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Part II

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Chapter 1 and Parts 2, 4, 7, et al.
Federal Acquisition Regulations; Final
Rules and Small Entity Compliance Guide**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0001, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-38; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-38. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005-38 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

LIST OF RULES IN FAC 2005-38

Item	Subject	FAR case	Analyst
I	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009-017	Cundiff.
II	Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts ...	2006-026	Jackson.
III	Internet Protocol Version 6 (IPv6)	2005-041	Woodson.
IV	Federal Food Donation Act of 2008 (Pub. L. 110-247)	2008-017	Jackson.
V	Postretirement Benefits (PRB), FAS 106	2006-021	Chambers.
VI	Travel Costs	2006-024	Chambers.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

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

FAC 2005-38 amends the FAR as specified below:

Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006-026)

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005-041)

This final rule adopts the proposed rule published in the **Federal Register** at 71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M-05-22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M-05-22 provides guidance to agencies for transitioning to IPv6.

Item IV—Federal Food Donation Act of 2008 (Pub. L. 110-247) (FAR Case 2008-017)

This rule adopts as final, with no changes, the interim rule published in the **Federal Register** at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110-247), which encourages executive agencies and their contractors, in contracts for the provision, service, or

sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006-021)

Currently FAR 31.205-6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

Item VI—Travel Costs (FAR Case 2006-024)

This final rule amends the FAR to change the travel cost principle (FAR 31.205-46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms “coach or equivalent” and “standard” from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a “coach” fare may be available, given the great variety of fares often available, the “coach” fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

Item VII—Technical Amendments

Editorial changes are made at FAR 6.302-2, 8.703, 15.305, 52.209-6, and 52.212-5.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-38 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-38 is effective December 10, 2009, except for Items V and VI, which are effective January 11, 2010, and Item II, which is effective February 1, 2010.

Dated: November 25, 2009.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: November 24, 2009.

David A. Drabkin,

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

Dated: November 20, 2009.

James A. Balinskas,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. E9-28928 Filed 12-9-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005-38; FAR Case 2009-017; Item I; Docket 2009-0040, Sequence 1]

RIN 9000-AL47

Federal Acquisition Regulation; FAR Case 2009-017, Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees

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 (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to delete FAR Subpart 22.16 and the corresponding clause at FAR 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order (E.O.) 13201 of February 17, 2001, of the same title. E.O. 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. E.O. 13201 was revoked by E.O. 13496 of January 30, 2009, Notification of Employee Rights Under Federal Labor Laws.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2009-017.

SUPPLEMENTARY INFORMATION:

A. Background

On January 30, 2009, the President issued E.O. 13496 (74 F.R. 6107, February 4, 2009) which requires contractors to post a notice informing employees of their rights under Federal labor laws, including the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, allowing workers to freely associate, self-organize, and designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. E.O. 13496 revoked the prior E.O. 13201. The new E.O. sets forth a different policy that will be included in the FAR as a separate rule in conjunction with guidance from the Secretary of Labor on the appropriate content for a replacement notice to employees. Therefore, the language at FAR Subpart 22.16 that prescribes the policy and procedures of E.O. 13201 is no longer applicable.

This final rule amends the FAR to delete FAR Subpart 22.16 in its entirety as well as the corresponding clause at FAR 52.222-39. FAR clauses 52.212-5 and 52.244-6 are also amended to delete any references to the revoked E.O. 13201 and FAR clause 52.222-39. The Department of Labor rescinded its

implementing regulations on March 30, 2009 (74 F.R. 14045).

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 2, 22, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-38, FAR case 2009-017), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 2, 22, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 22, and 52 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101 in paragraph (b)(2), in the definition “United States”, by removing paragraph (5), and redesignating paragraphs (6) through (9) as paragraphs (5) through (8), respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.16—[Removed and reserved]

3. Remove and reserve subpart 22.16.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 52.212-5 by—
 - a. Revising the date of the clause;
 - b. Removing paragraph (b)(26), and redesignating paragraphs (b)(27) through (b)(43) as (b)(26) through (b)(42), respectively;
 - c. Removing and reserving paragraph (e)(1)(vii); and
 - d. In Alternate II by—
 - i. Revising the date of the alternate; and
 - ii. Removing paragraph (e)(1)(ii)(G), and redesignating paragraphs (e)(1)(ii)(H) through (e)(1)(ii)(N) as paragraphs (e)(1)(ii)(G) through (e)(1)(ii)(M), respectively.
- The revised text reads as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *
 CONTRACT TERMS AND CONDITIONS
 REQUIRED TO IMPLEMENT STATUTES OR
 EXECUTIVE ORDERS—COMMERCIAL
 ITEMS (DEC 2009)

* * * * *
Alternate II (DEC 2009). * * *
 * * * * *

5. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(2)(vi) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *
 TERMS AND CONDITIONS—SIMPLIFIED
 ACQUISITIONS (OTHER THAN
 COMMERCIAL ITEMS) (DEC 2009)

(a) * * *
 (2) * * *
 (vi) 52.244-6, Subcontracts for Commercial
 Items (DEC 2009).
 * * * * *

52.222-39 [Removed and reserved]

6. Remove and reserve section 52.222-39.

52.244-6 [Amended]

7. Amend section 52.244-6 by revising the date of the clause to read “(DEC 2009)”; and by removing and reserving paragraph (c)(1)(vii).
 [FR Doc. E9-28929 Filed 12-9-09; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 13, 16, 32, and 52

[FAC 2005-38; FAR Case 2006-026; Item II; Docket 2009-0041, Sequence 1]

RIN 9000-AK87

Federal Acquisition Regulation; FAR Case 2006-026, Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to restrict the use of the Governmentwide commercial purchase card as a method of payment for offerors with debts subject to the Treasury Offset Program.

DATES: *Effective Date:* February 1, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2006-026.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 and other statutes provide the tools for administering a centralized program for the collection of delinquent, non-tax and tax debts. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is charged with implementing the Government’s delinquent debt collection program. Since 1996, FMS has collected more than \$24.4 billion in delinquent debt. In fiscal year 2006, collections of delinquent debt remained at a constant \$3.1 billion. To collect delinquent debts owed to Federal agencies and States, FMS uses the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. TOP uses both “offsets” and “continuous levies” to collect

delinquent debts. Offset is a process whereby Federal payments are reduced or “offset” to satisfy a person’s overdue Federal debt, child support obligation, or State tax debt. A payee’s name and taxpayer identification number are matched against a Treasury/FMS database of delinquent debtors for automatic offset of funds. Offset funds are then used to satisfy payment of the delinquent debt to the extent allowed by law.

Under the continuous levy program, delinquent Federal tax debts are collected by levying non-tax payments until the debt is satisfied, as authorized by the 1997 Taxpayer Relief Act. The continuous levy program includes levy of some vendor payments (Treasury disbursed and non-Treasury disbursed payments), Federal employee salary payments, the Office of Personnel Management retirement payments, and Social Security benefit payments. Continuous levy is accomplished through a process almost identical to that of offset. FMS matches delinquent debtor data with payment record data for automated collection of the debt at the time of payment, after the delinquent taxpayer has been afforded due process.

FMS is currently unable to offset or apply a continuous levy to payments made to contractors with delinquent debts when the Governmentwide commercial purchase card is used as the method of payment. When the Governmentwide commercial purchase card is used as the method of payment, the Government does not make a direct payment to the contractor. Instead, the Acquiring Bank submits the payment to the contractor’s bank account. Acquiring Banks (also known as Merchant Banks) are the banks that do business with merchants who accept charge cards. A merchant has an account with this bank and each day deposits the value of the day’s charge card sales. Acquirers buy (acquire) the merchant’s sales slips and credit the ticket’s value to the merchant’s account. The GSA SmartPay® contracted banks are issuing banks and do not directly pay the merchants.

VISA and Master Card are associations, not banks. VISA and Master Card are retail electronic payments networks and global financial services brands. They facilitate global commerce through the transfer of information among financial institutions, merchants, consumers, businesses, and Government entities. To assess the significance of the problem, FMS and VISA matched VISA payments for Governmentwide purchase card transactions for one year. As a result of

the match, FMS determined that approximately \$73.5 million of delinquent debts subject to collection under TOP were not collected because the debtors were paid using the Governmentwide commercial purchase card. The individual payments that otherwise would have been collected were all in excess of the micro-purchase threshold.

