

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–03; Introduction

AGENCY: 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) 2023–03. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov.

RULES LISTED IN FAC 2023–03

Item	Subject	FAR case	Analyst
I	Removal of FAR Subpart 8.5, Acquisition of Helium	2022–007	Jackson.
II	Exemption of Certain Contracts from the Periodic Inflation Adjustments to the Acquisition-Related Thresholds.	2022–002	Ryba.
III	Technical Amendments.		

ADDRESSES: The FAC, including the SECG, is available at <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–03 amends the FAR as follows:

Item I—Removal of FAR Subpart 8.5, Acquisition of Helium (FAR Case 2022–007)

This final rule amends the FAR to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program ended a year later, on September 30, 2022. Agencies now procure helium on the open market as they do for other requirements.

The final rule will not have a significant economic impact on a substantial number of small entities because it removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. Procurements for helium shall be conducted using the most appropriate methods in the FAR.

Item II—Exemption of Certain Contracts From the Periodic Inflation Adjustments to the Acquisition-Related Thresholds (FAR Case 2022–002)

This final rule amends the FAR to add a new statutory exception for certain performance and payment bonds requirements for construction contracts to the already established list of acquisition-related thresholds not subject to escalation. These updates ensure that the current dollar thresholds are retained for performance and payment bonds as well as the threshold for alternatives to such bonds. This rule is not expected to have a significant impact on the Government or industry, to include small entities, because the rule maintains acquisition-related thresholds that have been in the FAR for several years.

Item III—Technical Amendments

Administrative change is made at FAR 7.403.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2023–03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2023–03 is effective April 26,

2023 except for Items I through III, which are effective May 26, 2023.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 8, 51, and 52

[FAC 2023–03; FAR Case 2022–007; Item I; Docket No. FAR–2022–0004; Sequence No. 1]

RIN 9000–AO44

Federal Acquisition Regulation: Removal of FAR Subpart 8.5, Acquisition of Helium

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013.

DATES: Effective May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at michaelo.jackson@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2023–03, FAR Case 2022–007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 87 FR 57166 on September 19, 2022, to implement the final disposition of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40), which required the disposal of the Federal Helium System by September 30, 2021. The Act required the Department of the Interior (DOI), through the Director of the Bureau of Land Management (BLM), to begin offering helium for auction or sale on an annual basis. Under the Federal In-Kind Program, Federal agencies were required to purchase all of their refined helium from private suppliers who, in turn, were required to purchase an equivalent amount of crude helium from the Federal Helium Reserve.

On April 16, 2020, the BLM announced the process and timeline for disposal of the remaining helium and helium assets to meet the September 30, 2021, statutory deadline. Excess helium and helium assets remaining after September 30, 2021, were transferred to GSA, in accordance with the statutory disposal process. Federal In-Kind users were provided access to helium until September 30, 2022, while GSA completed the disposal process. Federal In-Kind users are now required to seek new sources of helium on the open market.

II. Discussion and Analysis

There were no public comments submitted in response to the proposed rule, and no changes were made to the final rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule removes FAR clause 52.208–8, Required Sources for Helium and Helium Usage Data; FAR subpart 8.5—Acquisition of Helium; and other associated language in FAR parts 1, 8, and 51. The final rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

This final rule is not expected to have a significant impact on the Government or industry because the operation of the Federal Helium Reserve ceased on September 30, 2021, and agencies were notified that the Federal In-Kind Program would end on September 30, 2022. Agencies now have to procure helium on the open market as they do for other requirements.

V. 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 regulatory flexibility. This rule 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.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This rule implements the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113–40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program ended a year later, on September 30, 2022.

The objective of the rule is to remove the Federal Helium System requirements from the FAR to comply with the statutory direction.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

This rule applies to all solicitations and contracts for the procurement of helium. The final rule removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. Procurements for helium shall be conducted using the most appropriate methods in the FAR. The rule is not expected to impact a significant number of entities.

