

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 14, 1994.

A closed meeting will be held on Tuesday, March 15, 1994, at 2:30 p.m. An open meeting will be held on Wednesday, March 16, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 15, 1994, at 2:30 p.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.
- Opinions.

The subject matter of the open meeting scheduled for Wednesday, March 16, 1994, at 10 a.m., will be:

Consideration of whether to propose for public comment two new rules and rule amendments under the Investment Advisers Act of 1940. The first rule would expressly prohibit investment advisers from making unsuitable recommendations to clients. The second rule would prohibit registered investment advisers from exercising

investment discretion with respect to client accounts unless they have a reasonable belief that the custodians of those accounts send account statements to the clients no less frequently than quarterly. Related amendments to recordkeeping rule under the Advisers Act also would be proposed. For further information, please contact Robert E. Plaze or W. Thomas Conner at (202) 272-2107.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Carrie Dwyer (202) 272-2000.

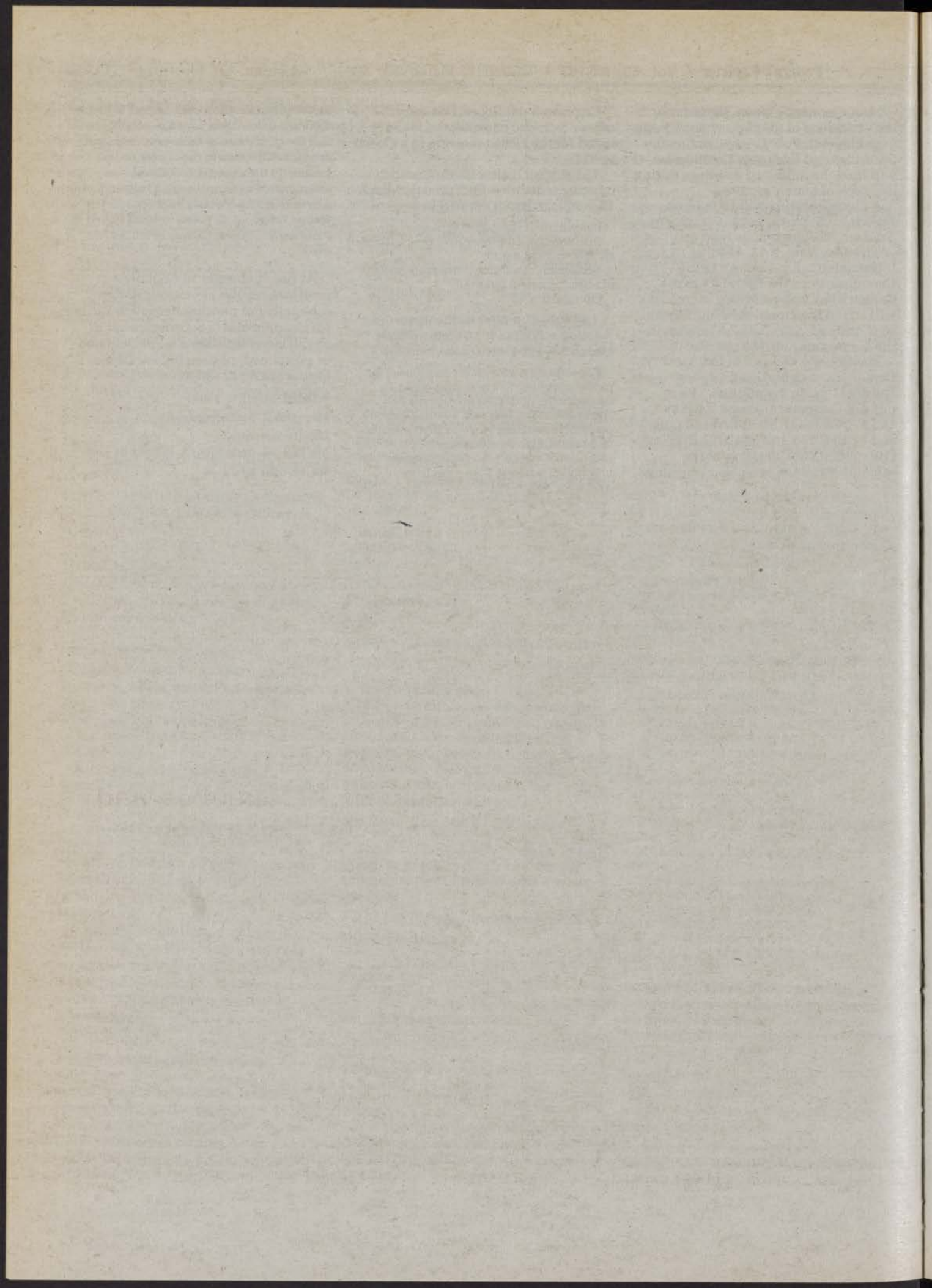
Dated: March 8, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-5806 Filed 3-8-94; 3:56 pm]