To help increase the collection of delinquent debts owed to the Government, the rule amends the FAR to require contracting officers to determine whether the Central Contractor Registration (CCR) indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt indicator is found, the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the flag at the time of contract award or order placement or issuance. The rule also amends the applicable Governmentwide commercial purchase card payment FAR clause at 52.232–36 to advise contractors that the Governmentwide commercial purchase card is not authorized as a method of payment if a debt indicator is included in the CCR for the contractor. The proposed rule included the requirement for the contracting officer to check CCR prior to option exercise, but has been removed by the Councils in the final rule. The Councils removed the requirement to check CCR prior to option exercise because the proposed rule language was considered to be a change to the requirement for exercising an option, which if the method of payment was changed, would result in a contract change outside the scope of exercising an option. This rule will not apply to individual travel charge cards or centrally billed accounts for travel/transportation services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 74255, December 31, 2007. The comment period closed on February 29, 2008. The Councils received comments from seven respondents, one of which was inadvertently sent in error and belonged to a National Oceanic Atmospheric Administration proposed rule that followed this rule in the FRN entitled “Pacific Halibut Fisheries”.

The Councils have made the following changes to the proposed rule:

a. FAR 4.1103(a)(3) of the proposed rule has been modified to change the sentence structure from “except when payment by the Governmentwide commercial purchase card is contemplated (see 32.1108 (b)(2))” to “except when use of the Governmentwide commercial purchase

card is contemplated as a method of payment. (See 32.1108(b)(2))”.

b. FAR 8.402(g) was added to the rule to clarify that this rule does not apply to orders placed at or below the micro-purchase threshold.

c. FAR 13.201(h) was not in the proposed rule and has been added as follows: “When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP)” to make it very clear that purchases under the micro-purchase threshold are exempt from checking the CCR database for a delinquent debt flag. This change from the proposed rule is deemed necessary because of the repeated public comments received on the issue and to provide clarity that purchases under the micro-purchase threshold are exempt from checking the CCR database for the delinquent debt flag.

d. FAR 16.505(a)(11) was added to the rule to clarify that this rule does not apply to orders placed at or below the micro-purchase threshold.

e. FAR 17.207(f) of the proposed rule which included adding new subparagraphs (1) and (2) was reinstated as currently in the FAR.

f. FAR 32.1108(b)(2)(i) of the proposed rule has been modified to delete “program” as it was duplicated in the proposed FAR language. FAR 32.1108(b)(2)(i) was also amended in the final rule to require the contracting officer to check for the debt flag indicator only if payment by the Governmentwide purchase card is anticipated and the contract or order is above the micro-purchase threshold.

The requirement was removed to check the CCR database for the indicator prior to option exercise.

g. FAR 32.1108(b)(2)(ii) of the proposed rule has been modified to add language informing contracting officers that contracts to be paid by purchase card must either include FAR 52.232–33 or FAR 52.232–34, so that in the event that payment cannot be made by purchase card, the contractor is aware of the method of payment and the requirements thereof, *i.e.*, active CCR status.

h. The last sentence of FAR 32.1108(b)(2)(ii) of the proposed rule which read, “Contracting officers shall not use the presence of the delinquent debt indicator to exclude a contractor from receipt of the contract, order, or exercised option” is renumbered to be

FAR 32.1108(b)(2)(iii) and has been modified to correct grammar and delete the requirement to check CCR for the indicator when exercising an option.

i. FAR 32.1108(b)(2)(iii) of the proposed rule has been modified to correct grammar and reflect the new subparagraph “iv.”

j. Language was added at FAR 32.1110(d) of the rule to inform contracting officers that contracts to be paid by purchase card must either include FAR 52.232–33 or FAR 52.232–34, so that in the event that payment cannot be made by purchase card, the contractor is aware of the method of payment and the requirements thereof, *i.e.*, active CCR status.

k. FAR 52.212–5 was added to the rule in order to change the date of FAR 52.232–36 at paragraph (b)(41). The date of FAR 52.212–5 itself was also changed.

l. In the proposed rule at FAR 52.232–36(a)(2), the clause read “The Governmentwide commercial purchase card is not authorized as a method of payment when the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt...” In the final rule the word “when” is being replaced with “during any period” so that the beginning of FAR 52.232–36(a)(2) now reads as follows: “The Governmentwide commercial purchase card is not authorized as a method of payment during any period the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt...” The change from “when” in the proposed rule to “during any period” in the final rule is done for clarification to make it clear that the contracting officer shall not authorize the use of the commercial purchase card for payment at any time when the CCR registration shows that the contractor has delinquent debt that is subject to collection under TOP.

The basis for each change and analysis of all public comments follows.

1. Comment: One respondent commented that this rule should exclude Government card purchases made under the simplified acquisition procedures because non-contracting officers will not consistently check the CCR database for the debt collection flag.

Response: The FAR change is applicable to all acquisitions that include the CCR clauses (FAR 52.204–7 or FAR 52.212–4(t)). The only exclusions are in FAR 4.1102. Forcing personnel that have been designated as cardholders, but are not contracting officers, to perform the check for the debt flag indicator in the CCR database could be administratively burdensome

and may potentially curtail card usage. When the Governmentwide commercial purchase card is used as a method of payment for purchases above the micro-purchase threshold then contracting officers (COs) are required to check in the CCR database to see if there is a delinquent debt flag identified for the contractor. This has been further clarified with the added language in FAR 13.201(h). In addition, language has been added to the FAR text at FAR 8.402 and FAR 16.505, clarifying that when placing orders at or below the micro-purchase threshold, CCR does not have to be checked for the debt flag indicator.

2. Comment: One respondent commented that the proceeds of simplified acquisition procedures are unlikely to make a serious dent in the indebtedness of businesses.

Response: The \$73.5 million is a yearly total for the Governmentwide commercial purchase cards only and is considered significant. This remedy is directed specifically at Government contractors who owe delinquent debt, yet continue to do business with the Government. Collections of \$73.5 million per year represent a significant portion of the debt owed by this population. In addition, the collection of the \$3.1 billion is being pursued utilizing other mechanisms.

3. Comment: Five respondents recommended this rule be applicable only to purchases above the micro-purchase threshold. One questioned whether the requirement to check CCR was applicable to orders placed on GSA Advantage or DoD eMail by a purchase cardholder who is not a warranted contracting officer.

Response: The Councils agree that purchases at or below the micro-purchase threshold are excluded from the requirement to check the CCR database for the debt flag indicator when using the Governmentwide commercial purchase card as a method of payment. FAR 13.201(h) has been added to make it very clear that the CCR database is not required to be checked for the delinquent debt flag whenever the purchase is below the micro-purchase threshold. In addition, language has been added at FAR 8.402 and FAR 16.505, to make it clear that the CCR database is required to be checked for the delinquent debt flag whenever the order is above the micro-purchase threshold when the Governmentwide commercial purchase card is used as a method of payment by a contracting officer.

4. Comment: One respondent stated that “it would also be nice if GSA contracts specify that payments may not

be made through the charge card for existing and new contracts.”

Response: The responsibility to include the FAR clause at 52.232–36 is whenever the purchase card will be used as a method of payment under a contract as outlined in the prescription in FAR 32.1110(d). The responsibility to check the CCR database for GSA contractors with a delinquent debt flag is a requirement and a duty of the GSA contracting officer prior to award of a contract or issuance or placement of an order. It is the responsibility of the ordering agency/office contracting officer to check the CCR database for contractors with a delinquent debt flag prior to placing an order against a GSA schedule contract when the purchase is above the micro-purchase threshold and when the Governmentwide commercial purchase card is used as the method of payment.

5. Comment: One respondent expressed concern about the burden on the contracts/procurement folks of the Government and stated that if the Government really wanted to solve the problem the Government would automate the VISA/Governmentwide commercial purchase card system to perform the debt collection offset.

Response: It is within the discretion of the Government to assign duties to Government employees in order to achieve the Government’s policies.

