

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2009-0002, Sequence 2]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005-31;  
Small Entity Compliance Guide**

**AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),

and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued  
under the joint authority of the  
Secretary of Defense, the Administrator  
of General Services and the  
Administrator of the National  
Aeronautics and Space Administration.  
This *Small Entity Compliance Guide* has  
been prepared in accordance with  
Section 212 of the Small Business  
Regulatory Enforcement Fairness Act of  
1996. It consists of a summary of rules  
appearing in Federal Acquisition  
Circular (FAC) 2005-31 which amend

the FAR. An asterisk (\*) next to a rule  
indicates that a regulatory flexibility  
analysis has been prepared. Interested  
parties may obtain further information  
regarding these rules by referring to FAC  
2005-31, which precedes this  
document. These documents are also  
available via the Internet at [http://  
www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms.  
Hada Flowers, Regulatory Secretariat,  
(202) 208-7282. For clarification of  
content, contact the analyst whose name  
appears in the table below.

**LIST OF RULES IN FAC 2005-31**

Item	Subject	FAR case	Analyst
*I .....	Small Business Size Rerepresentation .....	2006-032	Cundiff
II .....	Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (Interim).	2008-012	Chambers
III .....	Amendments to Incorporate New Wage Determinations .....	2008-014	Woodson
IV .....	Least Developed Countries that are Designated Countries .....	2008-021	Murphy
V .....	Federal Food Donation Act of 2008 (Interim) .....	2008-017	Jackson
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.

FAC 2005-31 amends the FAR as  
specified below:

**Item I—Small Business Size  
Rerepresentation (FAR Case 2006-032)**

This rule amends the Federal  
Acquisition Regulation (FAR) to adopt  
as final, with changes, an interim FAR  
rule published in the **Federal Register** at  
72 FR 36852, July 5, 2007, amending the  
FAR to implement the Small Business  
Administration's (SBA) final rule  
published on November 15, 2006 (71 FR  
66434), entitled Small Business Size  
Regulations; Size for Purposes of  
Governmentwide Acquisition Contracts,  
Multiple Award Schedule Contracts and  
Other Long-Term Contracts; 8(a)  
Business Development/Small  
Disadvantaged Business; Business  
Status Determinations. The purpose of  
the SBA rule and this FAR rule is to  
improve the accuracy of small business  
size status reporting, at the prime  
contract level, over the life of certain  
contracts (long-term contracts,  
novations, acquisitions, and mergers).  
Contractors are required to rerepresent  
their size status prior to the end of the  
fifth year of a contract that is more than  
five years in duration (long-term

contract); prior to exercising any option  
thereafter; following execution of a  
novation agreement on any contract; or  
following a merger or acquisition,  
regardless of whether there is a novation  
agreement. A change in the size status  
does not change the terms and  
conditions of the contract, but the  
agency may no longer include the value  
of options exercised or orders issued  
against the contract in its small business  
prime contracting goal achievements.

**Item II—Clarification of Submission of  
Cost or Pricing Data on Non-  
Commercial Modifications of  
Commercial Items (FAR Case 2008-012)  
(Interim)**

The Civilian Agency Acquisition  
Council and the Defense Acquisition  
Regulations Council (Councils) are  
issuing an interim final rule amending  
the Federal Acquisition Regulation  
(FAR) to harmonize the thresholds for  
cost or pricing data on non-commercial  
modifications of commercial items to  
reflect the Truth In Negotiation Act  
(TINA) threshold for cost and pricing  
data.

The Councils are hereby  
implementing a requirement of the  
National Defense Authorization Act  
(NDAA) for FY 2008. Specifically,  
Section 814 of the Act requires the  
harmonization of the threshold for cost  
or pricing data on non-commercial  
modifications of commercial items with  
the TINA threshold for cost and pricing

data. By linking the threshold for cost or  
pricing data on non-commercial  
modifications of commercial items with  
the TINA threshold at FAR 15.403-4,  
whenever the TINA threshold is  
adjusted the threshold for cost or  
pricing data on non-commercial  
modifications of commercial items will  
be automatically adjusted as well.

**Item III—Amendments to Incorporate  
New Wage Determinations (FAR Case  
2008-014)**

The final rule amends the Federal  
Acquisition (FAR) to correct an  
inconsistency between FAR 15.206(c)  
and 22.404-5(c)(3), by revising the  
language at 22.404-5(c). This change  
requires the contracting officer to amend  
solicitations to incorporate new Davis  
Bacon wage determinations (WD) and  
furnish the wage rate information only  
to all offerors that have not been  
eliminated from the competition, if the  
closing date for receipt of offers has  
already passed. The revision is  
necessary to ensure consistency with  
FAR 15.206(c), and eliminate a possible  
scenario where incorporation of an  
updated WD into the solicitation  
process, could cause an unnecessary  
and counterproductive reevaluation of  
proposals already eliminated from  
competition. This change is consistent  
with the intent of the Department of  
Labor regulations, ensuring that the  
most current WD is placed in the  
contract at the time of award for

compliance at the start of contract performance.

**Item IV—Least Developed Countries that are Designated Countries (FAR Case 2008–021)**

This final rule amends the Federal Acquisition Regulation (FAR) to revise the definition of designated country, adding Liberia and removing Cape Verde. Least Developed Countries form a subset of designated countries. The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The United States Trade Representative has updated the list of Least Developed Countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S.-made or

designated country end products, or U.S. or designated-country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)).

**Item V—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017) (Interim)**

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 26, 31, and 52 to encourage executive agencies and their contractors to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. This change implements the Federal Food Donation Act of 2008 (Pub. L. 110–247) which encourages executive agencies and their contractors, in contracts for the provision, service, or

sale of food to encourage the contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. The rule is effective for all solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States issued on or after the effective date of the rule.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 3.503–2, 47.103–1, and 52.225–11.

Dated: March 13, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–5993 Filed 3–18–09; 8:45 am]

**BILLING CODE 6820–EP–S**