

the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

23.1104 Policy.

Agencies shall encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving—

(a) Company-owned or –rented vehicles or Government-owned vehicles; or

(b) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

23.1105 Contract clause.

The contracting officer shall insert the clause at 52.223–18, Contractor Policy to Ban Text Messaging While Driving, in all solicitations and contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by revising the date of clause; redesignating paragraphs (b)(31) thru (b)(43) as paragraphs (b)(32) thru (b)(44); and adding a new paragraph (b)(31) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (Sep 2010)

* * * * *

(b) * * *

(31) 52.223–18, Contractor Policy to Ban Text Messaging while Driving (SEP 2010) (E.O. 13513).

* * * * *

■ 5. Add section 52.223–18 to read as follows:

52.223–18 Contractor Policy to Ban Text Messaging While Driving.

As prescribed in 23.1105, insert the following clause:

CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010)

(a) *Definitions.* As used in this clause—
Driving—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor should—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or –rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–46; FAR Case 2009–039; Item VII; Docket 2010–0104, Sequence 1]

RIN 9000–AL62

Federal Acquisition Regulation; Buy American Exemption for Commercial Information Technology—Construction Material

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) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

DATES: *Effective Date:* September 29, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–46, FAR Case 2009–039, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–039” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009–039.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–039” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–46, FAR Case 2009–039, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR Case 2009–039.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR subparts 25.2 and 52.2 to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

This same exemption has appeared every year since Fiscal Year 2004 (section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108–199)). The Fiscal Year 2004 exemption was implemented through deviations by the individual agencies. Subsequently, regulations were published to implement the exemption for supplies (71 FR 223, January 3, 2006). The exemption for construction material was not implemented until publication of this interim rule.

The interim rule is based on the probability 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.

“Information technology” and “Commercial item” are already defined in FAR part 2.

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 Councils do not expect this interim rule 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 the rule simplifies the treatment of

construction material that is also a commercial information technology item, which constitutes a small percentage of the overall construction material in a project. This interim rule does not affect small business set-asides to the prime contractor or the small business subcontracting goals. Construction contracts that exceed \$7,804,000 and are subject to trade agreements already exempt designated country construction material from the Buy American Act. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in the FAR subparts 25 and 52 affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2009–039) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the changes to the FAR will slightly reduce the information collection requirements currently approved by the Office of Management and Budget (OMB Control number 9000–0141, entitled Buy America Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11) but we estimate that the impact will be negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), effective December 16, 2009. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), 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: September 21, 2010.

Edward Loeb,

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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Amend section 25.202 by revising the introductory text of paragraph (a), and by adding paragraph (a)(4) to read as follows:

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may allow the contractor to acquire foreign construction materials without regard to the restrictions of the Buy American Act:

* * * * *

(4) *Information technology that is a commercial item.* The restriction on purchasing foreign construction material does not apply to the acquisition of information technology that is a commercial item, when using Fiscal Year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.225–9 by revising the date of the clause and paragraph (b)(2) to read as follows:

52.225–9 Buy American—Construction Materials.

* * * * *

BUY AMERICAN—CONSTRUCTION MATERIALS (SEP 2010)

* * * * *

(b) * * *

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

* * * * *

■ 4. Amend section 52.225–11 by revising the date of the clause and paragraph (b)(3) to read as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—
CONSTRUCTION MATERIALS UNDER
TRADE AGREEMENTS (SEP 2010)

* * * * *

(b) * * *
(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable
excepted materials or indicate “none”]

* * * * *

[FR Doc. 2010–24206 Filed 9–28–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 8]

Federal Acquisition Regulation;
Federal Acquisition Circular 2005–46;
Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued
under the joint authority of the
Secretary of Defense, the Administrator
of General Services and the
Administrator of the National

Aeronautics and Space Administration.
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 rules
appearing in Federal Acquisition
Circular (FAC) 2005–46 which amend
the FAR. Interested parties may obtain
further information regarding these
rules by referring to FAC 2005–46,
which precedes this document. These
documents are also available via the
Internet at <http://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: The
analyst whose name appears in the table
below. Please cite FAC 2005–46 and the
specific FAR case number. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat at (202) 501–
4755.

LIST OF RULES IN FAC 2005–46

Item	Subject	FAR case	Analyst
I	Equal Opportunity for Veterans (Interim)	2009–007	Woodson.
II	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (Interim)	2010–012	Davis.
III	Termination for Default Reporting	2008–016	Parnell.
IV	Award-Fee Language Revision	2008–008	Chambers.
V	Offering a Construction Requirement–8(a) Program	2009–020	Morgan.
VI	Encouraging Contractor Policies to Ban Text Messaging While Driving (Interim)	2009–028	Clark.
VII	Buy American Exemption for Commercial Information Technology—Construction Material (Interim)	2009–039	Davis.

SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow.
For the actual revisions and/or
amendments made by these FAR cases,
refer to the specific item number and
subject set forth in the documents
following these item summaries.
FAC 2005–46 amends the FAR as
specified below:

Item I—Equal Opportunity for Veterans
(FAR Case 2009–007) (Interim)

This interim rule with request for
comments implements the Department
of Labor’s (DoL) Office of Federal
Contract Compliance Programs (OFCCP)
final rule published in the **Federal
Register** at 72 FR 44393 on August 8,
2007, that implements amendments to
the affirmative action provisions of the
Vietnam Era Veterans’ Readjustment
Assistance Act of 1972 (VEVRAA), as
amended by the Jobs for Veterans Act
(JVA). The rule re-titles FAR subpart
22.13 from “Special Disabled Veterans,
Veterans of the Vietnam Era, and Other
Eligible Veterans” to “Equal Opportunity
for Veterans.” Accordingly, FAR clause
52.222–35 is also renamed “Equal
Opportunity for Veterans” and

incorporates the new categories and
definitions of protected veterans as
established by DoL. In addition, the
FAR clause at 52.222–37, “Employment
Reports on Special Disabled Veterans,
Veterans of the Vietnam Era, and Other
Eligible Veterans” is renamed
“Employment Reports on Veterans” and
the new DoL requirements for using the
VETS–100A report are incorporated.
Lastly, the FAR provision at 52.222–38,
“Compliance with Veterans’
Employment Reporting Requirements,”
is revised to incorporate new title
references for FAR 52.222–37 and the
new report form VETS–100A.

Item II—Certification Requirement and
Procurement Prohibition Relating to
Iran Sanctions (FAR Case 2010–012)
(Interim)

This interim rule amends the FAR by
enhancing efforts to enforce sanctions
with Iran. The rule implements
requirements imposed by the
Comprehensive Iran Sanctions,
Accountability, and Divestment Act of
2010 (Pub. L. 111–195), specifically
sections 102 and 106. To implement
section 102, the FAR will require

certification that each offeror, and any
person owned or controlled by the
offeror, does not engage in any activity
for which sanctions may be imposed
under section 5 of the Iran Sanctions
Act. This rule also partially implements
section 106 of Public Law 111–195,
which imposes a procurement
prohibition relating to contracts with
persons that export certain sensitive
technology to Iran. There will be further
implementation of Section 106 in FAR
Case 2010–018. This rule will have little
effect on United States small business
concerns, because such dealings with
Iran are already prohibited in the United
States.

Item III—Termination for Default
Reporting (FAR Case 2008–016)

This final rule amends the FAR to
revise the contractor performance
information process. The FAR revisions
include changes to FAR parts 8, 12, 15,
42, and 49. The purpose of the rule is
to establish procedures for contracting
officers to provide contractor
information into the Federal Awardee
Performance & Integrity Information
System (FAPIS) module of Past