The Federal Contractor Tax Compliance (FCTC) task force and a purchase card subgroup extensively studied and determined that blocking Federal payment to delinquent contractors that way is not an option. According to industry members, the current commercial Merchant Category Code blocking process and authorization and transactions settlement processes do not have the capabilities to block transactions for individual vendors. Therefore blocking transactions at the point of sale for merchants that are delinquent on their taxes is not feasible. Currently there are no commercial systems available that have the technological capability to subject specific purchase card payments to the Federal Payment Levy Program (FPLP). Therefore, it has been determined that it is not currently possible or feasible to implement automating the offset of Governmentwide commercial purchase card payments within the VISA/Governmentwide Purchase Card system.

6. Comment: One respondent questioned whether transactions below the micro-purchase threshold were studied.

Response: The Financial Management Service within the U.S. Department of

Treasury did study those transactions below the micro-purchase threshold level and the Program Director of the GSA Office of Charge Card Management has stated that while purchases below the micro-purchase threshold represent a large percentage of the volume of purchase card transactions, they represent a relatively small percentage of the dollars expended and not worthy of the administrative burden of checking the CCR database for the debt collection flag.

7. Comment: One respondent questioned whether changing the payment method would put an awkward burden on the front-line folks.

Response: The requirement to check the CCR database at contract award or order placement or issuance, should be completed in advance so that the payment mechanism could be worked out between the parties. In addition, the Contractor may choose to pay their delinquent debt rather than change the payment method. If the contractor pays the debt, the debt flag will be removed from the CCR database, and this will enable the use of the Governmentwide commercial purchase card as a method of payment. Otherwise, other alternate payment methods/clauses will have to be utilized because the use of the Governmentwide commercial purchase card is prohibited as a payment method if a debt flag is identified for the contractor in the CCR database.

8. Comment: One respondent asked what the contracting officer should do if there is no CCR registration or it is inactive when a contracting officer attempts to place an order or exercise an option.

Response: The contracting officer should plan well in advance of awarding a contract or placing or issuing an order by checking the CCR database to ensure the contractor registration has not expired. If it has expired, then the contracting officer should encourage the contractor/offeror to renew their registration in CCR prior to placing the order as required by their respective contract or agreement. By now all contractors should have registered in CCR unless they were given an exception. The contracting officer for an order for which there is no CCR registration should assume the contractor was given an exception at the time of contract award and so need not worry about checking for the flag. The proposed rule requirement for the contracting officer to check CCR prior to option exercise has been removed by the Councils in the final rule.

9. Comment: One respondent asked what contracting officers are supposed to do if the instant acquisition is exempt

from being registered in the CCR database.

Response: If the instant acquisition is exempt from CCR as outlined in FAR 4.1102 then the contracting officer does not have to check CCR for registration. However, if the acquisition is not exempt as prescribed by FAR 4.1102, the contracting officer must make efforts to encourage the contractor/offeror to register in CCR or the offeror will not be permitted to receive an award.

10. Comment: One respondent commented that the FAR clause at 52.232-36, Payments by Third Party, should be a required clause when payment by the purchase card is contemplated and therefore, the prescription should be modified as the clause shall be required because it is not discretionary.

Response: The Councils agree the clause is not discretionary and believe it is clear in the prescription of the clause at FAR 32.1110(d).

11. Comment: One respondent commented that the CCR database has not yet implemented the Federal Debt Flag functionality in the public search record.

Response: The Councils have been modified to include the debt flag indicator and will be fully operational and accessible by the time this case is issued as a final rule.

12. Comment: A respondent questioned the inappropriate terms used in the preamble to the proposed rule in the statements "instead, the processing bank for the Governmentwide commercial purchase card pays the contractor" and "To assess the significance of the problem, FMS and Visa, one of the processing banks...".

The respondent asserted that the Acquiring Bank submits the payment to the contractor's bank account. The GSA SmartPay® contracted banks are issuing banks and do not directly pay the merchants. Acquiring Banks (a.k.a. Merchant Banks) are the banks that do business with merchants who accept charge cards. A merchant has an account with this bank and each day deposits the value of the day's charge card sales. Acquirers buy (acquire) the merchant's sales slips and credit the ticket's value to the merchant's account. VISA is an Association, not a bank. VISA is a retail electronic payments network and global financial services brand. It facilitates global commerce through the transfer of information among financial institutions, merchants, consumers, businesses, and Government entities.

Response: The Councils agree, with the exception that not only VISA, but Master Card also is an Association, the

Background section of the proposed rule contained an erroneous statement.

13. Comment: One respondent stated that, "Our primary objection to the proposed rule is the use of delinquent debts reported under the Treasury Offset Program as a basis for restricting use of a Governmentwide commercial purchase card as a method of payment to contractors. We believe many of the debts reported under TOP are highly inaccurate and do not satisfy the requirements of the Debt Collections Improvement Act of 1996. When the statute was enacted in 1996, it contained a requirement to notify contractors of claims established under the Act. The processes and systems established to notify contractors failed to comply with the statutory notification required. There have been many reports of cases where withholds have been taken in error and cases where advance notice of intent to withhold was not received by a responsible individual in the employ of the company."

Response: Before a nontax debt may be submitted to the Treasury Offset Program for collection by offset, agencies must certify to Treasury that the debt is valid and that all due process requirements have been met (31 CFR 285.5(c)(6)). These due process requirements include notice and an opportunity to dispute the debt (31 U.S.C. 3716). Actual receipt of the notice by the debtor is not required provided the agency has made a reasonable attempt to notify the debtor. Debtors are afforded notice and an opportunity to dispute debts prior to an offset or levy under the Treasury Offset Program. In the case of tax debts, the notice requirements contained in the Internal Revenue Code are followed. Additionally, when an offset or levy occurs, a notice is sent to the debtor that includes contact information to address any concerns regarding the offset or levy.

14. Comment: One respondent stated that the inaccurate tax information could lead to erroneous award decisions by contracting officers.

Response: This rule does not impact contract award decisions by contracting officers. The rule precludes the use of the Governmentwide commercial purchase card as a method of payment only and does not affect the award.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only impacts the method by which a contractor can be paid when the contractor has a delinquent debt.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 4, 8, 13, 16, 32, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 8, 13, 16, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 8, 13, 16, 32, and 52 continues to read as follows:

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

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1103 by revising paragraph (a)(3) to read as follows:

4.1103 Procedures.

(a) * * *

(3) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204-7, or 52.212-4(t), or a similar agency clause, except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2)).

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Amend section 8.402 by adding paragraph (g) to read as follows:

8.402 General.

* * * * *

(g) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central

Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

■ 4. Revise section 8.405-7 to read as follows:

8.405-7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card (but see 32.1108(b)(2)).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.003 by revising paragraph (e) to read as follows:

13.003 Policy.

* * * * *

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions (but see 32.1108(b)(2)).

* * * * *

■ 6. Amend section 13.201 by adding paragraph (h) to read as follows:

13.201 General.

* * * * *

(h) When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

■ 7. Amend section 13.301 by revising the first sentence of paragraph (a) and (c)(3) to read as follows:

13.301 Governmentwide commercial purchase card.

(a) Except as provided in 32.1108(b)(2), the Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. * * *

* * * * *

(c) * * *

(3) Make payments, when the contractor agrees to accept payment by the card (but see 32.1108(b)(2)).

PART 16—TYPES OF CONTRACTS

■ 8. Amend section 16.505 by adding paragraph (a)(11) to read as follows:

16.505 Ordering.

(a) * * *

(11) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

* * * * *

PART 32—CONTRACT FINANCING

■ 9. Amend section 32.1108 by revising paragraph (b) to read as follows:

32.1108 Payment by Governmentwide commercial purchase card.

* * * * *

(b)(1) Written contracts to be paid by purchase card should include the clause at 52.232-36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(2)(i) When it is contemplated that the Governmentwide commercial purchase card will be used as the method of payment, and the contract or order is above the micro-purchase threshold, contracting officers are required to verify (by looking in the Central Contractor Registration (CCR)) whether the contractor has any delinquent debt subject to collection under the Treasury Offset Program (TOP) at contract award and order placement. Information on TOP is available at <http://fms.treas.gov/debt/index.html>.

(ii) The contracting officer shall not authorize the Governmentwide commercial purchase card as a method of payment during any period the CCR indicates that the contractor has delinquent debt subject to collection under the TOP. In such cases, payments under the contract shall be made in accordance with the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate (see FAR 32.1110(d)).

(iii) Contracting officers shall not use the presence of the CCR debt flag indicator to exclude a contractor from receipt of the contract award or issuance or placement of an order.

