

with the President's delegation, has provided guidance for exercise of the authority delegated by the President to make determinations of need to make no-setoff commitments under contracts containing assignment of claims clauses. Because this guidance is administrative in nature and has no significant impact upon the public, it is being published as a final rule.

**B. Regulatory Flexibility Act**

As noted above, this rule implements a change in authority for existing policy and procedures in the FAR. This change in authority to be cited does not change the usage of the procedure (the no-setoff commitment) or the impact upon small entities. Thus, this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.*, (FAC 90-38, FAR Case 94-767) in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 32**

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Part 32 is amended as set forth below:

**PART 32—CONTRACT FINANCING**

1. The authority citation for 48 CFR Part 32 continues to read as follows:

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

2. Section 32.803 is amended by revising paragraph (d) to read as follows:

**32.803 Policies.**

\* \* \* \* \*

(d) Any contract of a designated agency (see FAR 32.801), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the head of the agency, in accordance with the Presidential delegation of authority dated October 3, 1995, and after such determination has been published in the Federal Register. The Presidential delegation makes such determinations of need subject to further guidance issued by the Office of Federal Procurement Policy. The following guidance has been provided: Use of the no-setoff provision may be appropriate to facilitate the national defense; in the event of a national emergency or natural disaster; or when the use of the no-setoff provision may facilitate private financing of contract performance. However, in the event an offeror is significantly indebted to the United States, the contracting officer should consider whether the inclusion of the no-setoff commitment in a particular contract is in the best interests of the United States. In such an event, the contracting officer should consult with the Government officer(s) responsible for collecting the debt(s).

\* \* \* \* \*

Section 32.806 is amended by revising paragraph (a)(2) to read as follows:

**32.806 Contract clause.**

(a) \* \* \*

(2) If a no-setoff commitment has been authorized (see FAR 32.803(d)), the contracting officer shall use the clause with its Alternate I.

\* \* \* \* \*

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**48 CFR Parts 32 and 52**

[FAC 90-38; FAR Case 92-045; Item IV]

RIN 9000-AF44

**Federal Acquisition Regulation; Interest Clause; Revisions**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that certain Cost Accounting

Standards (CAS) clauses provide for the use of differing interest rates under differing circumstances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** June 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-38, FAR case 92-045.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Under the CAS clauses at 52.230-2, Cost Accounting Standards, 52.230-3, Disclosure and Consistency of Cost Accounting Practices, and 52.230-4, Consistency in Cost Accounting Practices, interest charges associated with contract price adjustments resulting from CAS noncompliance are computed at the annual interest rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621), as required by subsection 5(h)(4) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679). The clauses at 52.230-2 and 52.230-3 also specify that disputes are subject to the Contract Disputes Act which, in contrast, uses the semiannual interest rate established by the Secretary of the Treasury for the Renegotiation Board pursuant to Public Law 92-41. This rule revises FAR 32.610(b)(2), 32.613(h)(3), 32.614-1(c), and the clause at 52.232-17 to clarify that the CAS clauses at 52.230-2 and 52.230-3 provide for the use of differing interest rates under differing circumstances.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90-38, FAR case 92-045), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: April 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 32 and 52 are amended as set forth below:

**PART 32—CONTRACT FINANCING**

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

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

2. Section 32.610 is amended by revising paragraph (b)(2) to read as follows:

**32.610 Demand for payment of contract debt.**

\* \* \* \* \*

(b) \* \* \*

(2) Notification that any amounts not paid within 30 days from the date of the

demand will bear interest from the date of the demand, or from any earlier date specified in the contract, and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, that interest will run from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

\* \* \* \* \*

3. Section 32.613 is amended by revising paragraph (h)(3) to read as follows:

**32.613 Deferment of collection.**

\* \* \* \* \*

(h) \* \* \*

(3) Notice of an interest charge, in conformity with FAR 32.614 and the clause at FAR 52.232-17, Interest; or, in the case of a debt arising from a defective pricing or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause.

\* \* \* \* \*

4. Section 32.614-1 is amended by revising the first sentence of paragraph (c) introductory text to read as follows:

**32.614-1 Interest charges.**

\* \* \* \* \*

(c) Unless specified otherwise in the clause at FAR 52.232-17, the interest charge shall be at the rate established by the Secretary of the Treasury under Public Law 92-41 for the period in which the amount becomes due. \* \* \*

\* \* \* \* \*

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

5. Section 52.232-17 is amended by revising the date of the clause and the first sentence of paragraph (a) to read as follows:

**52.232-17 Interest.**

\* \* \* \* \*

INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. \* \* \*

\* \* \* \* \*

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