According to data from the Bureau of Land Management, there were approximately seven remaining entities participating in the Federal In-Kind Program in calendar year 2020. Data obtained from the System for Award Management as of June 14, 2022, indicates that of those seven entities, there are no small entities participating in the Federal In-Kind Program.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, this rule removes current reporting and compliance requirements for small entities.

There are no known significant alternative approaches to the final rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Helium Stewardship Act of 2013 (Pub. L. 113–40) required the disposal of the Federal Helium System by September 30, 2021. The operation of the Federal Helium Reserve has ended, and agencies now procure helium on the open market as they do for other requirements. OMB Control Number 9000–0113, Acquisition of Helium, was discontinued. Therefore, this rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Action (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 1, 8, 51, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 8, 51, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 8, 51, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**1.106 [Amended]**

- 2. In section 1.106 amend the table by removing FAR segment “8.5” and the corresponding OMB Control Number “9000–0113”.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**8.003 [Amended]**

- 3. Amend section 8.003 by removing paragraph (e).

Subpart 8.5 [Removed and Reserved]

- 4. Remove and reserve subpart 8.5, consisting of sections 8.500 through 8.505.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

- 5. Amend section 51.102 by—
 - a. Removing from the end of paragraph (c)(3) “20420;” and adding “20420; or” in its place;
 - b. Removing paragraph (c)(4);
 - c. Redesignating paragraph (c)(5) as paragraph (c)(4);
 - d. Removing from the newly redesignated paragraph (c)(4) the words “(1) through (4) above” and adding the phrase “paragraphs (c)(1) through (c)(3) of this section” in its place;
 - e. Removing from the end of paragraph (e)(3)(i) the word “DoD;” and adding “DoD; and” in its place;
 - f. Removing from the end of paragraph (e)(3)(ii) the word “and”; and
 - g. Removing paragraph (e)(3)(iii).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.208–8 [Removed and Reserved]**

- 6. Remove and reserve section 52.208–8.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 1**

[FAC 2023–03, FAR Case 2022–002, Item II; Docket No. FAR–2022–0002, Sequence No. 1]

RIN 9000–A039

Federal Acquisition Regulation: Exemption of Certain Contracts From the Periodic Inflation Adjustments to the Acquisition-Related Thresholds

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2022 that provides a statutory exception to the periodic inflation adjustments of acquisition-related thresholds for certain bond requirements.

DATES: Effective May 26, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Marissa Ryba, Procurement Analyst, at 314–586–1280 or by email at Marissa.Ryba@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2023–03, FAR Case 2022–002.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published a proposed rule at 87 FR 58300 on September 26, 2022, to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81), which provides for a statutory exception to the periodic inflation adjustments of acquisition-related thresholds under 41

U.S.C. 1908. Three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. All of the respondents expressed support for the rule because maintaining the current thresholds for performance and payment bonds ensures continued payment protections benefiting small businesses. The Councils acknowledge this support. No changes were made to the final rule as a result of public comments.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not create new solicitation provisions or contract clauses or revise the text of any existing provisions or clauses. The rule does not change any current requirements in the provisions or clauses but does prevent future periodic inflation adjustments to acquisition-related thresholds.

IV. Expected Impact of the Rule

This rule does not have a significant impact on the Government or industry because this rule maintains acquisition-related thresholds that have been in the FAR for several years without significant change.

The FAR threshold for performance and payment bonds at FAR 28.102 had one escalation adjustment in 2010, which raised the threshold by \$50,000 from \$100,000 and has since remained unchanged. The FAR threshold for alternatives to payment bonds at FAR 28.102 is currently \$35,000; it was escalated twice, one in 2006 and again in 2015. Each adjustment raised the threshold by \$5,000 starting from \$25,000. Since the second adjustment, this threshold has also remained unchanged.

Because the acquisition-related thresholds under FAR 28.102 have remained mostly unchanged, there is little expectation for future increases or changes that would affect Government and industry. There is also no expected cost impact of this rule since the acquisition-related thresholds will remain the same. There may be some benefit of consistency to the public by ensuring that the thresholds remain the same.