(iv) The contracting officer may take steps to authorize payment by Governmentwide commercial purchase card when a contractor alerts the contracting officer that the CCR debt flag

indicator has been changed to no longer show a delinquent debt.

* * * * *

■ 10. Amend section 32.1110 by adding a new sentence to the end of paragraph (d) to read as follows:

32.1110 Solicitation provision and contract clauses.

* * * * *

(d) * * * When the clause at 52.232–36 is included in a solicitation or contract, the contracting officer shall also insert the clause at 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(40) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (FEB 2010)

* * * * *

(b) * * * (40) 52.232–36, Payment by Third Party (FEB 2010) (31 U.S.C. 3332).

* * * * *

■ 12. Amend section 52.232–36 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.232–36 Payment by Third Party.

* * * * *

PAYMENT BY THIRD PARTY (FEB 2010) (a) *General.* (1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. If the CCR subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.* (1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

* * * * *

[FR Doc. E9–28930 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 12, and 39

[FAC 2005–38; FAR Case 2005–041; Item III; Docket 2009-0042, Sequence 1]

RIN 9000–AK57

Federal Acquisition Regulation; FAR Case 2005–041, Internet Protocol Version 6 (IPv6)

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) acquisitions using Internet Protocol (IP). IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 capable products and standards.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2005–041.

SUPPLEMENTARY INFORMATION:

A. Background

To guide the Federal Government in its transition to IPv6, OMB issued Memorandum M–05–22, Transition Planning for Internet Protocol Version 6, which outlined a transition strategy for agencies to follow and established the goal for all Federal agency network backbones to support IPv6 by June 30, 2008. This guidance initiated the development for an addressing mechanism to increase the amount of available IP address space and support interconnected networks to handle increasing streams of text, voice, and video without compromising IPv4 capability or network security. Such benefits offered by IPv6 include (1) A platform for innovation, collaboration, and transparency; (2) Integrated interoperability and mobility; (3) Improved security features and; (4) Unconstrained address abundance. To begin the planning, agencies can achieve valuable benefits from IPv6 using the “IPv6 Planning Guide and Roadmap” to begin the planning for improvement in operational efficiencies and citizen services. This direction is necessary due to the inability of IPv4 to meet the Government’s long-term business needs because of limited robustness, scalability, and features. In coordination with OMB, the National Institute of Standards and Technology (NIST) developed additional standards and testing infrastructures to support agency plans for IPv6 adoption. The U.S. Government version 6 (USGv6) profile defines effective dates for its mandatory requirements so as to provide vendors a 24-month lead time to implement and test. The earliest effective date in version 1 of the profile is July, 2010. For NIST IPv6 information, visit <http://www.antd.nist.gov/usgv6>.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 50011, August 24, 2006, to amend the FAR to ensure that all new IT acquisitions using Internet Protocol are IPv6 compliant. Proactive integration of IPv6 requirements into Federal contracts may reduce the costs and complexity of transition by ensuring that Federal applications can operate in an IPv6

environment without costly upgrades. The final rule—

- Adds a new paragraph (iii) at FAR 7.105(b)(4) to require a discussion of Internet Protocol compliance, as required by FAR 11.002(g), for information technology acquisitions using Internet Protocol;

- Adds a new paragraph (g) to FAR 11.002 specifying that agency requirement documents must include the appropriate IPv6 compliance requirements in accordance with the Agency's Enterprise Architecture, unless a waiver to the use of IPv6 has been granted; and

- Adds a new paragraph (e) to both FAR 12.202 and FAR 39.101 stating that agencies must include the appropriate Internet Protocol compliance requirements consistent with FAR 11.002(g) regarding information technology acquisitions using Internet Protocol.

The Councils received public comments from six sources in response to the proposed rule. A discussion of the comments is provided below.

1. *FAR 7.105, Contents of written acquisition plans.*

a. A total of 5 comments were received regarding this section recommending editorial revisions to clarify the requirement, including adding a reference to OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6), and indicating that the requirement only applies to IT acquisitions using Internet Protocol.

Response: The Councils have clarified the rule by: adding the basic requirement for IPv6 compliance in FAR 11.002(g) along with a reference to the OMB memorandum; moving the acquisition planning requirement to FAR 7.105(b)(4)(iii) to ensure that it applies to both contracts and orders; and adding cross references to FAR 11.002(g), in FAR 12.202(e) and FAR 39.101(e).

b. Comment: A respondent commented that several actions outlined in the Chief Information Officers (CIO) Council IPv6 guidance are not yet implemented and their absence makes it very difficult to adopt new FAR clauses. The Government has interchanged terminologies "IPv6 compliant" and "IPv6 capable." Without a clear standard with which to measure technologies, it is possible that some Government procurements could be IPv6 capable, but not IPv6 compliant. To require compliance at the contract level before development and adoption of a clear standard is premature.

Another respondent commented that FAR 7.105(b)(4)(ii)(A)(2) states that the

reader can find "additional requirements" for IPv6 at the CIO Council Web site but the "additional requirements" are not readily accessible. There are a number of links but none concern IPv6.

Response: As stated in OMB Memorandum M-05-22, the Federal CIO Council Architecture and Infrastructure Committee issued additional IPv6 transition guidance in February 2006 (ref: www.cio.gov/documents/IPv6_Transition_Guidance.doc). In addition, the National Institute for Standards and Technology (NIST) has developed a standard to address IPv6 compliance for the Federal Government. The US Government standards for Internet Protocol Version 6 (IPv6) are located in NIST Special Publication 500-267 at [www.antd.nist.gov/usgv6/profile.html](http://wwwantd.nist.gov/usgv6/profile.html). This final rule retains a reference to OMB Memorandum M-05-22.

2. *FAR 12.202, Market research and description of agency need. Several comments were received regarding this section.*

a. Comment: One respondent commented that considering the requirements of FAR 12.202(b), why is the reminder at FAR 12.202(e) necessary? It seems highly unlikely that the agency would conduct market research or describe agency need and forget such an important element.

Response: The Councils believe that it is important to remind contracting officers that when describing agency needs, requirements documents for IT using Internet Protocol must be IPv6 compliant. However, the final rule has been revised to establish the basic compliance requirement at FAR 11.002(g) and cross reference it in FAR 12.202 and FAR 39.101 instead of repeating the language in these latter two sections.

b. Comment: The respondent commented that the reference to Web sites is inconsistent regarding "additional requirements." One refers to the CIO Web site and the other to OMB's Webpage containing OMB Memorandum M-05-22.

Response: This final rule has been clarified as indicated in the response in paragraph 1.

c. Comment: One respondent recommended that FAR 12.202(e) be changed to read: "Requirements documents for information technology solutions must include Internet Protocol Version 6 (IPv6) capability as outlined in the OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6), and additional requirements for IPv6 at

<http://www.cio.gov/IPv6>. Market research shall include the United States certified test suites, testing methodologies that do not include proprietary vendor solutions and show evidence of being a compliant product or service. Information on compliant products and services are found at <http://www.cio.gov/IPv6>."

Response: The final rule has been clarified at FAR 12.202(e) to indicate that requirements documents must include the appropriate Internet Protocol compliance requirements in accordance with FAR 11.002(g).

3. *FAR 39.101, Policy.* Several respondents suggested revisions to FAR 39.101(e) to clarify the waiver process and indicated that the term "information technology solution," as used in this subpart and throughout the final rule, was not defined and recommended that a definition be added.

Response: The Councils have revised the final rule to delete the questioned term and instead have adopted the self-defining "information technology using Internet Protocol." In addition, waiver language has been clarified at FAR 11.002, indicating that IPv6 compliance requirements are outlined in the agency's IPv6 transition plan.

4. *General comments.* Five comments were submitted regarding the general requirements of this final rule.

a. Comment: One respondent commented that the proposed rule is not required, as it is a technical requirement, not an acquisition related mandate. The respondent also considers the proposed rule to be redundant because the requirements are referenced in OMB Memorandum M-05-22 and in other supplemental guidance on the CIO Council's Web site.

