

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2001-04; FAR Case 2001-017;
Item IV]

RIN 9000-AJ13

**Federal Acquisition Regulation;
Executive Order 13204, Revocation of
Executive Order on Nondisplacement
of Qualified Workers Under Certain
Contracts**

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 Executive Order (E.O.) 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on February 17, 2001. The E.O. requires that any rules implementing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, be promptly rescinded.

DATES: *Effective Date:* February 20, 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 2001-04, FAR case 2001-017.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the FAR to implement Executive Order (E.O.) 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts. The E.O. required the prompt recession of any orders, rules, regulations, guidelines, or policies implementing or enforcing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, to the extent consistent with law.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 27416, May 16, 2001. No comments were received in response to the notice. The interim rule is converted to a final rule without change.

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 merely removes requirements from the FAR that implemented regulations issued by the Department of Labor (DoL) for which DoL certified would not have a significant economic effect on a substantial number of small entities (see **Federal Register** at 62 FR 28175, May 22, 1997).

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 22 and 52

Government procurement.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 22 and 52, which was published in the **Federal Register** at 66 FR 27416, May 16, 2001, 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).

[FR Doc. 02-2916 Filed 2-7-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001-04; FAR Case 2000-306;
Item V]

RIN 9000-AJ27

**Federal Acquisition Regulation;
Caribbean Basin Country End
Products**

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule also implements Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act.

DATES: *Effective Date:* February 20, 2002.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before April 9, 2002, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000-306@gsa.gov

Please submit comments only and cite FAC 2001-04, FAR case 2000-306, in all correspondence related to this case.

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. Cecelia L. Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-04, FAR case 2000-306.

SUPPLEMENTARY INFORMATION:

A. Background

The USTR published a notice in the **Federal Register** on December 14, 2001 (66 FR 64897), renewing the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule implements that determination.

This interim rule also amends the FAR to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act (Title II of Pub. L. 106-200) and the determinations of the USTR under that Act. To date, the USTR has published determinations in the **Federal Register** at 65 FR 60236, October 10, 2000; 65 FR 69988, November 21, 2000; 66 FR 9888, February 12, 2001, and 66 FR 31272, June 11, 2001. Section 211 amends the Caribbean Basin Economic Recovery Act at 19 U.S.C. 2703 to provide enhanced trade benefits for Caribbean Basin countries that have implemented and follow, or are making substantial progress toward implementing and following, the customs procedures required by the Caribbean Basin Trade Partnership Act. Certain products of those countries now qualify for duty-free treatment, so they can be treated as Caribbean Basin country end products. Offerors can find these products, and the current list of countries, in the Harmonized Tariff Schedule (HTS). The FAR gives information on the HTS in FAR clause 52.225-5, Trade Agreements. The USTR notices in the **Federal Register** announced the determination that Barbados, Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, and Trinidad and Tobago currently qualify for the enhanced trade benefits and modified the Harmonized Tariff Schedule of the United States accordingly.

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 interim rule is not expected to 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 it only affects a limited number of products from a few Caribbean Basin countries. The Berry Amendment (formerly at 10 U.S.C. 2241, note, but recently enacted as 10 U.S.C. 2533a) still prohibits the Department of Defense from buying most of the textile and apparel articles receiving duty-free treatment under this Act. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-04, FAR case 2000-306), in correspondence.

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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the determination of the USTR to provide enhanced benefits to the products of certain countries under the Caribbean Basin Trade Partnership Act became effective on October 2, 2000, and because the USTR reinstated the expired Caribbean Basin program on December 14, 2001, effective immediately. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

2. Amend section 25.003 in the definition “Caribbean Basin country” by removing “Panama,”; and by revising the definition “Caribbean Basin country end product” to read as follows:

25.003 Definitions.

* * * * *

Caribbean Basin country end product—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at

<http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

25.400 [Amended]

3. Amend section 25.400 in paragraph (a)(2) by removing the words “Republic and Honduras” and adding “Republic, Honduras, and Panama,” in its place.

25.404 [Amended]

4. Amend section 25.404 by removing the second and third sentences.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.225–5 by—
a. Removing “Panama,” from the definition “Caribbean Basin country”; and

b. Revising the definition “Caribbean Basin country end product” to read as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (Feb 2002)

(a) * * *

* * * * *

Caribbean Basin country end product—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

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[FR Doc. 02–2917 Filed 2–7–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAC 2001–04; FAR Case 1999–026; Item VI]

RIN 9000–AI86

Federal Acquisition Regulation; Final Contract Voucher Submission

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 explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract.

DATES: *Effective Date:* February 20, 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 Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 2001–04, FAR case 1999–026.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 46332, July 27, 2000, with a request for comment. The proposed rule amended FAR 42.705, Final indirect cost rates, and FAR 52.216–7, Allowable Cost and Payment, to—

- Explicitly state that the contracting officer may issue a unilateral modification that reflects the contracting officer’s determination of the amounts due to the contractor under the contract. The contracting officer may make this determination if the contractor fails to submit a completion invoice or voucher within the time specified (normally 120 days after settlement of the final indirect cost rates but may be longer, if approved in writing by the contracting officer); and

- Make the contracting officer’s determination not subject to appeal under the Disputes clause of the contract.

Thirteen respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule, which was modified as a result. The following issues merit noting:

1. Almost half of the respondents questioned the language in paragraphs 42.705(c)(2) and 52.216–7(d)(6)(ii) of the proposed rule that stated that the contracting officer’s decision would not be subject to appeal under the Disputes clause. The Councils agreed that precluding the right to appeal is not equitable and may result in inaccurate financial payment decisions. The rule has been revised by making the contracting officer’s decision final and