33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

* * * * *

Continued portion of the contract means the portion of a contract that the contractor must continue to perform following a partial termination.

* * * * *

Partial termination means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

* * * * *

Termination for convenience means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest.

Termination for default means the exercise of the Government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Terminated portion of the contract means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

17.103 [Amended]

3. Amend section 17.103 by removing the definition ''Termination for convenience.''

4. Amend section 17.104 by adding paragraph (d) to read as follows:

17.104 General.

* * * * *

(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years' quantities).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–47 [Amended]

5. Amend section 31.205–47 in paragraph (f)(1) by removing ''(see 33.201)'' and adding ''(see 2.101)'' in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.201 [Amended]

6. Amend section 33.201 by removing the definition ''Claim.''

7. Amend section 33.213 by revising paragraph (a) to read as follows:

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, the Act, at 41 U.S.C. 605(b), authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233–1, Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at 52.233–1. A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233–1.) This distinction is recognized by the clause with its Alternate I (see 33.215).

* * * * *

PART 49—TERMINATION OF CONTRACTS

49.001 [Amended]

8. Amend section 49.001 by removing the definitions ''Claim,'' ''Continued portion of the contract,'' ''Partial termination,'' and ''Terminated portion of the contract.''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213–4 [Amended]

9. Amend section 52.213–4 by revising the date of the clause to read ''(7/02)''; and by removing from paragraph (a)(2)(v) ''(Dec 1998)'' and adding ''7/02'' in its place.

10. Amend section 52.233–1 by revising the date and paragraph (c) of the clause; and by revising the introductory paragraph of Alternate I to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (7/02)

* * * * *

(c) *Claim,* as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

* * * * *

Alternate I (Dec 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

* * * * *

[FR Doc. 02–15940 Filed 6–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 51

[FAC 2001–08; FAR Case 1999–614; Item II]

RIN 9000–AJ01

Federal Acquisition Regulation; Federal Supply Schedule Order Disputes and Incidental Items

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 incorporate policies for disputes in schedule contracts and the handling of incidental items, and to remove the requirement to notify GSA when a schedule contractor refuses to honor an order placed by a Government contractor.

DATES: *Effective Date:* July 29, 2002.

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 Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–08, FAR case 1999–614.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 79702, December 19, 2000. Nine respondents submitted comments in response to the **Federal Register** notice. The public comments were received from contractors, professional associations, and Federal agencies. Clarifying revisions have been made to FAR 8.401(d) and 8.405–7(d) of the rule as a result of the public comments. A summary of the significant comments and concerns expressed by respondents is summarized below.

• *Addition of Open Market, Noncontract Items on a Schedule Order.* Some respondents believed that the intent regarding the incorporation of open market, noncontract items on a schedule order needed further clarification and recommended alternative language. The Councils agreed that absent a definition of ''open market'' or ''noncontract'' items in the FAR further clarification is needed. Accordingly, it has substituted the expression ''items not on the Federal Supply Schedule'' to best characterize what these items mean.

• *Inclusion of FAR Part 19 in the Listing of Applicable Acquisition Regulations.* One respondent expressed concern regarding the omission of a reference to FAR Part 19, Small Business Programs, in the proposed language in FAR 8.401(d) for adding open market, noncontract items to a Federal Supply Schedule BPA. The respondent believes that the omission of FAR Part 19 in the list of applicable acquisition regulations an agency must follow will allow ordering offices to circumvent the requirement that all procurements valued between $2,500 and $100,000 be set aside for small business concerns.

The Councils agreed that FAR Part 19 should be included in the list of applicable regulations in FAR 8.401(d)(1). Even though FAR 13.003(b)(1) addresses small business set-asides for acquisitions above the micro-purchase threshold, the inclusion of FAR Part 19, in addition to FAR Part 13, further emphasizes that ordering offices must consider small business programs when acquiring items not on the Federal Supply Schedule.

• *FAR Reference to Alternative Dispute Resolution (ADR) Procedures for Schedule Disputes.* One respondent suggested that in lieu of the proposed language in FAR 8.405–7(d) (''The contracting officer should use the alternative dispute resolution (ADR) procedures, when appropriate (see 33.214)''), the language should be revised to cite the policy statement as it is set forth in FAR 33.204, that ADR should be used ''to the maximum extent practicable.'' The respondent further suggested that either FAR 33.204 be cited alone, or that 33.204 be cited in addition to 33.214. Since the language in FAR 33.204 speaks to policy regarding the use of ADR, while 33.214 provides additional information regarding ADR, the Councils agreed that, for clarity, both citations be included in the final rule, and that the language in FAR 8.405–7(d) be revised.

This is not a significant regulatory action, and therefore, was not 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 rule addresses internal Government administrative procedures and does not impose any additional requirements on Government offerors or contractors.

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. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 51

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 51 as set forth below:

1. The authority citation for 48 CFR parts 8 and 51 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.401 by adding paragraph (d) to read as follows:

8.401 General.

* * * * *

(d) For administrative convenience, an ordering office contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.,* publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(2) The ordering office contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

3. Revise section 8.405–7 to read as follows:

8.405–7 Disputes.

(a) *Disputes pertaining to the performance of orders under a schedule contract.* (1) Under the Disputes clause of the schedule contract, the ordering office contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering office contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering office contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see 33.204 and 33.214).

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.103 [Amended]

4. Amend section 51.103 by removing paragraph (b); and by redesignating paragraph (c) as (b).

[FR Doc. 02–15941 Filed 6–26–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001–08; FAR Case 1997–032; Item III]

RIN 9000–AH96

Federal Acquisition Regulation; Relocation Costs

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) ''relocation costs'' cost principle by making allowable payments for spouse employment assistance and for increased employee income and Federal Insurance Contributions Act (FICA) (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs, increasing the ceiling for allowance of miscellaneous costs of relocation, and making a number of editorial changes.

DATES: *Effective Date:* July 29, 2002.

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. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–08, FAR case 1997–032.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 28330, May 25, 1999, that revised the cost principle at FAR 31.205–35, Relocation costs, to—

- Remove the numerous ceilings imposed on individual relocation cost elements;
- Recognize the growing commercial practice of reimbursing relocation costs on a lump-sum basis in certain situations;
- Make allowable payments for employment assistance for spouses and for increased employee income and FICA taxes incident to allowable reimbursed relocation costs;
- Increase the ceiling for allowable miscellaneous relocation costs; and
- Make a number of editorial changes.

The final rule amends the FAR to—

- Increase the limit for miscellaneous expenses when a lump-sum approach is used. The current FAR requires the reimbursement of miscellaneous expenses to be limited to actual expenses or $1,000 (if the lump-sum approach is used). The proposed rule removed the $1,000 limitation in its entirety. To reduce the Government's risk in this area, the final rule maintains a ceiling for miscellaneous expenses when a contractor uses the lump-sum payment method, but increases the limit from $1,000 to $5,000. The cost principle continues to have no ceiling for miscellaneous expenses when reimbursement is based on actual expenses;
- Add two new categories of allowable relocation costs. Consistent with the proposed rule, the final rule makes allowable two categories of expenses that are currently unallowable: (1) Payments for increased employee income and FICA taxes incident to allowable reimbursed relocations costs, and (2) payments for spouse employee assistance. Since contractors incur these types of costs in a good faith effort to keep transferred employees from being adversely affected by the relocation, it appears equitable to reimburse contractors for these types of costs. In addition, the Employee Relocation Council (ERC) data showed that it is a common industry practice to reimburse relocating employees for both of these costs; and
- Make a number of editorial changes, including revising the ''compensation for personal services'' cost principle at FAR 31.205–6(e)(2) to clarify that the differential allowances paid to compensate for increased taxes on employee compensation is unallowable, but that the payments to compensate for increased taxes incident to allowable reimbursed relocation costs is allowable.

Twenty-two respondents submitted public comments. The Councils considered all comments when developing the final rule. A discussion of the major comments follows:

- *Inadequate Analysis.* One commenter expressed the opinion that ''the proposed changes to FAR 31.205–35 have not been adequately researched and the potential impact has not been documented.'' The commenter went on to suggest that all of the proposed changes, except for the lump-sum payment option, have been carefully considered by the FAR drafters in the past and that those previous decisions should not be overturned lightly and without thorough research and documentation that demonstrate how the conditions have changed to make previously rejected proposed changes now acceptable. In a related comment, another commenter cautioned that ''the councils should carefully review the information provided in response to the questions directed to industry respondents to determine that the administrative time and cost savings will offset increased costs before eliminating the ceilings.''

Response to Comments: As an integral part of its review of the public comments submitted in response to this proposed rule, current industry relocation practices were carefully analyzed (primarily using data compiled by the ERC in its 1998 report entitled ''Relocation Assistance:

Transferred Employees''), together with the past regulatory history of the relocation cost principle.

- *Disagree With Removing Ceilings.* Four commenters opposed the removal of the current ceilings on individual relocation cost elements, while two of them added that ''if the current limitations are not adequate, they should be adjusted but not eliminated.'' These two commenters disagreed with the **Federal Register** justification that the ''ceilings represent unnecessary micromanagement of contractor business practices.'' One stated that ''cost ceilings are a means of controlling business expenses reimbursed with taxpayer dollars,'' and the other argued that ''the ceilings merely represent the maximum the Government believes is reasonable.'' The commenter continued: ''The FAR ceilings were initially implemented to assure that reasonableness determinations were consistently applied to all contractors and that unreasonable costs would not be paid because the cost principle is too general or unenforceable.''

One commenter stated that ''the ceilings * * * are necessary to protect the Government from liability for reimbursement of excessive costs.'' Another maintained that since the 14 percent limitation on closing costs and