

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Federal Acquisition Circular 97-22; Introduction

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

ACTION: Summary presentation of final 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) 97-22. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. 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.arnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-22 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Definitions	1999-403	Olson.
II	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage	2000-301	Nelson.
III	Advance Payments for Non-Commercial Items	1999-016	Olson.
IV	Part 12 and Assignment of Claims	1999-021	Moss.
V	Clause Flowdown—Commercial Items	1996-023	Moss.
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

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

Federal Acquisition Circular 97-22 amends the FAR as specified below:

Item I—Definitions (FAR Case 1999-403)

This final rule clarifies the applicability of definitions used in the FAR, eliminates redundant or conflicting definitions, and makes definitions easier to find. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the “Definitions” section of the highest level FAR division (part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of that subpart, then the definition was moved to the “Definitions” section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined

differently in another part, subpart, or section of the FAR; and

- Makes technical corrections throughout the FAR.

Item II—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000-301)

The interim rule published as Item VIII of FAC 97-18 (65 FR 36028, June 6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, CAS Program Requirements, and the FAR clause at 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board’s final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by—

- Removing the requirement at FAR 52.230-1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million (“trigger contract”) to be subject to “full CAS coverage.” The CAS Board added a new “trigger contract” dollar amount of \$7.5 million at paragraph (b)(7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revising FAR 30.201-4(b), Disclosure and consistency of cost

accounting practices, and FAR 52.230-1 to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and

- Revising the CAS waiver procedures and conditions at FAR 30.201-5.

Item III—Advance Payments for Non-Commercial Items (FAR Case 99-016)

This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

Item IV—Part 12 and Assignment of Claims (FAR Case 1999-021)

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232-36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212-5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212-4, Contract Terms and Conditions—Commercial Items, addresses assignment of claims but does not include the third party prohibition.

This rule revises FAR 52.212-4(b) to add the prohibition.

**Item V—Clause Flowdown—
Commercial Items (FAR Case 1996-023)**

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219-8, Utilization of Small Business Concerns, when specified circumstances have been met. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

Item VI—Technical Amendments

This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-22 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-22 are effective March 12, 2001, except for Items II and VI, which are effective January 10, 2001.

Dated: December 8, 2000

Deidre A. Lee,

Director, Defense Procurement.

Dated: December 8, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 7, 2000.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

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SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52

[FAC 97-22; FAR Case 1999-403; Item I]

RIN 9000-AJ08

**Federal Acquisition Regulation;
Definitions**

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 agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and make definitions easier to find.

DATES: *Effective Date:* March 12, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501-3221. Please cite FAC 97-22, FAR case 1999-403.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule clarifies the applicability of definitions, eliminates redundant or conflicting definitions, and makes definitions easier to find. The Councils do not intend to make any substantive policy changes to the FAR by these amendments. Nevertheless, in view of the extensive scope of these FAR improvements, comments are invited in the event any substantial policy change appears to have been made inadvertently. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the “Definitions” section of the highest level FAR division (part, subpart, or section) the term as defined is used in. For example, if a term was defined in a FAR section, but the term is used as defined in another section of

that subpart, then the definition was moved to the “Definitions” section of that subpart;

- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;

- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the FAR;

- Makes plain language revisions to the revised text in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998; and

- Makes technical corrections throughout 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 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 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 97-22, FAR case 1999-403), in 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. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52 as set forth below: