16, Gains and Losses on Disposition or

**Impairment of Depreciable Property or Other Capital Assets**, to clarify that these subsections reflect the CAS provisions that an asset be disposed of in order to recognize a gain or loss. Consequently, for Government contract purposes, (1) an impairment loss is recognized only upon disposal of the impaired asset and is measured, like other losses, as the difference between the net amount realized and the impaired asset's undepreciated balance; (2) Government contractors recover the carrying values of impaired assets held for use by retaining pre-write-down depreciation or amortization schedules as though no impairment had occurred; and (3) changes in depreciation are allowable from other permissible causes.

An interim rule was published in the Federal Register on December 14, 1995 (60 FR 64254). Four sources submitted public comments. All comments were considered in developing this final rule.

#### B. Regulatory Flexibility Act

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

#### C. Paperwork Reduction Act

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

#### List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Accordingly, the interim rule amending 48 CFR Part 31 and published at 60 FR 64254, December 14, 1995, is adopted as a final rule with the following changes:

#### PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205-11(o) is revised to read as follows:

#### 31.205-11 Depreciation.

\* \* \* \* \*

(o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets shall be limited to the amounts that would have been allowed had the assets not been written down (see 31.205-16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

3. Section 31.205-16(g) is revised to read as follows:

#### 31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

\* \* \* \* \*

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

[FR Doc. 96-32010 Filed 12-19-96; 8:45 am]

BILLING CODE 6820-EP-P

#### 48 CFR Part 31

[FAC 90-43, FAR Case 96-003, Item XI]

RIN 9000-AH35

#### Federal Acquisition Regulation; Local Government Lobbying Costs

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to amend the Federal Acquisition Regulation (FAR) to make allowable the costs of lobbying activities to influence local legislation

in order to directly reduce contract costs or to avoid material impairment of the contractor's authority to perform the contract. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: December 20, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-43, FAR case 96-003, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-003.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) (FASA) added to the lists of unallowable costs found at 10 U.S.C. 2324(e)(1) and 41 U.S.C. 256, the costs of lobbying the legislative body of a political subdivision of a state (i.e., local lobbying). As a result, under FAR Case 94-754 (60 FR 42659, August 16, 1995), FAR 31.205-22(a) (3) and (4) were revised to make unallowable the costs associated with any attempt to influence local legislation. The paragraph at FAR 31.205-22(b) contains a list of activities exempted from the provisions at 31.205-22(a). Included in the exempted activities are lobbying activities to influence state legislation in order to directly reduce contract costs, or to avoid material impairment of the contractor's authority to perform the contract. This interim rule amends FAR 31.205-22(b)(2) to treat lobbying activities to influence local legislation in a manner consistent with the treatment of lobbying activities to influence state legislation.

##### B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*,

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Part 31

[FAC 90-35; FAR Case 95-003]

RIN 9000-AG73

Federal Acquisition Regulation;  
Impairment of Long-Lived Assets

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

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to clarify the allowability of losses recognized when carrying values of impaired assets are written down for financial reporting purposes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** *Effective Date:* December 14, 1995.

*Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before February 12, 1996.

**ADDRESSES:** Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-35, FAR Case 95-003.

## SUPPLEMENTARY INFORMATION:

## A. Background

This interim rule is intended to clarify cost allowability rules concerning the recognition of gains and losses related to long-lived assets. The rule addresses a cost category which is the subject of a Financial Accounting Standards Board Statement of Financial Accounting Standards (SFAS), No. 121, dated March 1995, entitled "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets To Be Disposed Of."

The SFAS applies to long-lived assets (such as land, buildings, and equipment), identifiable intangibles, and related goodwill, and establishes guidance to recognize and measure impairment losses. If impaired assets are to be held for use, the SFAS requires a write-down to fair value when events or circumstances (e.g., environmental damage, idle facilities arising from declining business, etc.) indicate that carrying values may not be fully recoverable.

