DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–52; FAR Case 2009–039; Item IV; Docket 2010–0104, Sequence 1]

RIN 9000–AL62

Federal Acquisition Regulation; Buy American Exemption for Commercial Information Technology—Construction Material

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010, to authorize exemption from the Buy American Act for acquisition of information technology that is a commercial item.

DATES: Effective Date: May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cecilia L. Davis, Procurement Analyst, at (202) 219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–52, FAR Case 2009–039.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 75 FR 60266 on September 29, 2010, to implement section 615 of the Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). No comments were received by the close of the public comment period on November 29, 2010.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 the rule simplifies the treatment of construction material that is also a commercial information technology item, which constitutes a small percentage of the overall construction material in a project. This final rule does not affect small business set-asides to the prime contractor or the small business subcontracting goals. Construction contracts that exceed $7,804,000 and are subject to trade agreements already exempt designated country construction material from the Buy American Act.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0141, titled: Buy America Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 18, 2011.

Millissa Gary,
Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the Federal Register at 75 FR 60266 on September 29, 2010, is adopted as final without change.

BILLING CODE 6820–EP–P