

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. Although a number of respondents took exception to the statement in the Federal Register that the proposed rule "is not expected to have a significant economic impact on a substantial number of small entities" * * * because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply", they added that (1) many contracts awarded to small entities are cost-reimbursable and cost principles apply; (2) cost principles apply when small entities negotiate annual overhead rates; and (3) cost principles apply whenever a cost analysis is performed. We agree that cost principles apply in these cases, but the analysis concluded that a substantial number of small businesses are not involved. In addition, this rule only applies to those small entities (1) whose contracts are governed by cost principles; and (2) who file a protest, or are defending against a protest. Based on the data available, the analysis concludes that the percentage of small entities who meet this second criterion is well below 5 percent. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 2, 1996.

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

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205–47 is amended by adding paragraph (f)(8) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(f) * * *

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

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LIST OF RULES IN FAC 90–41—Continued

Item	Subject	FAR case
II	Compliance with Immigration and Nationality Act Provisions.	96–320
III	Federal Acquisition and Community Right-to-Know.	95–305
IV	Restrictions on Certain Foreign Purchases.	95–303
V	Legal Proceedings Costs.	93–010

Item I—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

This interim rule implements the Information Technology Management Reform Act (ITMRA) of 1996 (Division E of Public Law 104–106). ITMRA seeks to improve Federal information management and to facilitate acquisition of state-of-the-art information technology that is critical for improving the efficiency and effectiveness of Government operations. Under ITMRA, each executive agency is authorized to acquire information technology, including entering into contracts that provide for multi-agency acquisitions of information technology in accordance with guidance issued by the Office of Management and Budget. This interim rule also contains certain policies and procedures from the Federal Information Resources Management Regulation (FIRMR). The changes to the FAR include (1) addition of a definition of "information technology" at 2.101; (2) relocation of the definition of "major system" from 34.001 to 2.101; (3) addition of a new Subpart 8.9, Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program; (4) revision of Part 39, Acquisition of Information Technology; (5) addition of a new clause at 52.239–1, Privacy or Security Safeguards; and (6) various conforming amendments in other parts of the FAR.

Item II—Compliance With Immigration and Nationality Act Provisions (FAR Case 96–320)

This interim rule amends FAR 9.406 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment

LIST OF RULES IN FAC 90–41

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provisions of the Immigration and Nationality Act.

Item III—Federal Acquisition and Community Right-to-Know (FAR Case 95–305)

The interim rule published in FAC 90–34 is revised and finalized. The rule implements Executive Order 12969, Federal Acquisition and Community Right-to-Know, which requires that Government contractors report in a public manner on toxic chemicals released into the environment. The final rule differs from the interim rule in that it amends FAR Subpart 23.9, the provision at 52.223–13, and the clause at 52.223–14 to clarify that (1) an offeror must submit a Certification of Toxic Chemical Release Reporting regarding

only those facilities that it owns or operates, and (2) a contractor must file a Toxic Chemical Release Inventory Form with the Environmental Protection Agency only for its facilities that are subject to the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

Item IV—Restrictions on Certain Foreign Purchases (FAR Case 95–303)

This final rule amends FAR Subpart 25.7 and the clause at 52.225–11 to (1) implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and (2) reflect the regulations of the Department of the Treasury, Office of Foreign Assets Control (31 CFR Chapter V). Iran and Libya are added to the list of sources

from which procurement is restricted; Vietnam, Cambodia, and South Africa are removed from the list.

Item V—Legal Proceedings Costs (FAR Case 93–010)

This final rule amends FAR 31.205–47 to make the costs of pre- or post-award protests unallowable. An exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

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Edward C. Loeb,

*Director, Federal Acquisition Policy Division.
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