

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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not require application of the cost principle contained in this rule.

### 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.* The interim rule deleted a reporting and recordkeeping requirement at FAR 31.205-2 under OMB Control Number 9000-0072.

#### List of Subjects in 48 CFR Parts 1 and 31

Government procurement.

#### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 1 and 31 which was published at 61 FR 69287, December 31, 1996, is adopted as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: August 7, 1997

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*  
[FR Doc. 97-21489 Filed 8-21-97; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 10, 11, 13, 15, 23, 36, 42, and 52

[FAC 97-01; FAR Case 92-054A; Item V]

RIN 9000-AG40

### Federal Acquisition Regulation; Environmentally Sound Products

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

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item II of Federal Acquisition Circular 90-27 on May 31, 1995. The rule amends the Federal Acquisition Regulation (FAR) to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATE:** Effective October 21, 1997.

**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 Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-01, FAR case 92-054A.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

An interim rule was published in the **Federal Register** at 60 FR 28494, May 31, 1995. Ninety comments were received from 18 respondents.

The Councils' analysis of those comments resulted in revisions to the rule to: revise the definitions of "new" and "reconditioned" at 11.001 and in the clause at 52.211-5; delete the definitions of "material" and "other than new" at 11.001 and in the clause at 52.211-5; add Executive Order No. 12909 of March 8, 1994, to the list of statutory authorities at 11.002; clarify the policy on acceptability of used, reconditioned, or remanufactured supplies, and former Government surplus property proposed for use under a contract; delete the definition of "source reduction" at 15.601; delete all requirements related to "agency designated items" in Subpart 23.4; add a definition of "pollution prevention" at 23.703; streamline the clauses at 52.211-5 through 52.211-7 by combining their requirements into the clause at 52.211-5; eliminate the solicitation provision at 52.223-8; and streamline the clause at 52.223-9.

##### B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

This action is being taken to implement the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*), as amended; Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention; Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities; and Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services.

The objective of this rule is to amend the FAR to clearly reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. The rule also implements policies for procurement of items for which the Environmental Protection Agency (EPA) has designated minimum recovered material content.

We received no public comments which specifically addressed the Initial Regulatory Flexibility Analysis.

The final rule's policies regarding acceptable new and used materials apply to all small and large entities that perform or propose to perform Government contracts. No statistics are maintained on the number of offerors that propose used, reconditioned, or remanufactured materials for use under Government contracts.

The requirements for minimum recovered material content for EPA-designated items apply to all entities that supply such items, with a value exceeding \$10,000 per year, to the Government. However, the final rule exempts procurements under the simplified acquisition threshold of \$100,000 from recovered material content reporting requirements. Based on Fiscal Year 1995 Governmentwide procurement statistics for Federal Supply/Service Codes which comprise EPA-designated items, we estimate that the Federal Government receives approximately 20,875 covered proposals per year from small entities, and awards approximately 2,280 covered contracts per year to small entities.

Several reporting requirements were streamlined or eliminated in this final rule. Certifications of recovered material content are now required only in response to solicitations which are for, or which specify the use of, EPA-designated items. Such certifications are no longer required on an annual basis and are required only under contracts which exceed the simplified acquisition threshold.

Reporting requirements related to agency-designated items have been eliminated.

We considered elimination of the requirement that an offeror notify the contracting officer when the offeror proposes the use of used, remanufactured, or reconditioned supplies. However, we determined that use of such supplies under many contracts might be unacceptable. The notification requirement will allow contracting officers to continue to decide on a case-by-case basis whether to permit use of such supplies.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. The final rule reduces the information collection requirements contained in the interim rule and approved by the Office of Management and Budget (OMB) under OMB Control Number 9000-0134.

**List of Subjects in 48 CFR Parts 1, 10, 11, 13, 15, 23, 36, 42, and 52**

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final With Changes**

Accordingly, the interim rule amending 48 CFR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, and 52, which was published at 60 FR 28494, May 31, 1995, is hereby adopted as final with the following changes:

1. The authority citation for 48 CFR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, 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).

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**1.106 [Amended]**

2. Section 1.106 is amended in the list following the introductory paragraph by removing the entries "52.210-5" and "52.210-6" and the corresponding OMB control numbers "9000-0030" in both places; and by adding the following entries in numerical order:

FAR segment	OMB control No.
* * * * *	* * * * *
52.211-5 .....	9000-0030
* * * * *	* * * * *
52.223-4 .....	9000-0134
* * * * *	* * * * *
52.223-8 .....	9000-0134
* * * * *	* * * * *

**PART 11—DESCRIBING AGENCY NEEDS**

3.-4. Section 11.001 is revised to read as follows:

**11.001 Definitions.**

As used in this part—

*New* means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw

material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including, but not limited to, performance, reliability, and life expectancy.

*Reconditioned* means restored to the original normal operating condition by readjustments and material replacement.

*Recovered material* has the meaning provided such term in 23.402.

*Remanufactured* means factory rebuilt to original specifications.

*Virgin material* means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

5. Section 11.002 is amended in paragraph (d) by revising the first sentence to read as follows:

**11.002 Policy.**

\* \* \* \* \*

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, Executive Order 12873, dated October 20, 1993, and Executive Order 12902, dated March 8, 1994, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. \* \* \*

\* \* \* \* \*

6. Section 11.101 is amended by revising paragraph (b) to read as follows:

**11.101 Order of precedence for requirements documents.**

\* \* \* \* \*

(b) Agencies should prepare product descriptions to achieve maximum practicable use of recovered material, other materials that are environmentally preferable, and products that are energy-efficient (see subparts 23.4 and 23.7).

7. Subpart 11.3, consisting of sections 11.301 and 11.302, is revised to read as follows:

**Subpart 11.3—Acceptable Material**

**11.301 Policy.**

(a) Agencies shall not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b) Except when acquiring commercial items, agencies shall require offerors to identify used, reconditioned, or remanufactured supplies, or unused

former Government surplus property, proposed for use under the contract. Such supplies or property may not be used in contract performance unless authorized by the contracting officer.

(c) When acquiring commercial items, the contracting officer shall consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property, proposed for use under the contract. The request for such information shall be included in the solicitation and shall, to the maximum practicable extent, be limited to information provided pursuant to normal commercial practices.

**11.302 Contract clause.**

Except when acquiring commercial items, the contracting officer shall insert the clause at 52.211-5, Material Requirements, in solicitations and contracts for supplies.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

8. Section 13.111 is amended by revising paragraph (h) to read as follows:

**13.111 Inapplicable provisions and clauses.**

\* \* \* \* \*

(h) 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

**PART 15—CONTRACTING BY NEGOTIATION**

**15.601 [Amended]**

9. Section 15.601 is amended by removing the definition "Source reduction".

10. Section 15.605 is amended by revising paragraph (b)(1)(iv) to read as follows:

**15.605 Evaluation factors and subfactors.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Environmental objectives, such as promoting waste reduction and energy efficiency (see part 23), also shall be considered in every source selection, when appropriate. These considerations may be expressed in terms such as resource or energy conservation, pollution prevention, waste minimization, and recovered material content.

\* \* \* \* \*

**PART 23—ENVIRONMENT,  
CONSERVATION, OCCUPATIONAL  
SAFETY, AND DRUG-FREE  
WORKPLACE**

11. Section 23.400 is revised to read as follows:

**23.400 Scope of subpart.**

This subpart prescribes policies and procedures for acquisition of—

(a) Environmental Protection Agency (EPA) designated items for which agencies must develop and implement affirmative procurement programs pursuant to 42 U.S.C. 6901, *et seq.*, and Executive Order 12873; and

(b) Other products when preference is given to offers of products containing recovered material.

**23.401 [Amended]**

12. Section 23.401 is amended in the first sentence of paragraph (c) by inserting “as amended,” following “October 20, 1993.”

13. Section 23.402 is amended by adding an introductory sentence and revising the definitions “EPA designated item” and “Postconsumer material” to read as follows:

**23.402 Definitions.**

As used in this subpart—

*EPA designated item* means an item—

(1) That is or can be made with recovered material;

(2) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

*Postconsumer material* means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item.

