

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–10; Introduction

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

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–10. 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 2001–10 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002–016	Nelson.
II	Executive Order 13202, Preservation of Open, Competition and Government Neutrality Towards Government Contractors' Labor Relations On Federal and Federally Funded Construction projects.	2001–016	
III	Caribbean Basin Country End Products.	2000–306	Davis.
IV	Financing Policies	2000–007	Olson.
V	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.

FAC 2001–10 amends the FAR as specified below:

Item I—General Records Schedule (FAR Case 2002–016)

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, item IV, General Records Schedule (FAR case 1999–615) published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made in FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705–2 to read “Pay administration records” instead of “Construction contract pay administration records,” thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;
- Revises FAR 4.705–2(a) to change from a record retention period of 3 years

after completion of contract unless contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97–18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the

possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000–306)

The interim rule published in the **Federal Register** as item V of FAC 2001–04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products

originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000-007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502-2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-10 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 2001-10 are effective December 23, 2002, except for items II, III, and V, which are effective November 22, 2002.

Dated: November 1, 2002.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: October 28, 2002.

David A. Drabkin,

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

Dated: October 28, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001-10; FAR Case 2002-016; Item I]

RIN 9000-AJ49

Federal Acquisition Regulation; General Records Schedule

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 revise pay administration record retention requirements.

DATES: *Effective Date:* December 23, 2002.

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 Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-10, FAR case 2002-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to reflect the previous language of FAR 4.705-2 exactly as it was written prior to revision of this subsection by FAC 97-18, item IV, General Records Schedule (FAR case 1999-615), published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705-2 made by FAC 97-18 inadvertently resulted in longer record retention periods for contractors and subcontractors.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the prior requirements published in FAC 97-18 is acceptable.

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 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 part 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 2001-10, FAR case 2002-016), 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 Part 4

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 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. Amend section 4.705-2 by revising the section heading and paragraph (a) to read as follows:

4.705-2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

* * * * *

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