BILLING CODE 8010-01-M



Federal Register

**Thursday
March 10, 1994**

Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Part 1, et al.
Federal Acquisition Regulations; Final
Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-20]

Federal Acquisition Regulation;
Introduction of Miscellaneous
AmendmentsAGENCIES: Department of Defense (DOD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).ACTION: Summary of interim and final
rules and corrections.SUMMARY: This document introduces the
documents, set forth below, which
comprise Federal Acquisition Circular
(FAC) 90-20. The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council are
issuing FAC 90-20 to amend the Federal
Acquisition Regulation (FAR) to
implement changes in the following
subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Section 6050M of the Tax Reform Act of 1986	91-52	91-007	Klein.
II	Made in America Labels and Unfair Trade Practices	93-301	.....	DeStefano.
		93-306	.....	DeStefano.
III	Preference for Commercial Products	91-48	89-315	O'Neill.
IV	Increase in Cost or Pricing Data Threshold	91-53	90-303	Olson.
V	Reimbursement, Interest Charges, and Penalties for Overpayment, Clarification	91-99/89-37	91-090	Olson.
VI	Clarify Increased Cost of Pricing Data Threshold	91-96	91-309	Olson.
VII	Nonmanufacturer Rule	91-50	90-335	O'Neill.
VIII	Small Business Competitiveness Demonstration Program	91-97	91-065	Scott.
IX	Removal of Steel Conduit from the FAR Buy American Act Exemption List	92-619	.....	Klein.
X	Buy American Act—Construction Materials	91-75	91-305	O'Such.
XI	Examination of Records	92-47	.....	O'Such.
XII	Independent Research and Development and Bid and Proposal Costs	93-302	.....	Olson.
XIII	Prompt Payment Overseas	92-46	.....	Olson.
XIV	Federal Courts Administration Act	92-301/91-62	.....	O'Neill.
			90-323	
XV	Defense Traffic Management Regulation	92-53	.....	Klein.
XVI	Records of Plant Equipment	91-73	91-019	Klein.
XVII	Reports of Government Property	91-58	90-454	Klein.
XVIII	Returnable Cylinders	91-10	90-457	Klein.
XIX	Small Business Innovation Research Rights in Data	93-305	.....	O'Neill.
XX	Corrections and Technical Amendments .....	.....	.....	.....
Notices	Annual notice of Rates of Inflation .....	.....	.....	Olson
	Availability of the 1993 Consolidated Reprint of the FAR.	.....	.....	.....

DATES: For effective dates, see separate documents which appear elsewhere in this separate part. Please cite FAC 90-20 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. For specific information contact the analyst whose name appears in relation to each FAR case or subject area (see table under **SUMMARY**). Please cite FAC 90-20 and applicable FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-20 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Section 6050M of the Tax Reform Act of 1986 (FAR Case 91-52)

The interim rule published at 57 FR 44259 on September 24, 1992 (FAC 90-

13, Item I), is converted to a final rule with one change. FAR Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the clause at 52.204-3, Taxpayer Identification, have been revised to ensure the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications. The approved change is to the last sentence of 52.204-3(b). A 31 percent figure has replaced the previous 20 percent figure as a result of an amendment to 26 U.S.C. 3406(a)(1).

Item II—Made in America Labels (FAR Case 93-301) and Unfair Trade Practices (FAR Case 93-306)

These interim rules add language to FAR 9.403, 9.406, and 9.407 concerning suspension or debarment of contractors who engage in unfair trade practices and/or intentionally affixed a label bearing a "Made in America" inscription (or any inscription having

the same meaning) to a product sold in or shipped to the United States.

Item III—Preference for Commercial Products (FAR Case 91-48)

The interim rule published as Item V of FAC 90-9 is converted to a final rule. The interim rule amended section 10.001 and revised sections 10.002(d) and 10.006(a) to provide an order of preference for the various types of product descriptions used in contracting. The final rule differs from the interim rule in that (1) the Department of Defense (DOD) requirement for mandatory use of product descriptions listed in the DOD Index of Specifications and Standards, which was inadvertently omitted from the interim rule, is reinstated at 10.006(a); (2) a new exception to the requirement for mandatory use of indexed product descriptions is added at 10.006(a)(6); and (3) editorial changes are made for clarification.

Item IV—Increase in Cost or Pricing Data Threshold (FAR Case 91-53)

The interim rule published at 56 FR 67413, December 30, 1991 (FAC-90-10, Item I), is confirmed as final without change. This rule amended the FAR to reflect an increase in the statutory threshold for submission of cost or pricing data from \$100,000 to \$500,000 for DOD, NASA, and the Coast Guard.

Item V—Reimbursement, Interest Charges, and Penalties for Overpayment; Clarification (FAR Case 91-99/89-37)

This item clarifies Item 11 of FAC-90-3 (55 FR 52782, December 21, 1990) regarding the application, to contract modifications, of the statutory and regulatory guidance on reimbursement, interest charges, and penalties for overpayment (FAR case 89-37). The word "contracts" in Item 11 includes control modifications.

For DOD, NASA, and the Coast Guard, the statutory and regulatory guidance applies to: (1) Contracts awarded on or after November 8, 1985; and (2) modifications issued on or after November 8, 1985, regardless of the date of contract award. For all other agencies, the regulatory guidance applies to contracts awarded and modifications issued after January 22, 1991.

If a contract is modified and that modification requires the submission of certified cost or pricing data, the contract must be updated to incorporate the January 1991 version of the clause at FAR 52.214-37, 52.215-22, or 52.215-23 for that modification. This updating is to ensure that the contract includes the requirement for interest on defective pricing reductions for modifications.

Item VI—Clarify Increased Cost or Pricing Data Threshold (FAR Case 91-96)

The interim rule published as Item X in FAC 90-16 is converted to a final rule without change. The interim rule revised FAR 15.804-2 to clarify application of the \$500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. This rule implements Section 804 of the FY 92 Defense Authorization Act, which amended 10 U.S.C. 2306a(a)(1) to specify that the \$500,000 threshold for DOD, Coast Guard, and NASA, also applies to subcontracts entered into after December 5, 1991, under prime contracts entered into on or before December 5, 1990, if the prime contract

is modified to incorporate the \$500,000 threshold. It also specifies that the \$500,000 threshold applies to changes or modifications made after December 5, 1991, when the prime contract is modified to incorporate the \$500,000 threshold.

Item VII—Nonmanufacturer Rule (FAR Case 91-50)

This converts the interim rule on the Nonmanufacturer Rule, published in the Federal Register at 57 FR 60571 on December 21, 1992, as Item XI of FAC 90-16, to a final rule with minor revisions. The interim rule implemented section 210 of Public Law 101-574. It revised FAR 19.001 and 19.102 to add a definition for the term "nonmanufacturer rule," to address Small Business Administration waiver of the nonmanufacturer rule for specific items, and to remove the partial listing of classes for which a waiver has been granted.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 91-97)

FAR 19.1001(b) and 19.1006(b)(1) are amended to extend the Small Business Competitiveness Demonstration Program through September 30, 1996. FAR 19.1006(b)(1) is also amended to clarify procedures when an emerging small business (ESB) reserve amount is greater than \$25,000. Section 19.1006(c)(1) is amended to delete the dollar threshold for the ESB reserve amount and substitute "established by the Office of Federal Procurement Policy." Subparagraph (c)(1) (i) and (ii) have been added to clarify how to proceed when there is not a reasonable expectation of offers from two or more responsible ESB's or when it is necessary to cancel an ESB set-aside.

Item IX—Removal of Steel Conduit From the FAR Buy American Act Exemption List (FAR Case 92-619)

Paragraph (d)(1) of 25.108, Excepted Articles, Materials, and Supplies, is being amended to remove steel conduit (5" and 6") from the FAR Buy American Act exemption list. Market research has uncovered two domestic sources for these products.

Item X—Buy American Act—Construction Materials (FAR Case 91-75)

The interim rule published at 57 FR 20372, May 12, 1992, (FAC 90-11, Item II) is confirmed as final without change. The interim rule amended FAR 25.201 and 52.225-5 to modify the definition of "construction material" to require evaluation of an emergency life safety

system as a single construction material under the Buy American Act, regardless of when and how the individual parts or components are delivered to the construction site. This rule implements section 631 of Public Law 102-141, Treasury, Postal Service and General Government Appropriations Act.

Item XI—Examination of Records (FAR Case 92-47) (Statutory)

FAR 25.901(c) is revised to make the requirement for notification of Congress, when the clause at 52.215-1, Examination of Records by Comptroller General, is omitted from a contract with a foreign contractor, inapplicable to the Department of Defense.

Item XII—Independent Research and Development and Bid and Proposal Costs (FAR Case 93-302)

FAR 31.205-18(c)(2)(iii)(A) is amended to insert a date certain with regard to waiving the limitation on the maximum allowable amount of independent research and development and bid and proposal costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190).

Item XIII—Prompt Payment Overseas (FAR Case 92-46)

This interim rule revises FAR 32.901 and amends the clauses at FAR 52.232-25, 52.232-26, and 52.232-27 to remove the statements that no interest penalty will be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and to remove the definition of "foreign vendor" from the clauses.

Item XIV—Federal Courts Administration Act (FAR Cases 92-301 and 91-62)

This interim rule amends FAR 33.201, 33.202, 33.204, 33.207, 33.208, 33.210, 33.211, 33.214, 42.302, and the clause at 52.233-1 concerning the certification of claims under the Contract Disputes Act (CDA). The rule implements section 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102-572) which requires that the person certifying a CDA claim be duly authorized to bind the contractor; specifies the conditions under which a contracting officer does not have to issue a final decision; provides that certifications are not jurisdictional; further revises the existing alternative dispute resolution (ADR) coverage; and

provides for payment of interest from the date of initial receipt of the claim or enactment of Public Law 102-572, whichever is later. (Pub. L. 102-572 was enacted on October 29, 1992.)

Item XV—Defense Traffic Management Regulation (FAR Case 92-53)

FAR Subpart 42.14, Traffic and Transportation Management, is amended to update the title of the Defense Traffic Management Regulation and to add references to Military Departments and Defense Logistics Agency regulations concerning traffic and transportation management. Cross references at FAR 47.103(b)(2), 47.200(e), and 47.305-6(f)(1)(ii) were also revised to update the title of the Defense Traffic Management Regulation. Cross references at 47.103(b)(2), 47.200(e), and 47.305-6(f)(1)(ii) were also revised to update the title of the Defense Traffic Management Regulation.

Item XVI—Records of Plant Equipment (FAR Case 91-73)

The FAR is being revised at 45.501, 45.505-1, 45.505-4, and 45.505-5 to add language on the use of summary records and expand the use of summary records to special tooling and special test equipment costing less than \$5,000.

Item XVII—Reports of Government Property (FAR Case 91-58)

FAR 45.505-14, Reports of Government Property, is revised to require contractors to report annually all classifications of Government property in their possession. The FAR revision expands the list of property classifications to be reported to include special tooling, special test equipment, material and agency peculiar property. It deletes the dollar amounts for plant equipment.

Item XVIII—Returnable Cylinders (FAR Case 91-10)

A clause, Returnable Cylinders, is added to the FAR at 52.247-66, and prescriptive language is added at 47.305-17. The clause describes the Government's responsibilities relating to the return and accountability of contractor-furnished returnable cylinders.

Item XIX—Small Business Innovation Research Rights in Data (FAR Case 93-305)

Paragraph (d) of the clause at FAR 52.227-20, Rights in Data—SBIR Program, is revised to increase the small business concern's data rights retention period from 2 to 4 years. This revision implements Section 15(f) of the revised SBIR Program Policy Directive,

published by the SBA in the *Federal Register* on January 26, 1993 (58 FR 6144).

Item XX—Corrections and Technical Amendments

Corrections and technical amendments have been made to FAR parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52, and 53 for clarification, to correct references and terms. For the convenience of the user, Standard Forms 254, 255, and Optional Form 333 are reprinted. Among the changes are the following:

Standard Forms 254 and 255

Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, which were revised and illustrated as Item XXIII in FAC 90-16 (57 FR 60570, December 21, 1992), are being republished in this FAC 90-20 to reflect the removal of the Office of Management and Budget's (OMB) date of expiration for clearance approvals and to reflect other minor typographic changes.

Optional Form 333

Optional Form 333, Procurement Integrity Certification for Procurement Officials, is authorized for local reproduction indefinitely and the revised version is published here for the convenience of the user.

Annual Notice of Rates of Inflation

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish, as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of independent research and development and bid and proposal (IR&D/B&P) costs for major contractors under FAR 31.205-18(c)(2)(i)(C)(2). These rates were issued by the Acting Comptroller of the Department of Defense in March 1993. FAR 31.205-18(c)(2)(i)(C)(2) states the rates of inflation will be published in the *Federal Register* on an annual basis.

Federal Acquisition Circular 90-13, FAR case 91-37, Item VII, published in the *Federal Register* at 57 FR 44264, September 24, 1992, provided rates of inflation which were to be used to determine the allowability of IR&D/B&P costs for major contractors during the 3-year transition period FY 1993 through 1995. FAR 31.205-18(c)(2)(i)(C)(2) states the rates of inflation will be published in the *Federal Register* on an annual

basis. The following rates of inflation are effective immediately, supersede those published in the *Federal Register* at 57 FR 44264, September 24, 1992, and shall remain in effect until superseded by the next publication:

Fiscal year	Annual percent-age rate
1993	2.4
1994	2.3
1995	2.3
1996	2.2

Availability of the 1993 Consolidated Reprint of the FAR

The 1993 Consolidated Reprint of the FAR will be available after March 30, 1994. Circulars amending the 1990 edition of the FAR have been consolidated up through December 31, 1993; therefore, reprint users should immediately begin filing with FAC 90-19, which was issued January 5, 1994, and will be distributed to subscribers in March.

For additional information, contact the FAR Secretariat at 202 501-4755. For subscription and distribution information, contact the Superintendent of Documents at 202 512-2305.

Dated: February 22, 1994.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90-20 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) and other directive material contained in FAC 90-20 is effective May 9, 1994, except for Items I, II, III, IV, VI, VII, X, XIII, XIV, XIX, and XX which are effective May 9, 1994.

Dated: November 30, 1993.

Eleanor R. Spector,
Director, Defense Procurement.

Dated: November 9, 1993.

Richard H. Hopf III,
Associate Administrator for Acquisition Policy, General Services Administration.

Dated: October 29, 1993.

Thomas S. Luedtke,
Acting Deputy Associate Administrator for Procurement, NASA.

[FR Doc. 94-4381 Filed 3-9-94; 8:45 am]

BILLING CODE 6820-34-M

48 CFR Parts 4 and 52

[FAC 90-20; FAR Case 91-52; Item I]

RIN 9000-AF09

Federal Acquisition Regulation; Section 6050M of the Tax Reform Act of 1986

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

ACTION: Interim rule adopted as final.

SUMMARY: This adopts as final, with one change, the interim rule published at 57 FR 44259, September 24, 1992, as Item I of FAC 90-13. That rule amended the coverage "Information Reporting to the Internal Revenue Service (IRS)," of the Federal Acquisition Regulation (FAR), to ensure the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications occurring on or after April 1, 1990, when the initial contract was entered into before January 1, 1989. In addition, the coverage has been rearranged for clarification and the provision entitled "Taxpayer Identification" has been revised to update a reference. When the IRS issued its final regulations implementing section 6050M of the Tax Reform Act of 1986 (Public Law 99-514), the reporting requirements included the requirement to report certain modifications to contracts that were awarded before January 1, 1989. The Office of Federal Procurement Policy (OFPP) requested that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council consider revising the FAR accordingly. The rule is being adopted as a final rule with one change. The approved change is to the provision entitled "Taxpayer Identification" and consists of replacing the previous 20 percent figure with a 31 percent figure as a result of an amendment to 26 U.S.C. 3406(a)(1).