Another respondent stated that OMB Memorandum M-05-22 defines an aggressive target for initial agency adoption and operational deployment of a technology that is relatively new and unproven to most agencies. It is not clear that a second piece of policy is required to achieve the same goal as OMB Memorandum M-05-22. If the scope of the FAR is broader than OMB Memorandum M-05-22, then it would seem premature to pursue this broader policy until further IPv6 specifications and testing efforts mature and the results of the existing planning efforts to understand agency mission requirements, operational impacts and potential security ramifications are available.

Response: Proactive integration of IPv6 requirements into Federal contracts may reduce the costs and complexity of transition by ensuring that Federal

applications can operate in an IPv6 environment without costly upgrades. The final rule is necessary to amend the FAR to require IPv6 capable products be included in IT procurements. In addition, establishing FAR language ensures that all new information technology systems and applications purchased by the Federal Government will be able to operate in an IPv6 environment, to the maximum extent practical. The Councils believe that the final rule fully captures the intent of OMB Memorandum M-05-22.

b. Comment: One respondent questioned whether any of the proposed amendments to FAR parts 7, 12 and 39 need to refer to the "additional requirement" at all. It is likely the "additional requirements" are those the CIO Council is or may be developing to address internal, non-procurement related transition activities (see Attachment C to OMB memorandum). Instead of referring broadly to the OMB memorandum in the proposed FAR amendments, it might make sense to refer narrowly to the section of the memorandum entitled "Selecting Products and Capabilities," the only portion of the memorandum that directly addresses acquisition of IPv6 compliant information technology. FAR parts 7 and 12 both refer to the OMB memorandum and to "additional requirements" and FAR part 39 refers only to the OMB memorandum and not "additional requirements".

Response: This final rule has been revised to remove references to "additional requirements". New FAR 11.002(g) refers to NIST Special Publication 500-267. Previous Web references have been deleted and a reference to OMB Memorandum M-05-22 has been retained.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Government expects that commercially available items will be required, with no additional testing being necessary. The Chief Counsel for Advocacy, Office of Advocacy, within the Small Business Administration (SBA) was consulted by

the Councils on the impact of this rule on small businesses. SBA conducted its own informal survey with small businesses and their conclusion is that there is no negative impact on small businesses. There are no known significant alternatives that will accomplish the objectives of this rule. No alternatives were proposed during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 7, 11, 12, and 39

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 11, 12, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 11, 12, and 39 continues to read as follows:

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

PART 7—ACQUISITION PLANNING

■ 2. Amend section 7.105 by adding paragraph (b)(4)(iii) to read as follows:

7.105 Contents of written acquisition plans.

(b) * * *

(4) * * *

(iii) For information technology acquisitions using Internet Protocol, discuss whether the requirements documents include the Internet Protocol compliance requirements specified in 11.002(g) or a waiver of these requirements has been granted by the agency's Chief Information Officer.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

11.002 Policy.

* * * * *

(g) Unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol, the requirements documents

must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500-267) and the corresponding declarations of conformance defined in the USGv6 Test Program. The applicability of IPv6 to agency networks, infrastructure, and applications specific to individual acquisitions will be in accordance with the agency's Enterprise Architecture (see OMB Memorandum M-05-22 dated August 2, 2005).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.202 by adding paragraph (e) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 5. Amend section 39.101 by adding paragraph (e) to read as follows:

39.101 Policy.

* * * * *

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

[FR Doc. E9-28931 Filed 12-9-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26, 31, and 52

[FAC 2005-38; FAR Case 2008-017; Item IV; Docket 2009-0007, Sequence 1]

RIN 9000-AL49

Federal Acquisition Regulation; FAR Case 2008-017, Federal Food Donation Act of 2008 (Pub. L. 110-247)

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted, as final, with no changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Federal Food Donation Act of 2008 (Pub. L. 110-247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2008-017.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Food Donation Act of 2008 (Pub. L. 110-247) encourages Federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The Act requires Federal contracts above \$25,000 for the provision, service, or sale of food in the United States, to include a clause that encourages, but does not require, the donation of excess food to nonprofit organizations. The Act would also extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

The final rule is applicable to contracts above \$25,000 for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service). The type of solicitations and contract actions anticipated to be applicable to this law will mostly be for fixed-price commercial services; however, there may be circumstances when a noncommercial and/or cost-reimbursement requirement may apply. For example, on an indefinite-delivery, indefinite-quantity cost-reimbursement contract for logistical support to be performed in the United States, there may be a task order needed to provide food service to feed personnel.

The interim rule was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, with an effective date

of March 19, 2009, and a request for comments by May 18, 2009. Three respondents submitted comments in response to the interim rule. Below are the comments received on the interim rule along with the responses.

Comment 1, FAR matrix. One commenter had several comments about errors in the FAR matrix.

Response: There were several inadvertent errors that were made on the FAR clause matrix. These errors have been corrected and are reflected in the FAR clause matrix issued with the final rule.

Comment 2, Applicability for non-appropriated funds. The commenter expresses uncertainty as to whether this rule is applicable to their typical (non-appropriated funds) cafeteria contracts. The clause at FAR 52.226-6 is to be included in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Is the \$25,000 threshold intended to mean that amount of the appropriated funding, or can it also be satisfied by the sales volume? Will there be additional GSA financial management regulation guidance planned?

Response: The FAR only covers contracts made with appropriated funds. The rule is applicable to contracts greater than \$25,000 for the provision, service, or sale of food in the United States. This means the dollar amount of the contract only, not sales volume. GSA has jurisdiction over changes to the Federal Management Regulation (FMR) and we anticipate a change in the FMR to address this requirement.

Comment 3, Implementation of the Federal Food Donation Act of 2008. The benefits of this rule's implementation are evident based on the widespread support the Act received. The assistance it will provide to food insecure persons is truly important. This is especially crucial during these difficult economic times. Food suppliers will receive the listed benefits, as well as be protected against litigation by the Bill Emerson Good Samaritan Food Donation Act. Based on these reasons, we urge you to encourage the passage of this rule and implement it as quickly as possible.

Response: The interim rule was effective on the publication date of March 19, 2009. This means the rule has been implemented and is effective as of that date. The final rule adopts the interim rule as final, without change.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review,

dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule is not mandatory for contractors, including small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 26, 31, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 26, 31, and 52 which was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, is adopted as a final rule without change.

[FR Doc. E9-28933 Filed 12-9-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005-38; FAR Case 2006-021; Item V; Docket 2009-0043, Sequence 1]

RIN 9000-AK84

Federal Acquisition Regulation; FAR Case 2006-021, Postretirement Benefits (PRB), FAS 106

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to permit the contractor to measure accrued PRB costs using either the criteria in Internal Revenue Code (IRC) 419 or the criteria in Financial Accounting Standard (FAS) 106.

DATES: *Effective Date:* January 11, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2006-021.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 31.205-6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis.

When the accrual basis is used, the FAR currently requires that costs must be measured based on the requirements of Financial Accounting Standard (FAS) 106.

However, the tax-deductible amount that is contributed to the retiree benefit trust, which is part of a welfare benefit plan, is determined using Internal Revenue Code (IRC) (Title 26 of the United States Code) sections 419 and 419A, which has different measurement criteria than FAS 106. As a result, the FAS 106 amount can often exceed the costs measured under IRC sections 419 and 419A, and contractors that choose to accrue PRB costs for Government reimbursement face a dilemma: whether to fund the entire FAS 106 amount to obtain Government reimbursement of the costs, regardless of tax implications; or fund only the tax deductible amount and not be reimbursed for the entire FAS 106 amount under their Government contracts.

Consequently, DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 64185, November 15, 2007 to address this matter.

The Councils are amending FAR 31.205-6(o) to alleviate this dilemma. This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC sections 419 and 419A rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion potentially disallowed because it did not meet the FAR's current

measurement criteria. The Councils note that this amendment will not change the total measured PRB costs, *i.e.*, the total measured PRB costs over the life of the PRB plan would be the same whether the contractor chose to apply the criteria in FAS 106 or IRC sections 419 and 419A.

The Councils note that in this final rule the Government will not pay higher PRB costs, since the resulting difference from contractors previously funding the lower IRC amount rather than the full FAS amount will continue to be an unallowable cost. This final rule does permit contractors to electively switch to the IRC 419 accrual basis and avoid any current or future disallowances.

B. Public Comments

Public comments were received from two industry associations and one contractor.

The commenters made specific remarks but generally agreed with the purpose of the proposed rule.

