

**V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

**VI. Congressional Review Act**

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

**VII. Regulatory Flexibility Act**

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

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81) that provides a statutory exception to the periodic inflation adjustments of acquisition-related thresholds for certain bond requirements.

The objective of the final rule is to retain the current dollar thresholds for performance and payments bonds as well as the threshold for alternatives to such bonds.

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

The final rule applies to small entities performing construction services for the Government; however, the impact is expected to be de minimis. Contract actions with a value between \$35,000 and \$150,000 will still require an alternative to payment bonds for payment protection, and those with a value exceeding \$150,000 will still require performance and payment bonds. The rule makes permanent the thresholds that have been in place for several years, resulting in no changes for any entity performing construction services.

Data obtained from the Federal Procurement Data System (FPDS) for FY 2019, 2020, and 2021 indicates that an average of 678 unique small entities received an estimated 1,219 awards annually that require alternatives to payment bonds. FPDS data also indicates that an average of 1,340 unique small entities received an estimated 2,706 awards that are subject to performance and payment bonds annually. Approximately 2,018 (678 + 1,340) unique small entities will continue to comply with current bond requirements as a result of this final rule.

The final rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the final rule to accomplish the desired objective of the statute.

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

**VIII. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C 3501–3521) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0045, Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protection.

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

Government procurement.

**William F. Clark,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 1 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. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

- 2. Amend section 1.109 by revising paragraph (c)(1) to read as follows:

**1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.**

\* \* \* \* \*

(c) \* \* \*

(1) 40 U.S.C. chapter 31—

(i) Subchapter III, Bonds; and

(ii) Subchapter IV, Wage Rate Requirements (Construction);

\* \* \* \* \*

[FR Doc. 2023–08198 Filed 4–25–23; 8:45 am]

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 7**

[FAC 2023–03; Item III; Docket No. FAR–2023–0052; Sequence No. 2]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

**DATES:** Effective: May 26, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2023–03, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** This document makes an editorial change to 48 CFR part 7.

**List of Subjects in 48 CFR Part 7**

Government procurement.

**William F. Clark,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 7 as set forth below:

**PART 7—ACQUISITION PLANNING**

- 1. The authority citation for 48 CFR part 7 continues to read as follows:

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

**7.403 [Amended]**

- 2. Amend section 7.403 by removing from paragraph (c)(1) “(<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf>)” and adding “(<https://www.whitehouse.gov/wp-content/>

*uploads/legacy\_drupal\_files/omb/circulars/A94/a094.pdf*” in its place.

[FR Doc. 2023–08199 Filed 4–25–23; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

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

**Federal Acquisition Regulation; Federal Acquisition Circular 2023–03; Small Entity Compliance Guide**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide (SECG).

**SUMMARY:** This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2023–03, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2023–03, which precedes this document.

**DATES:** April 26, 2023.

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

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2023–03 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

**RULES LISTED IN FAC 2023–03**

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

**SUPPLEMENTARY INFORMATION:**

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

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

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

open market as they do for other requirements.

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

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

This final rule amends the FAR to add a new statutory exception for certain performance and payment bonds requirements for construction contracts to the already established list of acquisition-related thresholds not subject to escalation. These updates

ensure that the current dollar thresholds are retained for performance and payment bonds as well as the threshold for alternatives to such bonds. This rule is not expected to have a significant impact on the Government or industry, to include small entities, because the rule maintains acquisition-related thresholds that have been in the FAR for several years.

**Item III—Technical Amendments**

Administrative change is made at FAR 7.403.

**William F. Clark,**

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

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