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR case 91-52.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 6050M of title 26, United States Code, requires heads of Federal

executive agencies to report certain contract information to the IRS. The information returns filed under section 6050M are used as a source of information to collect delinquent Federal tax liabilities of persons who enter into contracts with Federal executive agencies.

On December 6, 1989, the IRS published regulations that implemented section 6050M of the Tax Reform Act of 1986 (Pub. L. 99-514). The regulations apply to Federal executive agencies' contracts entered into on or after January 1, 1989, except that, with respect to a basic or initial contract entered into before January 1, 1989, the regulations do not apply to an increase contract action treated as a new contract if the increase occurred before April 1, 1990, or if the increase is not in excess of \$50,000. The information required to be reported for contract actions over \$25,000 includes name, address, and TIN of the Contractor, name and TIN of the common parent (if any); date of the contract action; amount obligated on the contract; and duration of the contract.

The OFPP requested that the FAR be revised to ensure that agency reporting requirements include the requirement to report certain modifications to contracts that were awarded before January 1, 1989. Interim rule coverage was published on September 24, 1992, with a request for comment. One response (a "no comment") was received. However, one change was made to paragraph (b) of 52.204-3, Taxpayer Identification, as a result of an amendment to 26 U.S.C. 3406(a)(1).

B. 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all taxpayers are required to have a TIN, and this rule merely requests that contractors provide that number for certain contract modifications.

This rule was published as an interim rule with a request for comments (see 57 FR 44259, September 24, 1992), and no comments were received regarding the Regulatory Flexibility Act statement.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because the final rule increases the existing burden. Accordingly, a request for approval of a revised information collection requirement concerning OMB Control

Number 9000-0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number) was submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*, and was published in the Federal Register on October 16, 1992. OMB approved the collection through December 31, 1995.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final With One Change

Accordingly, the interim rule amending 48 CFR parts 4 and 52, which was published at 57 FR 44259 on September 24, 1992, is adopted as a final rule with the following change:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR parts 4 and 52 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).

52.204-3 [Amended]

Section 52.204-3 is amended in the last sentence of paragraph (b) by removing the figure "20" and inserting "31" in its place.

[FR Doc. 94-4382 Filed 3-9-94; 8:45 am]

BILLING CODE 6820-34-M

48 CFR Part 9

[FAC 90-20; FAR Cases 93-301 and 93-306; Item II]

RIN 9000-AF40

Federal Acquisition Regulation; Made in America Labels/Unfair Trade Practices

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

ACTION: Interim rules with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to interim rules amending the Federal Acquisition Regulation (FAR) to implement sections 201 and 202 of the Defense Production Act. Section 201 directs that the FAR be amended to address the responsibility of contractors

who engage in unfair trade practices as defined in section 201. Section 202 directs that the FAR be amended to address the responsibility of persons that intentionally affix a label bearing a fraudulent "Made in America" inscription to a product sold in or shipped to the United States.

DATES: Effective Date: March 10, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Attn.: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-20, FAR cases 93-301 and 93-306, as appropriate, in all correspondence related to these cases.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to these FAR cases. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR cases 93-301 and 93-306, as appropriate.

SUPPLEMENTARY INFORMATION:

A. Background

Section 201 of the Defense Production Act (Pub. L. 102-558), provides that any contractor who has engaged in unfair trade practices may be found to lack such business integrity to affect the contractor's responsibility to perform a Government contract or subcontract. Section 201 defines "unfair trade practices" as the commission by a contractor of any of the following acts: (1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as determined by the International Trade Commission, (2) a violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement, and (3) a knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished. Section 201 mandates that this statement of public contract law policy be implemented by amending Subpart 9.4 of title 48, Code of Federal Regulations, not later than 270 days after the date of enactment of the

Defense Production Act (October 28, 1992).

Section 202 of the Defense Production Act (Pub. L. 102-558) provides that any person determined to have intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when such product was not made in the United States, may be found to lack business integrity or business honesty to such a degree as to affect their responsibility to perform a Federal contract or subcontract. Section 202 mandates that this statement of policy be implemented by amending FAR Subpart 9.4 (Debarment, Suspension, and Ineligibility) not later than 270 days (July 28, 1993) after the date of enactment of the Defense Production Act (October 28, 1992).