Postconsumer material is a part of the broader category of “recovered material.”

\* \* \* \* \*

14. Sections 23.404 and 23.405 are revised to read as follows:

**23.404 Procedures.**

(a) *Applicability.* These procedures apply to all agency acquisitions of EPA designated items when—

(1) The price of the item exceeds \$10,000; or

(2) The aggregate amount paid for items, or for functionally equivalent items, in the preceding fiscal year was \$10,000 or more.

(b) *EPA designated items.* (1) EPA designates items that are or can be made with recovered materials in 40 CFR part

247 and accompanying RMAN's. The RMAN cites the applications for which the EPA items have been designated and the percentages of recovered material content.

(2) For EPA designated items, agencies shall establish an affirmative procurement program. The responsibilities for preparation, implementation, and monitoring of affirmative procurement programs shall be shared between technical or requirements personnel and procurement personnel. As a minimum, such programs shall include—

(i) A recovered materials preference program;

(ii) An agency promotion program;

(iii) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

(iv) Annual review and monitoring of the effectiveness of the program.

(3) Acquisition of EPA designated items that do not meet the EPA minimum recovered material standards shall be approved by an official designated by the agency head based on a written determination that the items—

(i) Are not available within a reasonable period of time;

(ii) Are available only at unreasonable prices;

(iii) Are not available from a sufficient number of sources to maintain a satisfactory level of competition; or

(iv) Based on technical verification, fail to meet performance standards in the specifications. Technical or requirements personnel shall provide a written statement when this determination is used partially or totally as a basis for an exemption. This determination shall be made on the basis of National Institute of Standards and Technology guidelines in any case in which the material is covered by these guidelines.

(4) Contractor certifications required by the clause at 52.223-9 shall be consolidated and reported in accordance with agency procedures.

**23.405 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 52.223-4, Recovered Material Certification, in solicitations that are for, or specify the use of, recovered materials.

(b) The contracting officer shall insert the clause at 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items, in contracts exceeding the simplified acquisition threshold that are for, or specify the use of, an EPA designated item.

15. Section 23.703 is amended by adding an introductory sentence and, in alphabetical order, the definition “Pollution prevention”; and by revising the definition “Waste prevention” to read as follows:

**23.703 Definitions.**

As used in this subpart—

\* \* \* \* \*

*Pollution prevention* means any practice that—

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants; or

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources.

\* \* \* \* \*

*Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

\* \* \* \* \*

16. Section 23.704 is revised to read as follows:

**23.704 Policy.**

(a) Agencies shall implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services, and shall employ acquisition strategies that affirmatively implement the objectives in paragraph (b) of this section.

(b) The following environmental objectives shall be addressed throughout the acquisition process:

(1) Obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance).

(2) Obtaining products considered to be energy-efficient; *i.e.*, products that are in the upper 25 percent of energy-efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards (see Executive Order 12902, Section 507).

(3) Eliminating or reducing the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promoting the use of nonhazardous and recovered materials.  
(5) Realizing life-cycle cost savings.  
(6) Promoting cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

17. Section 36.601-3 is amended by revising paragraph (a) to read as follows:

**36.601-3 Applicable contracting procedures.**

(a) For facility design contracts, the statement of work shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications.

\* \* \* \* \*

18. Section 36.602-1 is amended by revising paragraph (a)(2) to read as follows:

**36.602-1 Selection criteria.**

(a) \* \* \*  
(2) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;

\* \* \* \* \*

19. Section 36.602-3 is amended by revising paragraph (c) to read as follows:

**36.602-3 Evaluation board functions.**

\* \* \* \* \*

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

\* \* \* \* \*

**PART 42—CONTRACT ADMINISTRATION**

20. Section 42.302 is amended by revising paragraph (a)(68) introductory text and (a)(68)(i) to read as follows:

**42.302 Contract administration functions.**

(a) \* \* \*

(68) Evaluate the contractor's environmental practices to determine

whether they adversely impact contract performance or contract cost, and ensure contractor compliance with environmental requirements specified in the contract. Contracting officer responsibilities include, but are not limited to—

(i) Ensuring compliance with specifications requiring the use of environmentally preferable and energy-efficient materials and the use of materials or delivery of end items with the specified recovered material content. This shall occur as part of the quality assurance procedures set forth in part 46.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

21. Section 52.211-5 is revised to read as follows:

**52.211-5 Material Requirements.**

As prescribed in 11.302, insert the following clause:

Material Requirements (Oct 1997)

(a) *Definitions.*  
As used in this clause—  
*New* means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

*Reconditioned* means restored to the original normal operating condition by readjustments and material replacement.

*Recovered material* means waste materials and by-products that have been recovered or diverted from solid waste including postconsumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

*Remanufactured* means factory rebuilt to original specifications.

*Virgin material* means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of clause)

**52.211-6 and 52.211-7 [Removed and Reserved]**

22. Sections 52.211-6 and 52.211-7 are removed and reserved.

23. Section 52.223-4 is revised to read as follows:

**52.223-4 Recovered Material Certification.**

As prescribed in 23.405(a), insert the following provision:

Recovered Material Certification (Oct 1997)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

(End of provision)

**52.223-8 [Removed and reserved]**

24. Section 52.223-8 is removed and reserved.

25. Section 52.223-9 is revised to read as follows:

**52.223-9 Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.**

As prescribed in 23.405(b), insert the following clause:

Certification and Estimate of Percentage of Recovered Material Content For EPA Designated Items (Oct 1997)

(a) As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(j)(2)(C)), the Contractor shall execute the following certification:

Certification

I, \_\_\_\_\_ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA Designated Items was at least the amount required by the applicable contract specifications.

\_\_\_\_\_  
[Signature of the Officer or Employee]

\_\_\_\_\_  
[Typed Name of the Officer or Employee]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Name of Company, Firm, or Organization]

\_\_\_\_\_  
[Date]

(End of certification)

(b) The Contractor also shall estimate the percentage of recovered materials actually used in the performance of this contract. The estimate is in addition to the certification in paragraph (a) of this clause.

ESTIMATE

EPA designated item	Total dollar value of EPA designated item	Percentage of recovered material content *
.....	.....	.....
.....	.....	.....
.....	.....	.....

\*Where applicable, also include the percentage of postconsumer material content.

(c) The Contractor shall submit this certification and estimate upon completion of the contract to

\*To be completed in accordance with agency procedures.

(End of clause)

26. Section 52.223-10 is amended by revising the clause date and paragraph (b) to read as follows:

**52.223-10 Waste Reduction Program.**

\* \* \* \* \*

Waste Reduction Program (Oct 1997)

\* \* \* \* \*

(b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. Any such program shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6901, *et seq.*) and implementing regulations.

(End of clause)

[FR Doc. 97-21490 Filed 8-21-97; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 1**

[FAC 97-1; FAR Case 96-329; Item VI]

RIN 9000-AH67

**Federal Acquisition Regulation; New FAR Certifications**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to

reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). Section 4301(b)(2) prohibits the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** Effective October 21, 1997.

**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 Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-01, FAR case 96-329.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule adds a new section at FAR 1.107 to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). Section 4301(b)(2) amends Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) to prohibit the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification.

**B. Regulatory Flexibility Act**

The 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 comment is not required. However, 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.* (FAC 97-1, FAR case 96-329), 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.*

**List of Subjects in 48 CFR Part 1**

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 1 is amended as set forth below:

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

1. The authority citation for 48 CFR Part 1 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 1.107 is added to read as follows:

**1.107 Certifications.**

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

- (a) The certification requirement is specifically imposed by statute; or
- (b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

[FR Doc. 97-21491 Filed 8-21-97; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 7, 16, 37, 42, 46, and 52**

[FAC 97-01; FAR Case 95-311; Item VII]

RIN 9000-AH14

**Federal Acquisition Regulation; Service Contracting**

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