

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 13, 25, and 52**

[FAR Case 1999–616]

RIN 9000–A190

**Federal Acquisition Regulation;  
Revisions to Balance of Payments  
Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to remove regulations on the Balance of Payments Program.

**DATES:** Interested parties should submit comments in writing on or before November 13, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–616@gsa.gov. Please submit comments only and cite FAR case 1999–616 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 1999–616.

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

This proposed rule amends FAR Part 25, Foreign Acquisition, to remove Subpart 25.3, Balance of Payments Program, and makes conforming changes to FAR Parts 13 and 52. Note that DoD complies with the Balance of Payments restrictions in Subpart 225.3 of the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR 225.3). This proposed FAR rule does not imply any change in DoD policy with regard to Balance of Payments.

The Balance of Payments Program was established in the early 1960s to provide a preference for U.S. products and services for overseas use. The Balance of Payments Program restrictions are similar to the restrictions of the Buy American Act, which apply only within the United States. The Balance of Payments Program was an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. For civilian agencies, the Balance of Payments Program is applicable to only a small range of supplies or services. The amount of time and effort invested by civilian agencies in applying the Balance of Payments Program under these limited circumstances does not seem equal to any benefits that may be accrued under the program.

The Balance of Payments Program, as implemented in the FAR, originated with a Presidential Directive issued by President Eisenhower on November 16, 1960. This directive outlined steps the United States Government would take to alleviate balance of payment deficits resulting from efforts to restore economies devastated during World War II and bolster the military security of the United States and its allies. The directive was not one of general applicability, but instead identified actions to be taken by specific agencies, including direction to the Secretaries of Defense and Treasury to substantially reduce expenditures abroad of funds appropriated during fiscal year 1961 to the military services, the military assistance program, and the United States Coast Guard. This temporary restriction on overseas expenditure of appropriated funds by a few agencies was subsequently expanded as a matter of policy to apply to overseas acquisitions by all agencies subject to the FAR and has remained in effect for almost 40 years.

The Balance of Payments Program applies to purchases of supplies for use outside the United States and to construction materials for construction contracts performed outside the United States. Only a few civilian agencies make purchases for use outside the United States. Even fewer civilian agencies award construction contracts that are performed outside the United States.

The Balance of Payments Program applies to purchases valued at more than the simplified acquisition threshold (generally \$100,000) and has little impact for civilian agency acquisitions of supplies in excess of \$177,000 (the Trade Agreements Act threshold), because the civilian agencies

do not apply the Balance of Payments Program when the Trade Agreements Act applies.

Therefore, because there is no statutory requirement for this program, and because elimination of the Balance of Payments Program for civilian agencies will reduce administrative burdens on both the Government and the public, without significant impact on our international balance of payments, this rule proposes to eliminate the Balance of Payments Program from the FAR.

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 Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule would apply primarily to civilian agency acquisitions of supplies valued at more than \$100,000, but not more than \$177,000, for use outside the United States. Few acquisitions meet all of these limitations. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 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.* (FAR case 1999–616), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104–13) applies. The proposed FAR changes will reduce information collection requirements approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*, by approximately 1,121 hours. The affected OMB control numbers are 9000–0023, 9000–0130, and 9000–0141.

1. *Annual Reporting Burden—OMB Control No. 9000–0023.* This rule proposes to eliminate this information collection requirement of 1,038 hours.

2. *Annual Reporting Burden—OMB Control No. 9000–0130.* This rule proposes to eliminate only the Balance of Payments portion of this information collection requirement. Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

*Respondents:* 1,130.

*Responses per respondent:* 5.

*Total annual responses:* 5,650.

*Preparation hours per response:* .167.

*Total response burden hours:* 944.

3. **Annual Reporting Burden—OMB Control No. 9000-0141.** This rule proposes to eliminate only the Balance of Payments portion of this information collection requirement. Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

*Respondents:* 485.

*Responses per respondent:* 2.

*Total annual responses:* 970.

*Preparation hours per response:* 2.5.

*Total response burden hours:* 2,425.

#### D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing these burdens, not later than November 13, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether the collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of the collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justifications from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control Numbers 9000-0023, 9000-0130, and 9000-0141 in all correspondence.

#### List of Subjects in 48 CFR Parts 13, 25, and 52

Government procurement.

Dated: September 5, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 13, 25, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 13, 25, and 52 continues to read as follows:

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

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Amend section 13.302-5 by revising paragraph (d)(3)(i) to read as follows:

##### 13.302-5 Clauses.

\* \* \* \* \*

(d) \* \* \*

(3)(i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see subpart 25.4), substitute the clause at FAR 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR 52.225-1, Buy American Act—Supplies.

\* \* \* \* \*

#### PART 25—FOREIGN ACQUISITION

##### 25.000 [Amended]

3. Amend section 25.000 by removing “the Balance of Payments Program.”

##### 25.001 [Amended]

4. Amend section 25.001 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and by removing “and the Balance of Payments Program” from the first sentence of newly redesignated paragraph (b).

##### 25.002 [Amended]

5. Amend the table in section 25.002 as follows:

a. In the first column by removing “25.3 Balance of Payments Program” and adding, in its place, “25.3 [Reserved]”; and

b. In the third and fifth columns by removing “X” and adding, in their place, “—”.

6. Amend section 25.003 by revising the definition “Eligible product” to read as follows:

##### 25.003 Definitions.

\* \* \* \* \*

*Eligible product* means a foreign end product that is not subject to discriminatory treatment under the Buy American Act due to applicability of a trade agreement to a particular acquisition.

\* \* \* \* \*

#### Subpart 25.3—[Reserved]

7. Remove and reserve Subpart 25.3.

##### 25.402 [Amended]

8. Amend section 25.402 in the first and fourth sentences by removing “or the Balance of Payments Program”; and in the fourth sentence by removing the word “such” and inserting “those” in its place.

##### 25.403 [Amended]

9. Amend section 25.403 in paragraph (a)(1) by removing “and the Balance of Payments Program”.

##### 25.405 [Amended]

10. Amend section 25.405 in the second sentence of paragraph (a) by removing “or the Balance of Payments Program”.

##### 25.406 [Amended]

11. Amend section 25.406 in the next-to-the-last sentence by removing “or the Balance of Payments Program”.

##### 25.501 [Amended]

12. Amend section 25.501 in paragraph (d) by removing “and Balance of Payments Program”.

##### 25.502 [Amended]

13. Amend section 25.502—

a. In the introductory text of paragraph (c) by removing “or the Balance of Payments Program”;

b. In paragraph (c)(3) by removing “and the Balance of Payments Program provide” and adding “provides” in its place;

c. In the introductory text of paragraph (c)(4) by removing “or 25.304”;

d. In paragraph (d)(2) by removing “or Balance of Payments Program”; and

e. In paragraph (d)(3) by removing “and Balance of Payments Program”.

##### 25.504 [Amended]

14. Amend section 25.504 by removing the next-to-the last sentence.

15. Amend section 25.504-1 by revising the section heading and paragraphs (b)(1) and (b)(2) to read as follows:

##### 25.504-1 Buy American Act.

\* \* \* \* \*

(b)(1) *Example 2.*

Offer A .....	\$11,000	Domestic end product, small business.
Offer B .....	10,700	Domestic end product, small business.
Offer C .....	10,200	U.S.-made end product (not domestic), small business.

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see 25.502(c)(4)(ii)).

16. Amend section 25.1101 by revising paragraphs (a), (b), and (c)(1) to read as follows:

**§ 25.1101 Acquisition of supplies.**

\* \* \* \* \*

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

- (i) The solicitation is restricted to domestic end products in accordance with subpart 6.3;
- (ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability or public interest); or
- (iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225-2, Buy American Act Certificate, in solicitations containing the clause at 52.225-1.

(b)(1)(i) Insert the clause at 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts if—

- (A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the value of the acquisition is more than \$25,000, but is less than \$177,000; and
- (B) No exception in 25.401 applies.

For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

- (ii) If the acquisition value exceeds \$25,000 but is less than \$50,000, use the clause with its Alternate I.
  - (iii) If the acquisition value is \$50,000 or more but is less than \$54,372, use the clause with its Alternate II.
- (2)(i) Insert the provision at 52.225-4, Buy American Act—North American

Free Trade Agreement—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225-3.