Impaired assets that are to be disposed of, however, would be reported (with certain exceptions) at the lower of cost or fair value less cost to sell. Once written down, the previous carrying amount of an impaired asset could not be restored if the impairment was subsequently removed.

In contrast to the SFAS provisions, Cost Accounting Standard (CAS) 9904.409, "Depreciation of Tangible Capital Assets", provides quite different criteria and guidance to recognize gains and losses for Government contract purposes. The language at 9904.409-40 (a)(4) and (b)(4), 9904.409-50(j), and related Promulgation Comment 10, "Gain or Loss," makes it clear that gains and losses are recognized only upon asset disposal; no other circumstances trigger such recognition.

FAR 31.205-16 reflects the CAS provisions that an asset be disposed of in order to recognize a gain or loss. The FAR rule applies to both CAS and non-CAS covered contracts. Consequently, for Government contract purposes, an impairment loss is recognized only upon disposal of the impaired asset. Like other losses, it is measured as the difference between the net amount realized and the impaired asset's undepreciated balance. Government contractors, therefore, recover the carrying values of impaired assets held for use by retaining pre-write-down depreciation or amortization schedules as though no impairment had occurred. The rule addresses the treatment of losses for impaired assets by adding a new paragraph (o) at 31.205-11, and revising the title and adding a new paragraph (g) at 31.205.16.

## B. Regulatory Flexibility Act

The interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-35, Far case 95-003) in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any reporting or record keeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## D. Determination To Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary because the Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of, dated March 1995, requires all publicly owned firms to recognize impairment losses in their financial statements for fiscal years beginning after December 15, 1995. It is likely that Government contractors whose 1996 fiscal year begins after December 15, 1995, will recognize impairment losses for financial reporting and claim a portion of such losses either on current contracts or on those awarded after December 15, 1995. In order to ensure that contractors' impairment losses are not paid by the Federal Government, it is necessary to issue this clarification of existing cost principles expeditiously. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

## List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 8, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

## Federal Acquisition Circular

Number 90-35

Federal Acquisition Circular (FAC) 90-35 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 90-35 is effective December 14, 1995.

Dated: December 1, 1995.

Eleanor R. Spector,  
Director, Defense Procurement.

Dated: December 6, 1995.

Ida M. Ustad,  
Associate Administrator, for Acquisition Policy.

Dated: December 7, 1995.

Tom Luedtke,  
Deputy Associate Administrator for Procurement, NASA.

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

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

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

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

2. Section 31.205-11 is amended at the end of paragraph (e) by adding the parenthetical "(but see paragraph (o) of this subsection)."; and by adding paragraph (o) to read as follows:

**31.205-11 Depreciation.**

\* \* \* \* \*

(o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, depreciation of the impaired assets shall not exceed the amounts established on depreciation

schedules in use prior to the write-down (see 31.205-16(g)).

3. Section 31.205-16 is amended by revising the section heading and adding paragraph (g) to read as follows:

**31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.**

\* \* \* \* \*

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be recognized for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). Depreciation or amortization on pre-write-down carrying value of impaired assets not yet disposed of shall continue to be recoverable under established depreciation or amortization schedules to the extent it is not otherwise unallowable under other provisions of the FAR.

[FR Doc. 95-30442 Filed 12-13-95; 8:45 am]

BILLING CODE 6820-EP-M

**48 CFR Part 31**

[Federal Acquisition Circular 90-35]

**Federal Acquisition Regulation; Rates of Inflation**

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

**ACTION:** Annual notice of rates of inflation.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of IR&D/B&P costs for major contractors under 31.205-18(c)(2)(i)(C)(2) during the first three contractor fiscal years beginning on or after October 1, 1992. The following rates of inflation are effective immediately, and shall remain in effect until superseded by the next publication, which is anticipated in January 1996:

Fiscal year	Annual percent-age rate
1994 .....	2.5
1995 .....	2.9
1996 .....	3.0
1997 .....	3.0

The above rates are the Price Escalation Indices for the Research, Development, Test & Evaluation (RDT&E) Account, Total Obligation Authority (TOA), issued by the Principal Deputy Under Secretary of Defense (Comptroller) on January 10, 1995. These rates of inflation supersede those published in FAC 90-23, Item XL—Annual Notice of Rates of Inflation, in the Federal Register on December 28, 1994.