One commenter wrote that they: "generally agree with the concept of revising FAR 31.205-6(o) to better align FAR allowability provisions for Postretirement Benefit (PRB) Plans accounted for on an accrual basis with payments made to benefit trusts for tax purposes. We see this as a positive step toward allowing appropriate flexibility and equity in measuring, assigning and allocating allowable PRB costs."

Another commented: "We support the Councils' proposal to amend the Federal Acquisition Regulation 31.205-6(o) ("FAR") to permit contractors to measure postretirement benefit ("PRB") costs using either the criteria in Internal Revenue Code section 419 ("IRC") or the criteria in the Statement of Financial Accounting Standards No. 106 ("FAS")."

Specific Comments:

Comment 1: Two commenters objected to the 15 year minimum amortization period for PRB costs, stating:

"The proposed rule specifying that assignment of PRB costs be made over "the working lives of employees or fifteen years, whichever is longer" may not be appropriate. In our opinion, the proposed FAR requirement for costs measured in accordance with the deductibility measurement under the Internal Revenue Code (IRC) Section 419/419A has the potential for mismatching PRB costs with the underlying causal activity, that is, the labor of active employees covered by PRB plans. The IRC requires that the costs be assigned over the working lives of the employees, whereas the proposed

rule would require that the costs be assigned over the working lives of employees or fifteen years, whichever is longer. We are concerned about extending the assignment of costs beyond the working lives of employees, as this would cause costs to be charged to contracts that are not getting the benefit of those employees' services."

Response: The Councils believe the language in the proposed rule is appropriate. Many PRB plans cover no or few active employees, as contractors have closed their PRB plans to new entrants. FAS 106 requires that if a plan is comprised predominantly of inactive participants, then the cost should be spread over the future life expectancy of the inactive employees. FAR 31.205-6(o)(2)(ii) requires that if terminal funding is used then the liability must be spread over 15 years. For contractors who elect to use the proposed alternative accrual accounting method, the Councils believe that the FAS 106 requirement that plans predominantly comprised of inactive participants be spread over future periods should be maintained. For consistency, the proposed rule uses the same amortized recognition as required for terminally funded plans. The proposed rule adopted a simple "greater-of" rule to avoid any disputes concerning when a plan is predominantly comprised of inactive employees.

However, if the plan population comprises only inactive participants, the cost shall be spread over the average future life expectancy of the participants. This ensures that the accruals do not extend beyond the period when benefits are paid and the trust is dissolved. Therefore, the final rule revises FAR 31.205-6(o)(2)(iii)(A)(2)(ii) to state: "However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants."

Comment 2: The proposed rule does not address several issues of assignment of credits to a period that can arise when the accrual is based on FAS 106.

Two commenters remarked as follows regarding contract credits that might arise:

"Measuring PRB costs in accordance with FAS 106 can result in credits being assigned to cost accounting periods. FAS 106 dictates these credits be immediately assigned to cost accounting periods. However, contractors have no ability to extract irrevocably funded PRB contributions from their trusts. * * *"

Commenters were also concerned that the proposed rule does not address conflicts between the FAR and FAS 106

when there is a curtailment, settlement or payment of "special termination benefits." As a commenter noted:

"In the event of a curtailment, settlement or payment of "special termination benefits" (i.e., early retirement enhancements, FAS 106 mandates immediate recognition. This assignment of income was also one of the issues with FAS 106, which the failed promulgation of CAS 419 sought to moderate."

On the other hand, another commenter correctly noted that the proposed rule permits a contractor to elect to account for its PRB costs following the welfare benefit fund provisions of the IRC as an alternative to the current rule that limits accrual accounting to the provisions of FAS 106. The commenter discusses the advantages of having a choice as follows:

"Under existing FAR rules, contractors under accrual basis of accounting must use FAS 106 (so long as the transition obligation cost is amortized) for measuring PRB costs and fund this FAR expense to the PRB plan in order for the FAS expense to be considered an allowable cost.

"We believe this amendment will promote simplification of the funding of PRB plans by avoiding the dilemma of whether to fund the IRC limit or the FAS expense when there is conflict with each other. The contractor would not need to be worried about running afoul of tax rules or under-billing the contract.

"In addition, one advantage of permitting the PRB cost to be either FAS or IRC basis is that in the first year of a PRB funded plan, the amendment gives the contractor the flexibility to fund the larger of the two bases in order to lower PRB costs in the future as assets grow with investment returns. Done consistently under the same accounting basis, this approach would benefit the contract with lower PRB costs in the long run rather than limiting funding due the current dilemma of funding FAS or IRC.

"And finally, the amendment will promote an equitable measure of allowable PRB costs during the life of the PRB plan. Whether choosing FAS or IRC basis for funding, both methods would arrive at the same aggregate allowable cost over the life of the PRB plan."

Response: The Councils believe that the issues regarding credits, curtailments, and settlements do not need to be addressed in the proposed rule. No evidence has been presented that this issue has been a problem. Furthermore, these issues are outside the scope of this case. As noted in the

background section of **Federal Register** notice:

"* * * This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC 419 rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion disallowed because it did not meet the FAR's current measurement criteria. * * *"

The proposed rule provides an alternative for measuring PRB costs on an accrual accounting basis. The proposed rule and **Federal Register** notice do not address the existing provisions which, first published as 56 FR 29127 on June 25, 1991, adopted generally accepted accounting principles (FAS 106). The original rule was amended by 56 FR 41738 on August 22, 1991 to add a limitation only on the choice of recognizing the transition obligation.

Comment 3: Commenters expressed a concern with the provision allowing use of a healthcare inflation assumption as follows:

"The proposed rule's specific authorization of the use of a healthcare inflation assumption for measurement of costs which would otherwise be in accordance with IRC Sections 419/419A creates a mismatch of FAR allowable costs and IRS deductibility limitations. If the intent of the rule was to better align funding with FAR requirements, we find this provision, while not detrimental, is inconsistent with the stated purpose of the proposed rule, which is to better align the FAR allowability rules with the IRC for those contractors that choose to use IRC 419/419a."

Response: The Councils believe that the proposed rule should be revised to clarify the intent of this language. Generally accepted accounting principles currently require the use of a healthcare inflation assumption. For consistency, the intent of the proposed rule was to require use of a health care assumption unless the IRC welfare benefit fund rules prohibited it. The Councils are revising the wording in the proposed rule to assure clarity on this issue. Thus, the final rule revises FAR 31.205-6(o)(2)(iii)(A)(2)(i) to state that the costs shall "be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds."

Comment 4: Finally, two commenters opined that the requirement that assets be restricted is unnecessary. One of the commenters wrote: "Our recommended

changes to the proposed rule are shown in Attachment I. It should be noted that we have also proposed the elimination of the last sentence in 31.205-6(o)(2)(iii)(B). We do not believe that this asset restriction language is necessary to protect the Government's interests."

Response: The Councils disagree with the commenter. The Councils believe that the Government must assure there is adequate protection of the assets. If the fund holding the PRB plan can be cancelled or diverted to other purposes, then deposits to the fund can not be recognized as incurred. Moreover, this language is consistent with the FAS 106 definition of "plan assets," and with the IRC 419/419A criteria for tax-exempt funding.

The Councils note that even if an appropriately restricted fund is used, once all obligations for benefits have been settled the remaining assets may revert to the contractor or else inure to the contractor's benefit if diverted to provide other employee benefits. However, the Councils believe that the Government's interests are protected by existing FAR 31.205-6(o)(5) which states:

The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to Subpart 31.2.

Comment 5: One commenter expressed its concern with how the transition between accounting methods would be accomplished, writing:

"However, we are not certain if this proposal addresses changes of accounting methods, particularly from FAS to IRC basis; whether such resulting costs will be fully allowed immediately or transitioned over a period of time. Under the concept that both methods should yield the same aggregate cost over time, an immediate change of accounting method may misalign this relationship, and thus, new transition rules may be designed to preserve the equality. If this occurs, we believe it would be advisable for the Councils to promulgate new transition rules—preferably short-term ones in order to avoid prolonged complexity in cost calculations for many years, and incorporate them in FAR Part 31.205-6(o)."

This commenter further explained: "FAS 106 allows either the immediate expensing or the amortization of the transition obligation. However, for Government contract costing purposes,

the transition obligation must be capitalized and subsequently amortized. The parenthetical clause “so long as the transition obligation cost is amortized” could be more clearly stated as “provided the transition obligation cost is amortized rather than expensed.””

