

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 2005–07; Introduction**

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

**ACTION:** Summary presentation of final and interim rules, and technical amendments.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–07. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.acqnet.gov/far>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–07 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acqnet.gov/far>. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Item	Subject	FAR case	FAR Analyst
I	Transportation: Standard Industry Practices	2002–005	Parnell.
II	Common Identification Standard for Contractors(Interim)	2005–015	Jackson.
III	Change to Performance–based Acquisition	2003–018	Jackson.
IV	Free Trade Agreements–Australia and Morocco	2004–027	Marshall.
V	Deletion of the Very Small Business Pilot Program	2005–013	Cundiff.
VI	Purchases From Federal Prison Industries–Requirement for MarketResearch	2003–023	Nelson.
VII	Exception from Buy American Act for CommercialInformation Technology (Interim)	2005–022	Marshall.
VIII	Removal of Sanctions Against Libya	2005–026	Marshall.
IX	Elimination of Certain Subcontract NotificationRequirements	2003–024	Cundiff.
X	Annual Representations and Certifications–NAICSCode/Size	2005–006	Zaffos.
XI	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–07 amends the FAR as specified below:

**Item I—Transportation: Standard Industry Practices (FAR Case 2002–005)**

This final rule amends FAR Parts 1, 42, 46, 47, 52, and 53 to clarify and update the FAR coverage to reflect the latest changes to the Federal Management Regulation and statutes that require use of commercial bills of lading for domestic shipments. This final rule amends the FAR to—

- Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52.242–10 and FAR 52.242–11 and revise and relocate FAR clause 52.242–12 to FAR 52.247–68;
- Add definitions of “bill of lading,” “commercial bill of lading,” and “Government bill of lading” and clarify the usage of each term throughout FAR Part 47;
- Add definitions of “Government rate tenders,” “household goods,” “noncontiguous domestic trade,” and “released or declared value”;

- Require the use of commercial bills of lading for domestic shipments;
- Revise the references to “49 U.S.C. 10721” to read “49 U.S.C. 10721 and 13712” throughout FAR Part 47 to make it clear that Government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carrier, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of “carrier” at 49 U.S.C. 13102); and
- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR 372 Subpart B.

**Item II—Common Identification Standard for Contractors (FAR Case 2005–015)**

This interim rule amends the FAR by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD–12), “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification (PIV) of Federal Employees and Contractors.” The primary objectives of HSPD–12 are to establish a

process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors.

**Item III—Change to Performance-based Acquisition (FAR Case 2003–018)**

This final rule amends the FAR by changing the terms “performance-based contracting (PBC)” and “performance-based service contracting (PBSC)” to “performance-based acquisition (PBA)” throughout the FAR; adding applicable PBA definitions of “Performance Work Statement (PWS)” and “Statement of Objectives (SOO)”, and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate.

**Item IV—Free Trade Agreements—Australia and Morocco (FAR Case 2004–027)**

This final rule converts the interim rule published at 69 FR 77870,

December 28, 2004, to a final rule with changes. It allows contracting officers to purchase the products of Australia without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which were scheduled to go into effect on or after January 1, 2005, according to Public Laws 108-286 and 108-302. However, the Morocco Free Trade Agreement has not yet entered into force and, therefore, the implementation of the Morocco Free Trade Agreement has been removed from the final rule. The Australian Free Trade Agreement joins the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is \$58,550 (the same as other Free Trade Agreements to date).

**Item V—Deletion of the Very Small Business Pilot Program (FAR Case 2005-013)**

This final rule amends the FAR to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set aside for very small business concerns certain acquisitions with an anticipated dollar value between \$2,500 and \$50,000. The Councils are removing the FAR coverage because the legislative authority for the program terminated on September 30, 2003. Acquisitions previously set aside for pilot program vendors will now be open to other small businesses.

**Item VI—Purchases From Federal Prison Industries—Requirement for Market Research (FAR Case 2003-023)**

This final rule converts the interim rule published in FAC 2001-21 at 69 FR 16148, March 26, 2004, and the interim rule published as Item I of FAC 2005-03 at 70 FR 18954, April 11, 2005, to a final rule with amendments at FAR 8.602 to clarify the applicability of the rule. The rule implements Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency, pursuant to Governmentwide procurement

regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n.

**Item VII—Exception from Buy American Act for Commercial Information Technology (FAR Case 2005-022)**

This interim rule amends FAR 25.103 and FAR Subpart 25.11 to implement Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items. This applies only to the use of FY 2005 funds. This same exemption appeared last year in section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108-199). The FY 04 exemption was implemented through deviations by the individual agencies.

The interim rule is based on the estimation that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies. The effect of this exemption is that the following clauses are no longer applicable in acquisition of commercial information technology:

- FAR 52.225-1, Buy American Act—Supplies.
- FAR 52.225-2, Buy American Act Certificate.
- FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act.
- FAR 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Certificate.

This is because the Buy American Act no longer applies; and the Free Trade Agreement non-discriminatory provisions are no longer necessary, since all products now are treated without the restrictions of the Buy American Act.

**Item VIII—Removal of Sanctions Against Libya (FAR Case 2005-026)**

This final rule removes Libya from the list of prohibited sources at FAR Subpart 25.7 and the associated clause at 52.225-13, Restriction on Certain Foreign Purchases. Acquisitions of products from Libya may still be subject to restrictions of the Buy American Act, trade agreements, or other domestic source restrictions. The Department of State has not yet removed Libya from the list of state sponsors of terrorism.

**Item IX—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003-024)**

This final rule converts, with minor changes, the Federal Acquisition Regulation (FAR) interim rule published in the **Federal Register** at 70 FR 11761, March 9, 2005. The rule impacts contractors with Department of Defense (DoD), National Aeronautics and Space Administration (NASA), or Coast Guard cost-reimbursement contracts and Government personnel who award and administer those contracts. The interim rule amended FAR 44.201-2, Advance Notification Requirements, and 52.244-2, Subcontracts, to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, in Public Law 108-136. Section 842 removed the requirement under cost-reimbursement contracts with DoD, Coast Guard, and NASA for contractors to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract. The final rule makes two changes that resulted from one of the public comments. The final rule deletes Alternate I from FAR 44.204, Contract clauses for the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, and deletes the current Alternate I from 52.244-2, Subcontracts.

**Item X—Annual Representations and Certifications—NAICS Code/Size (FAR Case 2005-006)**

This final rule amends the FAR provision at 52.204-8 to provide a place for contracting officers to inform prospective offerors of the NAICS code and small business size standard applicable to the procurement.

**Item XI—Technical Amendments**

Editorial changes are made at FAR 9.203(b)(2), 11.102, 11.201(a), 11.201(b), 11.201(d)(2), 11.201(d)(3), 11.201(d)(4), 11.204(b), 25.1101(e)(2), and the provisions at 52.211-2 and 52.212-1 in order to update references.

The authority citation for FAR parts 27, 34, 38, 39, 43, 46, 48, and 50 is revised.

Dated: December 22, 2005.

**Gerald Zaffos,**

*Director, Contract Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005-07 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.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-07 is effective February 2, 2006 except for Items II, IV, V, VI, VII, IX, X and XI which are effective January 3, 2006

Dated: December 21, 2005.

**Domenic C. Cipicchio,**

*Acting Director, Defense Procurement and Acquisition Policy.*

Dated: December 16, 2005.

**Roger D. Waldron,**

*Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

Dated: December 14, 2005.

**Tom Luedtke,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 42, 46, 47, 52, and 53

[FAC 2005-07; FAR Case 2002-005; Item I]

RIN 9000-AJ84

#### Federal Acquisition Regulation; Transportation: Standard Industry Practices

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement changes to the Interstate Commerce Act, which abolished tariff-filing requirements for motor carriers of freight and the Interstate Commerce Commission (ICC). Also, the rule implements changes to the Federal Management Regulation that require use of commercial bills of lading for domestic shipments.

**DATES:** *Effective Date:* February 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAC 2005-07, FAR case 2002-005. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 4004, January 27, 2004, with request for comments. Thirteen comments from five respondents were received. A discussion of the comments is provided below. Consideration of these comments resulted in minor changes to the rule. In addition, editorial changes were made in the rule.

This final rule amends the FAR to implement changes to the Interstate Commerce Act. The Act has been substantially amended in recent years, most notably by the Trucking Industry Regulatory Reform Act of 1994 (Title II of Public Law 103-311), which abolished tariff-filing requirements for motor carriers of freight, and by the Interstate Commerce Commission (ICC) Termination Act of 1995 (Pub. L. 104-88), which abolished the ICC. Also, the rule implements changes to the Federal Management Regulation that require use of commercial bills of lading for domestic shipments. This rule amends the FAR to—

- Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52.242-10 and FAR 52.242-11 and revise and relocate FAR clause 52.242-12 to FAR 52.247-68;
- Add definitions of “bill of lading,” “commercial bill of lading,” and “Government bill of lading” and clarify the usage of each term throughout FAR Part 47;
- Add definitions of “Government rate tenders,” “household goods,” “noncontiguous domestic trade,” and “released or declared value”;
- Require the use of commercial bills of lading for domestic shipments;
- Revise the references to “49 U.S.C. 10721” to read “49 U.S.C. 10721 and 13712” throughout FAR Part 47 to make it clear that Government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carrier, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of “carrier” at 49 U.S.C. 13102);

- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR Part 372, Subpart B; and

- Make other conforming and editorial changes to FAR Part 47 and related clauses.

##### B. Summary and Discussion of Public Comments

*Comment 1:* In reading the existing and proposed text of the clause at FAR 52.247-67 it is not clear that after the commercial bill of lading (CBL) is audited and the CBL is forwarded to the paying office for payment, who the paying office makes the check out to. Is it the shipper or is it the contractor for the supply contract that contains the clause at FAR 52.247-1, F.O.B. Origin?

*Councils' response:* The Councils recommend no action in response to this comment. The intent of the FAR 52.247-67 revision was to change the title and include mandatory use of prepayment audits for transportation billings in respect to cost-reimbursable contracts. FAR 52.247-67 is not meant to address issues of payment. The intent of this clause is for contractors to submit CBLs to the contracting officer for a prepayment audit in excess of \$100 (threshold raised from \$50 to \$100) for cost-reimbursement. In this scenario, the “contractor” has already paid the “carrier.” The contractor submits the paid CBL to the contracting activity (fill-in completed by the contracting officer.) The agency makes a determination the transportation charges are valid, proper, and conform to related services with tariffs, quotations, agreements or tenders prior to contractor reimbursement. Previously, contractors were responsible for forwarding copies of freight bills/invoices, CBL’s passenger coupons, and supporting documents along with a statement to General Services Administration (GSA). The new process places the responsibility with the contracting activity to conduct CBL prepayment audit and forward original copies of paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents as soon as possible following the end of the month in one package, for postpayment audit to GSA.

In response to the question “who is the check made out to?” It will always be the contractor, since the carrier is already paid; however, the mechanics of the check process is outside the scope of this clause. Also note the commentor’s reference to FAR clause 52.247-1, F.O.B. Origin. The clause title should read “Commercial Bill of Lading Notations.”