Dated: December 8, 1995.

Edward C. Loeb,  
Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 95-30443 Filed 12-13-95; 8:45 am]

BILLING CODE 6820-EP-M



ACQUISITION AND  
TECHNOLOGY

DP/CPF

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

JAN 23 1995



MEMORANDUM FOR DEPUTY DIRECTOR, DEFENSE ACQUISITION REGULATIONS  
SYSTEM

SUBJECT: Accounting for Impairment of Long-Lived Assets

The Financial Accounting Standards Board plans to issue a new rule in February that will require publicly-held firms to recognize asset impairment losses resulting from certain events or changes in circumstances (e.g., environmental damage) when recovery of carrying values is improbable. Once written down, the previous carrying amount of an asset cannot be restored if the impairment is subsequently removed. The rule will apply to financial statements for fiscal years beginning after June 15, 1995.

Under current CAS and FAR provisions, impairment losses on assets held for use cannot be recognized for Government contracting. Nonetheless, uncertainty and potential controversy might be avoided if an appropriate FAR change is implemented to clarify existing policy on the subject.

CPF has staffed the issue with selected members of the Cost Principles and CAS committees, and drafted a proposed change to FAR 31.205-16 with collaterals (Attachment). Given the short lead time available to us, I would like this case to receive top priority. Please establish a case number and process the case as quickly as possible.

Eleanor R. Spector  
Director, Defense Procurement

Attachment



DAR Case 95-XX  
Baseline: FAR posted through FAC 94-20

Proposed change shown in [brackets].

**PART 31--CONTRACT COST PRINCIPLES AND PROCEDURES**

\* \* \* \*

**31.205-16 Gains and losses on disposition of depreciable property or other capital assets.**

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205-19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205-52). [Moreover, with respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be recognized for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). Depreciation or amortization on pre-write-down carrying values of impaired assets not yet disposed of shall continue to be recoverable under established depreciation or amortization schedules to the extent it is not otherwise unallowable under other provisions of the FAR.]

\* \* \* \*

Attachment

**PROPOSED FEDERAL REGISTER NOTICE**

DEPARTMENT OF DEFENSE  
GENERAL SERVICES ADMINISTRATION  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Impaired Assets.

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

**ACTION:** Request for comment on proposed rule.

**COMMENTS:** Comments should be submitted to the FAR Secretariat at the address shown below on or before (60 days from publication), to be considered in the formulation of a final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering *revising to* ~~revising~~ FAR 31.205-16 to *clarify* ~~set forth a clarification of~~ existing rules regarding the allowability of losses recognized when carrying values of impaired assets are written down for financial reporting.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, N.W., Room 4041, Washington, DC 20405. Please cite FAR Case 95-XX in all correspondence related to these issues.

**EFFECTIVE DATE:**

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Fayson, FAR Secretariat, telephone (202) *501-4786* ~~523-4755~~. Please cite FAR Case 95-XX.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The ~~revision~~ proposed <sup>rule</sup> ~~by the councils~~ is intended to clarify extant cost allowability rules regarding recognition of gains and losses related to long-lived assets. This ~~proposed~~ <sup>a</sup> rule addresses a cost category which is the subject of a Financial Accounting Standards Board proposed Statement of Financial Accounting Standards (SFAS), No. 132-B, dated November 29, 1993, and entitled "Accounting for the Impairment of Long-Lived Assets." <sup>//</sup> The SFAS applies to long-lived assets (such as land, buildings, and equipment), identifiable intangibles, and related goodwill, and establishes guidance to recognize and measure impairment losses. If impaired assets are to be held for use, the SFAS requires a write-down to fair value when events or circumstances (e.g., environmental damage, idle facilities arising from declining business, etc.) indicate that carrying values may not be fully recoverable. Impaired assets that are to be disposed of, however, would be reported (with certain exceptions) at the lower of cost or fair value less cost to sell. Once written down, the previous carrying amount of an impaired asset could not be restored if the impairment was subsequently removed. The final SFAS, which is virtually unchanged from the proposed rule (except for certain utility company provisions), is scheduled to be issued on February 15, 1995. The SFAS will apply to all financial statements issued for fiscal years beginning after June 15, 1995. In contrast to the SFAS provisions, Cost Accounting

