

applications can operate in an IPv6 environment without costly upgrades. The final rule is necessary to amend the FAR to require IPv6 capable products be included in IT procurements. In addition, establishing FAR language ensures that all new information technology systems and applications purchased by the Federal Government will be able to operate in an IPv6 environment, to the maximum extent practical. The Councils believe that the final rule fully captures the intent of OMB Memorandum M-05-22.

b. Comment: One respondent questioned whether any of the proposed amendments to FAR parts 7, 12 and 39 need to refer to the "additional requirement" at all. It is likely the "additional requirements" are those the CIO Council is or may be developing to address internal, non-procurement related transition activities (see Attachment C to OMB memorandum). Instead of referring broadly to the OMB memorandum in the proposed FAR amendments, it might make sense to refer narrowly to the section of the memorandum entitled "Selecting Products and Capabilities," the only portion of the memorandum that directly addresses acquisition of IPv6 compliant information technology. FAR parts 7 and 12 both refer to the OMB memorandum and to "additional requirements" and FAR part 39 refers only to the OMB memorandum and not "additional requirements".

Response: This final rule has been revised to remove references to "additional requirements". New FAR 11.002(g) refers to NIST Special Publication 500-267. Previous Web references have been deleted and a reference to OMB Memorandum M-05-22 has been retained.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Government expects that commercially available items will be required, with no additional testing being necessary. The Chief Counsel for Advocacy, Office of Advocacy, within the Small Business Administration (SBA) was consulted by

the Councils on the impact of this rule on small businesses. SBA conducted its own informal survey with small businesses and their conclusion is that there is no negative impact on small businesses. There are no known significant alternatives that will accomplish the objectives of this rule. No alternatives were proposed during the public comment period.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

**List of Subjects in 48 CFR Parts 7, 11, 12, and 39**

Government procurement.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 11, 12, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 11, 12, and 39 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 7—ACQUISITION PLANNING**

■ 2. Amend section 7.105 by adding paragraph (b)(4)(iii) to read as follows:

**7.105 Contents of written acquisition plans.**

(b) \* \* \*

(4) \* \* \*

(iii) For information technology acquisitions using Internet Protocol, discuss whether the requirements documents include the Internet Protocol compliance requirements specified in 11.002(g) or a waiver of these requirements has been granted by the agency's Chief Information Officer.

\* \* \* \* \*

**PART 11—DESCRIBING AGENCY NEEDS**

■ 3. Amend section 11.002 by redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

**11.002 Policy.**

\* \* \* \* \*

(g) Unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol, the requirements documents

must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500-267) and the corresponding declarations of conformance defined in the USGv6 Test Program. The applicability of IPv6 to agency networks, infrastructure, and applications specific to individual acquisitions will be in accordance with the agency's Enterprise Architecture (see OMB Memorandum M-05-22 dated August 2, 2005).

\* \* \* \* \*

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

■ 4. Amend section 12.202 by adding paragraph (e) to read as follows:

**12.202 Market research and description of agency need.**

\* \* \* \* \*

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

**PART 39—ACQUISITION OF INFORMATION TECHNOLOGY**

■ 5. Amend section 39.101 by adding paragraph (e) to read as follows:

**39.101 Policy.**

\* \* \* \* \*

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

[FR Doc. E9-28931 Filed 12-9-09; 8:45 am]

**BILLING CODE 6820-EP-S**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 26, 31, and 52**

[FAC 2005-38; FAR Case 2008-017; Item IV; Docket 2009-0007, Sequence 1]

RIN 9000-AL49

**Federal Acquisition Regulation; FAR Case 2008-017, Federal Food Donation Act of 2008 (Pub. L. 110-247)**

**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 adopted, as final, with no changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Federal Food Donation Act of 2008 (Pub. L. 110-247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

**DATES:** *Effective Date:* December 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2008-017.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Food Donation Act of 2008 (Pub. L. 110-247) encourages Federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The Act requires Federal contracts above \$25,000 for the provision, service, or sale of food in the United States, to include a clause that encourages, but does not require, the donation of excess food to nonprofit organizations. The Act would also extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

The final rule is applicable to contracts above \$25,000 for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service). The type of solicitations and contract actions anticipated to be applicable to this law will mostly be for fixed-price commercial services; however, there may be circumstances when a noncommercial and/or cost-reimbursement requirement may apply. For example, on an indefinite-delivery, indefinite-quantity cost-reimbursement contract for logistical support to be performed in the United States, there may be a task order needed to provide food service to feed personnel.

The interim rule was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, with an effective date

of March 19, 2009, and a request for comments by May 18, 2009. Three respondents submitted comments in response to the interim rule. Below are the comments received on the interim rule along with the responses.

*Comment 1, FAR matrix.* One commenter had several comments about errors in the FAR matrix.

*Response:* There were several inadvertent errors that were made on the FAR clause matrix. These errors have been corrected and are reflected in the FAR clause matrix issued with the final rule.

*Comment 2, Applicability for non-appropriated funds.* The commenter expresses uncertainty as to whether this rule is applicable to their typical (non-appropriated funds) cafeteria contracts. The clause at FAR 52.226-6 is to be included in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Is the \$25,000 threshold intended to mean that amount of the appropriated funding, or can it also be satisfied by the sales volume? Will there be additional GSA financial management regulation guidance planned?

*Response:* The FAR only covers contracts made with appropriated funds. The rule is applicable to contracts greater than \$25,000 for the provision, service, or sale of food in the United States. This means the dollar amount of the contract only, not sales volume. GSA has jurisdiction over changes to the Federal Management Regulation (FMR) and we anticipate a change in the FMR to address this requirement.

*Comment 3, Implementation of the Federal Food Donation Act of 2008.* The benefits of this rule's implementation are evident based on the widespread support the Act received. The assistance it will provide to food insecure persons is truly important. This is especially crucial during these difficult economic times. Food suppliers will receive the listed benefits, as well as be protected against litigation by the Bill Emerson Good Samaritan Food Donation Act. Based on these reasons, we urge you to encourage the passage of this rule and implement it as quickly as possible.

*Response:* The interim rule was effective on the publication date of March 19, 2009. This means the rule has been implemented and is effective as of that date. The final rule adopts the interim rule as final, without change.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review,

dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule is not mandatory for contractors, including small businesses.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

**List of Subjects in 48 CFR Parts 26, 31, and 52**

Government procurement.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

**Interim Rule Adopted as Final Without Change**

■ Accordingly, the interim rule amending 48 CFR Parts 26, 31, and 52 which was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, is adopted as a final rule without change.

[FR Doc. E9-28933 Filed 12-9-09; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAC 2005-38; FAR Case 2006-021; Item V; Docket 2009-0043, Sequence 1]

**RIN 9000-AK84**

**Federal Acquisition Regulation; FAR Case 2006-021, Postretirement Benefits (PRB), FAS 106**

**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