B. Regulatory Flexibility Act

These interim rules are not expected to 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 changes do not impose any new requirements on contractors and the amendments to FAR Subpart 9.4 are mandatory. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR cases 93-301, Made in America Labels, and/or 93-306, Unfair Trade Practices, as appropriate), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. This action is necessary because the required date for issuance of regulations under Public Law 102-558 was July 28, 1993.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 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. Section 9.403 is amended by adding, in alphabetical order, the definition "Unfair trade practices" to read as follows:

9.403 Definitions.

Unfair trade practices, as used in this subpart, means the commission of any of the following acts by a contractor:

(1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

2. Section 9.406-2 is amended at the end of paragraph (a)(3) by removing the word "or"; by redesignating paragraph (a)(4) as (a)(5) and adding new paragraphs (a)(4), (b)(3), and (b)(4) to read as follows:

9.406-2 Causes for debarment.

(a) * * *

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)); or

(b) * * *

(3) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when

the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)).

(4) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102-558)).

* * * * *

3. Section 9.407-2 is amended by redesignating paragraph (a)(5) as (a)(7) and adding new paragraphs (a)(5) and (a)(6) to read as follows:

9.407-2 Causes for suspension.

(a) * * *

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558));

(6) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102-558)); or

* * * * *

[FR Doc. 94-4383 Filed 3-9-94; 8:45 am]

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48 CFR Part 10

[FAC 90-20; FAR Case 91-48; Item III]

RIN 9000-AE95

Federal Acquisition Regulation; Preference for Commercial Products

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clearly reflect the preference for use of voluntary standards, commercial item descriptions, and functional or performance specifications over design-type specifications. This rule amends and finalizes the interim rule published in *Federal Register* on December 27, 1991 (56 FR 67130).

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR case 91-48.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2325 of title 10, United States Code, requires, to the maximum extent practicable, that DOD requirements shall be stated in terms of (1) functions to be performed, (2) performance required, or (3) essential physical characteristics, and that such requirements shall be fulfilled through the acquisition of nondevelopmental items. Section 824(c) of the Fiscal Year 1990 Defense Authorization Act (Pub. L. 101-189) requires the Secretary of Defense to consider whether revisions to the regulations governing specifications, standards, and other purchase descriptions are necessary to implement the requirements of section 2325 of title 10, United States Code. An interim rule was published in the *Federal Register* on December 27, 1991 (56 FR 67130) to implement these statutory requirements. This final rule differs from the interim rule in that (1) the DOD requirement for mandatory use of product descriptions listed in the DOD Index of Specifications and Standards, which was inadvertently omitted from the interim rule, is reinstated at section 10.006(a); (2) a new exception to the requirement for mandatory use of indexed product descriptions is added at section 10.006(a)(6); and (3) editorial changes are made for clarification.

B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis was prepared supporting the interim rule, because it was anticipated that the proposed changes might have a significant economic impact on a substantial number of small entities. However, none of the public comments received indicated any concerns in this area. The additional changes included in the final rule do not constitute significant FAR revisions within the meaning of FAR 1.501 and Public Law 98-577. A Final Regulatory Flexibility Analysis has been prepared and is available from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-48), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office

of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On December 27, 1991, an interim rule was published in the *Federal Register* (56 FR 67130). Seven comments were received from five organizations. All comments were considered, and changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR part 10, which was published at 56 FR 67130 on December 27, 1991, is adopted as a final rule with the following changes:

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1. The authority citation for 48 CFR part 10 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. Section 10.001 is amended by revising the definitions "Commercial item description" and "Product description" to read as follows:

10.001 Definitions.

* * * * *

Commercial item description (CID) means an indexed, simplified product description managed by the General Services Administration (GSA) that describes, by functional, performance, or essential physical requirements, the available, acceptable commercial products that will satisfy the Government's needs.

* * * * *

Product description is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, CID's, or purchase descriptions.

* * * * *

3. Section 10.002 is amended by revising paragraph (d) to read as follows:

10.002 Policy.

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(d) To the maximum practicable extent, unless inconsistent with applicable law or incapable of meeting the Government's needs, agencies shall