The commenter also noted that actuaries and mathematicians have stated that both accrual accounting methods would result in the same aggregate costs over the life of the PRB plan when either method is applied to a separate PRB plan as of “day one.” But they then expressed their concern that changing the accounting method “midstream” might cause misalignment of costs due to differences of timing arising from the two computational methodologies.

Finally they expanded their written comment by observing that the rule will permit a change of accrual accounting method and that this transition will result in a higher or lower amount of PRB costs in subsequent years than would have resulted without a change in methods. The commenter explained they were asking if there will be a “phase-in period” when changing methods of accounting for PRB costs, *i.e.*, would the change of costs be recognized in a single accounting period or amortized over future periods.

Response: The Councils agree that the language in the proposed rule should be revised to address the transition issue.

The Councils believe that the existing FAR 31.205–6(o)(2)(iii) provision regarding recognition of the FAS 106 Transition Obligation clearly articulates that the transition obligation cost is amortized rather than expensed.

The comment does raise two issues. First, a paraphrase of the existing policy at FAR 31.205–6(o)(2)(iii)(A) follows:

Accrued PRB costs shall be measured and assigned in accordance with generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110;

The cost impact of the change in cost accounting practice is addressed by the Cost Accounting Standards, rather than the FAR, for those contracts covered by the CAS. Under the CAS this would be a unilateral change in cost accounting practice; as such, the Government would not pay any increased costs resulting from this change unless the

contracting officer has determined it to be a desirable change. For those contracts not covered by the CAS, the FAR does not provide for price adjustments resulting from a change in cost accounting practice. The Councils do not believe this change is so unique as to require an alteration to this long-standing set of regulations regarding the treatment of changes in cost accounting practice. Thus, the language in the proposed rule has not been revised to address this issue.

The second issue regards the treatment of the change in actuarial liability and normal cost and recognition of accruals assigned to prior periods. Language has been added at FAR 31.205–6(o)(2)(iii)(G) to require that the Government has an opportunity to review and approve how the change in accounting method will be implemented. The new provision at FAR 31.205–6(o)(2)(iii)(G) reads:

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(1) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(2) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with subparagraphs (D), (E), and (F) to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

It is clear that the final rule must address how the transition from one cost method to another is accomplished. As one commenter observed, at “day one” the cost of the PRB plan, on a present value basis, will be the same under any of the methods permitted by FAR 31.205–6(o). However, after day one, this equivalence can only be maintained if there is a full accounting for costs assigned to prior periods, adjusted for interest, benefit payments, and administrative expenses. Only if prior funding and unfunded accrued costs are fully recognized will the costs assigned to future periods produce equivalent results, on a present value basis, over the life of the PRB plan. And to avoid any misunderstandings, the final rule at FAR 31.205–6(o)(2)(iii)(D) makes it clear that any prior period unfunded accrual becomes and remains unallowable under either accrual accounting method. FAR 31.205–6(o)(2)(iii)(D) reads:

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (3), adjusted for interest under paragraph(4).

The assets do fully account for prior accrued costs that were funded and the accumulated value of unallowable costs fully account for any prior unfunded accruals. To the extent that prior contract costs were always based on accrual accounting, prior accruals can be recognized in the current value of the plan assets plus the accumulated value of prior unallowable costs, adjusted for interest cost due to delayed funding.

And, finally, some contractors may have made deposits to voluntary employee benefit associations or other trusts in prior periods but used pay-as-you-go or terminal funding for contract costing purposes during those prior periods. To the extent that assets are attributable to costs that have never been recognized as Government contract cost, such assets must be excluded from the assets that have been accumulated by prior assigned costs. Otherwise, the contractor would be inequitably prevented from claiming a cost that has not yet been reimbursed.

Therefore, to ensure that prior funded accrued costs are fully recognized, paragraph FAR 31.205–6(o)(2)(iii)(E) has been added to the final rule. This provision reads:

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

Likewise, FAR 31.205–6(o)(2)(iii)(F) specifies that assets accumulated by deposits that were not used to claim contract costs are identified as prepayment credits and excluded from the plan assets used to determine the unfunded actuarial liability. FAR 31.205–6(o)(2)(iii)(F) reads:

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

C. Regulatory Planning and Review

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

D. 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 small entities do not accrue PRB costs for Government contract costing purposes.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.001 by adding, in alphabetical order, the definition “welfare benefit fund” to read as follows:

31.001 Definitions.

* * * * *

Welfare benefit fund means a trust or organization which receives and accumulates assets to be used either for the payment of postretirement benefits, or for the purchase of such benefits, provided such accumulated assets form a part of a postretirement benefit plan.

■ 3. Amend section 31.205–6 by revising paragraph (o)(2)(iii) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

- (o) * * *
- (2) * * *

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods:

(1) Generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110; or

(2) Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code. Allowable PRB costs based on such contributions shall—

(i) Be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds;

(ii) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(iii) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of 26 USC § 501(c).

(B) Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund

costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(1) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(2) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

* * * * *

[FR Doc. E9–28934 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–38; FAR Case 2006–024; Item VI; Docket 2009–0044, Sequence 1]

RIN 9000–AK86

Federal Acquisition Regulation; FAR Case 2006–024, Travel Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to change the travel cost principle to ensure a consistent application of the limitation on allowable contractor airfare costs.

DATES: *Effective Date:* January 11, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–024.

SUPPLEMENTARY INFORMATION:**A. Background**

The travel cost principle at FAR 31.205–46(b) currently limits allowable contractor airfare costs to “the lowest customary standard, coach, or equivalent airfare offered during normal business hours.” The Councils are aware that this limitation is being interpreted inconsistently, either as *lowest coach fare available to the contractor or lowest coach fare available to the general public*, and these inconsistent interpretations can lead to confusion regarding what costs are allowable.

The Councils believe that the reasonable standard to apply in determining the allowability of airfares is the *lowest priced airfare available to the contractor*. It is not prudent to allow the costs of the lowest priced airfares available to the general public when contractors have obtained lower priced airfares as a result of direct negotiation.

Furthermore, the Councils believe that the cost principle should be clarified to omit the term “standard” from the description of the classes of allowable airfares since that term does not describe actual classes of airline service. The Councils further believe that the terms “coach, or equivalent,” given the great variety of airfares often available, may result in cases where a “coach, or equivalent” fare is not the lowest airfare available to contractors, and should thus be omitted.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 72325, December 20, 2007.

B. Public Comments

The comment period closed on February 19, 2008. Ten comments were received from nine respondents. All comments were reviewed and analyzed.

General Comments.

Since most of the comments submitted were unique and brief, it was decided to address all ten specific comments.

Specific Comments:

1. *Comment:* Does “lowest priced coach class” mean the cost of “non-refundable” tickets when they are available and their cost is lower than refundable tickets?

Response: If the lowest available airfare is a non-refundable ticket then it is the allowable cost unless one of the exceptions in FAR 31.205–46(b) applies.

2. *Comment:* The requirement for supporting documentation and justification for airfare costs in excess of the “lowest coach airfare available” should include documentation justifying purchase of a higher-cost

refundable ticket in those instances when a non-refundable ticket is available.

Response: Concur in principle.

3. *Comment:* The proposed change “clarifies FAR 31.205–46 to the benefit of all contractors” and is consistent with requiring that all income, rebates, allowances or other credit relating to any allowable cost shall be credited to the Government.

Response: Concur in principle. This change is consistent with FAR 31.201–5, Credits.

4. *Comment:* How will the Government determine the lowest priced coach class airfare available to the contractor versus the lowest priced coach class airfare available to the general public if the contractor does not have a negotiated airfare agreement with air travel providers and, therefore, only has available to it the same airfare that is available to the general public?

Response: In the situations described by this commenter, the lowest priced coach class airfare available to the contractor and the lowest priced coach class airfare available to the general public are the same. In this regard, the revision promulgated in this FAR case has no effect on the contractor. This amendment is intended to prohibit the contractor’s practice where it has negotiated airfare agreements with travel providers and uses those agreements to purchase first class or business class seats but does not use the lowest priced airfare available under the agreements to determine the allowable cost baseline for the first class or business class seats, but instead determines the allowable cost based on the lowest airfare available to the general public instead of the lowest airfare available to the contractor under the agreements. This amendment will require the contractor to use the lowest airfare available to the contractor.

5. *Comment:* Please address whether or not costs associated with cancelling or changing restricted tickets will be allowable; alternatively, insert the word “unrestricted” into the phrase, *i.e.*, “lowest priced coach class unrestricted or equivalent airfare available to the contractor.”

Response: The Councils believe that the revision does not impact the allowability of costs associated with cancelling or changing restricted tickets or a forfeiture of air travel tickets purchased in good faith but later determined to be unsuitable to the mission requirements. To answer the Commenter’s questions, the costs before and after the revised cost principle should be allowable.

6. *Comment:* The “standard” rate for contractors with negotiated airfare agreements should be those same, negotiated airfares, rather than airfares available to the general public. “This is an issue of common sense.”

Response: This cost principle amendment explicitly identifies the lowest airfares available to the contractor, including its negotiated airfare agreements and those available to the general public, should be the baseline in determining allowable airfare. This amendment should eliminate inconsistent allowable airfare baselines used by various contractors; that is, some contractors do not consider the lowest priced airfare available to them under their negotiated agreements in determining the allowable airfare cost.

7. *Comment:* Does the phrase “lowest priced coach class, or equivalent, airfare” imply that the airfare tickets are refundable, as non-refundable tickets are typically lower than refundable tickets?

Response: Same response as response to comment number 1.

8. *Comment:* Airfare pricing is dynamic. Airlines provide for a variety of fares on given flights based upon available seat inventory. Therefore, employees of the same contractor, traveling on the same flight, may have different fares. Documenting and supporting Government inquiries as to why there is variation in the “lowest fare” among individuals on the same flight would be unduly burdensome. Under the existing regulation, travel agents provide a standard airfare that is readily available and clearly understood; the proposed amendment will increase costs by requiring additional administration to document the allowable airfare to satisfy Government audit inquiries.

Response: The cost principle currently requires the justification and documentation of airfare costs in excess of the lowest customary, standard coach, or equivalent airfare. In view of the changes in the airline industry, the terms “customary, standard, coach or equivalent” increasingly do not describe an actual class of airline service. This amendment clarifies that the reasonable standard to apply in determining allowability of airfare cost is the lowest airfare available to the contractor. This clarification in the cost principle should not increase the documentation implicit in the existing cost principle.

9. *Comment:* The proposed amendment is based upon the premise that there is a standard airfare rate that contractors pay each time for a negotiated fare. There are significant

differences in airfare based upon timing and load factors. Employees of the same contractor on the same flight might incur different airfare prices based on supply and demand. Determination of allowable airfare based upon this proposed rule of the "available air fare standard" will be more difficult to determine than exists under the current cost principle. We see no need for the proposed revision as it appears to be based upon the premise that there is only one negotiated price a contractor will pay for a flight.

Response: This amendment does not establish any "available air fare standard" nor does the amendment presume that there is only one negotiated price a contractor can pay for a particular flight. The final rule eliminates the reference to "coach or equivalent".

10. *Comment:* There are two parts to this comment. (1) The proposed amendment is perceived to require a comparison of coach class fares available to determine the lowest available for allowability purposes; as such, the comparison would be impossible to apply systematically for a number of reasons, most notably the disparity in the nature of price reductions. A specific flight with a negotiated airfare may appear to be the lowest cost when purchasing the ticket, but in fact a flight with a different airline providing a volume rebate later has a lower net cost. Throughout the cost principles is the underlying concept that only reasonable costs will be reimbursed. The measure of what is reasonable has never been interpreted to represent only the absolutely lowest cost available. (2) Also, elimination of the word "standard" from paragraph (b) of the cost principle creates a conflict with paragraph (c)(2) of the cost principle which requires comparison to "standard airfare" for travel costs by contractor-owned, -leased, or chartered aircraft.

Response: With respect to the first comment, the Councils do not believe the revision will be impossible to apply systematically. The amendment is not intended to guide contractors through the decision-making process of selecting the most economical airfare with the lowest net cost when multiple corporate airfare agreements are in place, as this is properly addressed in the contractor's policies and procedures that should be applied appropriately and reasonably in the circumstances of each travel mission and its associated scheduling requirements. In relying on the contractor's procedures to select the most economical airfare appropriate in the circumstances, this amendment only

seeks to clarify for the contractor that it should use the lowest airfare available to the contractor that meets the schedule requirements of the trip rather than considering only airfare available to the general public for the same flight. This amendment makes explicit that the lowest of the two should be selected as the appropriate baseline.

With respect to the second comment, the noted "conflict" created among paragraphs (b) and (c)(2) by the elimination of the word "standard" from (b), the Councils appreciate the commenter's observation and have replaced the word "standard" with "allowable" in paragraph (c)(2) where applicable.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Councils believe that few small businesses have negotiated rate agreements with airlines. The rule will primarily affect businesses with negotiated rate agreements who otherwise might seek to charge negotiated rates for first class or business travel which are lower than the coach rate available to the general public. Finally, no comments were received from small businesses on the Regulatory Flexibility Act statement in the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–46 by revising paragraph (b); and by removing from paragraph (c)(2) introductory text the word "standard" and replacing it with the word "allowable" wherever it appears (twice). The revised text reads as follows:

31.205–46 Travel costs.

* * * * *

(b) Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

* * * * *

[FR Doc. E9–28935 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 15, and 52

[FAC 2005–38; Item VII; Docket 2009–0003; Sequence 6]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street,

NW., Room 4041, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-38, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

List of Subjects in 48 CFR Parts 6, 8, 15, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 6, 8, 15, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 6, 8, 15, and 52 continues to read as follows:

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

PART 6—COMPETITION REQUIREMENTS

■ 2. Amend section 6.302-2 by revising paragraph (d) to read as follows:

6.302-2 Unusual and compelling urgency.

* * * * *

(d) *Period of Performance.* (1) The total period of performance of a contract awarded using this authority—

(i) May not exceed the time necessary—

(A) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and

(ii) May not exceed one year unless the head of the agency entering into the

contract determines that exceptional circumstances apply.

(2) The requirements in paragraph (d)(1) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(3) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(4) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.703 [Amended]

■ 3. Amend section 8.703 by removing “<http://www.abilityone.gov/jwod/PL.html>” and adding “<http://www.abilityone.gov/index.html>” in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.305 [Amended]

■ 4. Amend section 15.305 by removing from paragraph (a)(5) “15.304(c)(3)(iii)” and adding “15.304(c)(3)(ii)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209-6 [Amended]

■ 5. Amend section 52.209-6 by removing from the introductory paragraph “9.409(b)” and adding “9.409” in its place.

52.212-5 [Amended]

■ 6. Amend section 52.212-5, in Alternate I, by removing “12.301(b)(4)” and adding “12.301(b)(4)(i)” in its place. [FR Doc. E9-28937 Filed 12-9-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0002, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-38; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-38 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005-38 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208-7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005-38

Item	Subject	FAR case	Analyst
I	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009-017	Cundiff.
II	Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts ...	2006-026	Jackson.
III	Internet Protocol Version 6 (IPv6)	2005-041	Woodson.
IV	Federal Food Donation Act of 2008 (Pub. L. 110-247)	2008-017	Jackson.
V	Postretirement Benefits (PRB), FAS 106	2006-021	Chambers.
VI	Travel Costs	2006-024	Chambers.
VII	Technical Amendments		

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

FAC 2005-38 amends the FAR as specified below:

Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222-39,

Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006–026)

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005–041)

This final rule adopts the proposed rule published in the **Federal Register** at

71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M–05–22 provides guidance to agencies for transitioning to IPv6.

Item IV—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017)

This rule adopts as final, with no changes, the interim rule published in the **Federal Register** at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006–021)

Currently FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

Item VI—Travel Costs (FAR Case 2006–024)

This final rule amends the FAR to change the travel cost principle (FAR 31.205–46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms “coach or equivalent” and “standard” from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a “coach” fare may be available, given the great variety of fares often available, the “coach” fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

Item VII—Technical Amendments

Editorial changes are made at FAR 6.302–2, 8.703, 15.305, 52.209–6, and 52.212–5.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–28939 Filed 12–9–09; 8:45 am]

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