Standard (CAS) 9904.409, "Depreciation of Tangible Capital Assets," provides quite different criteria and guidance to recognize gains and losses for Government contracting purposes. The language at 9904.409-40(a)(4) and (b)(4), 9904.409-50(j), and related Promulgation Comment 10, "Gain or Loss," makes it clear that gains and losses are recognized only upon asset disposal; no other circumstances trigger such recognition. FAR 31.205-16, "Gains and losses on disposition of depreciable property and other capital assets," reflects the CAS provision that an asset be disposed of in order to recognize a gain or loss. The FAR rule applies to both CAS and non-CAS covered contracts. Consequently, for Government contracting purposes, an impairment loss is recognized only upon disposal of the impaired asset and, like other losses, it is measured as the difference between the net amount realized and the impaired asset's undepreciated balance. Government contractors, therefore, recover the carrying values of impaired assets held for use by retaining pre-write-down depreciation or amortization schedules as though no impairment had occurred. ~~In order to clarify the existing cost allowability rule, both councils have agreed to proceed with publication of this proposed rule.~~

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small entities

are awarded on a competitive fixed-price basis and <sup>the</sup> cost principles do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 95-~~XX~~<sup>003</sup>), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 31:**

Government procurement.

Dated:

# Case Management Record

Discussion Handout

<b>FAR Case</b> 95-003	<b>Date</b> January 30, 1995	
<b>Title</b> Impairment of Long-Lived Assets		
<b>Priority</b> 1	<b>Submitted By</b> Ladd	<b>Originator Code</b> O
<b>Case Manager</b> Mens	<b>Case References</b>	
<b>FAR Cites</b>	<b>DFARS Cites</b>	
<b>Cognizant Committees</b> Cost Principles and CAS		
<b>Coordination</b> CPF		
<b>Recommendation</b> Discuss: <u>Feb 15</u>		
<p>This is a new case initiated at the request of the Director of Defense Procurement to revise the FAR to implement a new Financial Accounting Standards Board (FASB) rule that will require publicly-held firms to recognize asset impairment losses resulting from certain events or changes in circumstances when recovery of carrying values is improbable.</p> <p>CPF has already developed a proposed rule and staffed it with selected members of the Cost Principles and CAS Committees. Please do whatever staffing you need to do within your agency so that we might discuss the draft language and reach agreement on a fast-track basis.</p>		

JAN 31 1995



ACQUISITION AND  
TECHNOLOGY

DP/CPF

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

JAN 23 1995



MEMORANDUM FOR DEPUTY DIRECTOR, DEFENSE ACQUISITION REGULATIONS  
SYSTEM

SUBJECT: Accounting for Impairment of Long-Lived Assets

The Financial Accounting Standards Board plans to issue a new rule in February that will require publicly-held firms to recognize asset impairment losses resulting from certain events or changes in circumstances (e.g., environmental damage) when recovery of carrying values is improbable. Once written down, the previous carrying amount of an asset cannot be restored if the impairment is subsequently removed. The rule will apply to financial statements for fiscal years beginning after June 15, 1995.

Under current CAS and FAR provisions, impairment losses on assets held for use cannot be recognized for Government contracting. Nonetheless, uncertainty and potential controversy might be avoided if an appropriate FAR change is implemented to clarify existing policy on the subject.

CPF has staffed the issue with selected members of the Cost Principles and CAS committees, and drafted a proposed change to FAR 31.205-16 with collaterals (Attachment). Given the short lead time available to us, I would like this case to receive top priority. Please establish a case number and process the case as quickly as possible.