(ii) If the acquisition value exceeds \$25,000 but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$54,372, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$177,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

\* \* \* \* \*

17. Amend section 25.1102 by revising the introductory text of paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraphs (d)(1) and (d)(2) to read as follows:

**§ 25.1102 Acquisition of construction.**

(a) Insert the clause at 52.225-9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,806,000.

\* \* \* \* \*

(b)(1) Insert the provision at 52.225-10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225-11, Buy American Act—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$6,806,000 or more.

\* \* \* \* \*

(d)(1) Insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act

before receipt of offers, use the provision with its Alternate I.

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

- 18. Amend section 52.212-3 by—
  - a. Revising the date of the provision;
  - b. Removing “—Balance of Payments Program” from the introductory text of paragraph (f) (twice), and in paragraph (f)(1);
  - c. Removing “—Balance of Payments Program” from the introductory text of paragraph (g)(1) (twice), paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii);
  - d. Revising paragraphs (g)(2) and (g)(3); and
  - e. Removing “or the Balance of Payments Program” from the second sentence of paragraph (g)(4)(iii). The revised text reads as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (Date)

\* \* \* \* \*

(g) \* \* \*  
 (2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (Date).* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian End Products:  
 Line Item No.

(List as necessary)

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (Date).* If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian or Israeli End Products:  
 Line Item No.

Country of Origin

(List as necessary)

\* \* \* \* \*

19. Amend section 52.212-5 by revising the date of the clause and paragraphs (b)(17) and (b)(18)(i) 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 (Date)

(b) \* \* \*

(17) 52.225-1, Buy American Act—Supplies (41 U.S.C. 10a-10d).

(18)(i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

\* \* \* \* \*

**52.213-4 [Amended]**

20. Amend section 52.213-4 in the clause heading by removing “(July 2000)” and adding “(Date)” in its place; and in paragraph (b)(1)(viii) by removing “—Balance of Payments Program”, and by removing “(Feb 2000)” and adding “(Date)” in its place.

21. Amend section 52.225-1 by revising the section and clause headings; by removing the last sentence from paragraph (b); and by removing “—Balance of Payments Program” from paragraph (d). The revised text reads as follows:

**52.225-1 Buy American Act—Supplies.**

\* \* \* \* \*

Buy American Act—Supplies (Date)

\* \* \* \* \*

22. Amend section 52.225-2 by revising the section and provision headings; and in paragraph (a) by removing “—Balance of Payments Program”. The revised text reads as follows:

**52.225-2 Buy American Act Certificate.**

\* \* \* \* \*

Buy American Act Certificate (Date)

\* \* \* \* \*

23. Amend section 52.225-3—  
a. By revising the section and clause headings;

b. By revising paragraph (c);

c. By removing “—Balance of Payments Program” from the third sentence of paragraph (d); and

d. By removing from Alternates I and II “(Feb 2000)” and adding “(Date)” in their place; and removing “—Balance of Payment Program”. The revised text reads as follows:

**52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.**

\* \* \* \* \*

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (Date)

\* \* \* \* \*

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), and the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note) by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

\* \* \* \* \*

**52.225-4 [Amended]**

24. Amend section 52.225-4 by removing “—Balance of Payments Program” from the section and provision headings, and paragraphs (a), (b), and (c), and Alternates I and II; and by revising the dates of the provision heading and Alternates I and II to read “(Date)”.

25. Amend section 52.225-6 by revising the date of the provision and paragraph (c) to read as follows:

**52.225-6 Trade Agreements Certificate.**

\* \* \* \* \*

Trade Agreements Certificate (Date)

\* \* \* \* \*

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.  
(End of provision)

26. Amend section 52.225-9 by—  
a. Revising the section and clause headings;

b. Removing “and the Balance of Payments Program” from paragraph (b)(1);

c. Revising paragraph (b)(3)(i); and

d. Removing the words “or Balance of Payments Program” from paragraph (b)(3)(ii), the introductory text of

paragraph (c), the first sentence of paragraph (c)(2), and in paragraph (c)(3) (twice). The revised text reads as follows:

**52.225-9 Buy American Act—Construction Materials.**

\* \* \* \* \*

Buy American Act—Construction Materials (Date)

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

\* \* \* \* \*

(End of clause)

27. Amend section 52.225-10 by—  
a. Revising the section and provision headings;

b. Removing “Balance of Payments Program—” from paragraph (a);

c. In the first and third sentences of paragraph (b) of the provision by removing “or Balance of Payments Program”;

d. In paragraph (c) of the provision by removing “or Balance of Payments Program”; and

e. In Alternate I by removing “(Feb 2000)” and adding “(Date)” in its place; and by removing “or Balance of Payments Program”. The revised text reads as follows:

**52.225-10 Notice of Buy American Act Requirement—Construction Materials.**

\* \* \* \* \*

Notice of Buy American Act Requirement—Construction Materials (Date)

\* \* \* \* \*

(End of provision)

28. Amend section 52.225-11 by—  
a. Revising the section and clause headings;

b. Revising paragraph (b)(4)(i) of the clause;

c. Removing the words “or Balance of Payments Program” from paragraph (b)(4)(ii), the introductory text of paragraph (c), the first sentence of paragraph (c)(2), and paragraph (c)(3) (twice); and

d. Removing from Alternate I “(June 2000)” and adding “(Date)” in its place; and revising paragraph (b)(1) of Alternate I. The revised text reads as follows:

**52.225-11 Buy American Act—Construction Materials under Trade Agreements.**

\* \* \* \* \*

Buy American Act—Construction Materials  
Under Trade Agreements (Date)

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

\* \* \* \* \*

(End of clause)

Alternate I (Date) \* \* \*

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

\* \* \* \* \*

29. Amend section 52.225–12 by—

a. Revising the section and provision headings;

b. Removing “Balance of Payments Program—” from paragraph (a) of the provision;

c. Removing “or Balance of Payments Program” from the first and third sentences of paragraph (b) of the provision;

d. Removing “or Balance of Payments Program” from paragraph (c)(1) of the provision;

e. Removing “(Feb 2000)” from Alternate I and adding “(Date)” in its place, and by removing “or Balance of Payments Program” from paragraph (b) of the Alternate; and

f. Removing “(June 2000)” from Alternate II and adding “(Date)” in its place, and by removing “Balance of Payments Program—” from paragraph (a) of the Alternate. The revised text reads as follows:

**52.225–12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.**

\* \* \* \* \*

Notice of Buy American Act Requirement—  
Construction Materials Under Trade  
Agreements (Date)

\* \* \* \* \*

(End of provision)

[FR Doc. 00–23119 Filed 9–8–00; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 2, 31, and 35**

[FAR Case 2000–401]

RIN 9000–AI91

**Federal Acquisition Regulation;  
Definitions of “Applied Research” and  
“Development”**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to move the definitions of “Applied Research” and “Development” from separate areas of the FAR into the same FAR section pertaining to definitions.

**DATES:** Interested parties should submit comments in writing on or before November 13, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: [farcas2000-401@gsa.gov](mailto:farcas2000-401@gsa.gov)

Please submit comments only and cite FAR case 2000–401 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ralph De Stefano, Procurement Analyst, at (202) 501–1757. Please cite FAR case 2000–401.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This rule amends FAR Subpart 2.1 to consolidate the definitions of “Applied Research” and “Development” found in 31.205–18 and 35.001 into the definitions section at FAR 2.101 and makes editorial changes for clarity. The Councils’ amendments are intended to reorganize, simplify, and clarify FAR language. The Councils do not intend any substantive changes to the FAR by these amendments.

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 is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. We will consider comments from small entities concerning the affected FAR parts 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.* (FAR case 2000–401), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 2, 31, and 35**

Government procurement.

Dated: September 5, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 31, and 35 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 31, and 35 continues to read as follows:

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

**PART 2—DEFINITIONS OF WORDS AND TERMS**

2. Amend section 2.101 by adding the definitions “Applied research” and “Development” to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

*Applied research*—(1) Means effort that—

(i) Normally follows basic research, but may not be severable from the related basic research;

(ii) Attempts to determine and exploit the potential of scientific discoveries or