Eleanor R. Spector  
Director, Defense Procurement

Attachment



**DAR Case 95-XX**  
**Baseline: FAR posted through FAC 94-20**

Proposed change shown in [brackets].

**PART 31--CONTRACT COST PRINCIPLES AND PROCEDURES**

\* \* \* \*

**31.205-16 Gains and losses on disposition of depreciable property or other capital assets.**

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205-19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205-52). [Moreover, with respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be recognized for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). Depreciation or amortization on pre-write-down carrying values of impaired assets not yet disposed of shall continue to be recoverable under established depreciation or amortization schedules to the extent it is not otherwise unallowable under other provisions of the FAR.]

\* \* \* \*

Attachment

**PROPOSED FEDERAL REGISTER NOTICE**

DEPARTMENT OF DEFENSE  
GENERAL SERVICES ADMINISTRATION  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Impaired Assets.

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

**ACTION:** Request for comment on proposed rule.

**COMMENTS:** Comments should be submitted to the FAR Secretariat at the address shown below on or before (60 days from publication), to be considered in the formulation of a final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering revising FAR 31.205-16 to set forth a clarification of existing rules regarding the allowability of losses recognized when carrying values of impaired assets are written down for financial reporting.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, N.W., Room 4041, Washington, DC 20405. Please cite FAR Case 95-XX in all correspondence related to these issues.

**EFFECTIVE DATE:**

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Fayson, FAR Secretariat, telephone (202) 523-4755. Please cite FAR Case 95-XX.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The revision proposed by the councils is intended to clarify extant cost allowability rules regarding recognition of gains and losses related to long-lived assets. This proposed rule addresses a cost category which is the subject of a Financial Accounting Standards Board proposed Statement of Financial Accounting Standards (SFAS), No. 132-B, dated November 29, 1993, and entitled "Accounting for the Impairment of Long-Lived Assets. The SFAS applies to long-lived assets (such as land, buildings, and equipment), identifiable intangibles, and related goodwill, and establishes guidance to recognize and measure impairment losses. If impaired assets are to be held for use, the SFAS requires a write-down to fair value when events or circumstances (e.g., environmental damage, idle facilities arising from declining business, etc.) indicate that carrying values may not be fully recoverable. Impaired assets that are to be disposed of, however, would be reported (with certain exceptions) at the lower of cost or fair value less cost to sell. Once written down, the previous carrying amount of an impaired asset could not be restored if the impairment was subsequently removed. The final SFAS, which is virtually unchanged from the proposed rule (except for certain utility company provisions), is scheduled to be issued on February 15, 1995. The SFAS will apply to all financial statements issued for fiscal years beginning after June 15, 1995. In contrast to the SFAS provisions, Cost Accounting

Standard (CAS) 9904.409, "Depreciation of Tangible Capital Assets," provides quite different criteria and guidance to recognize gains and losses for Government contracting purposes. The language at 9904.409-40(a)(4) and (b)(4), 9904.409-50(j), and related Promulgation Comment 10, "Gain or Loss," makes it clear that gains and losses are recognized only upon asset disposal; no other circumstances trigger such recognition. FAR 31.205-16, "Gains and losses on disposition of depreciable property and other capital assets," reflects the CAS provision that an asset be disposed of in order to recognize a gain or loss. The FAR rule applies to both CAS and non-CAS covered contracts. Consequently, for Government contracting purposes, an impairment loss is recognized only upon disposal of the impaired asset and, like other losses, it is measured as the difference between the net amount realized and the impaired asset's undepreciated balance. Government contractors, therefore, recover the carrying values of impaired assets held for use by retaining pre-write-down depreciation or amortization schedules as though no impairment had occurred. In order to clarify the existing cost allowability rule, both councils have agreed to proceed with publication of this proposed rule.

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small entities

are awarded on a competitive fixed-price basis and cost principles do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 95-XX), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 31:**

Government procurement.

Dated: