There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

As of June 2008, seven of the twenty-seven vendors who have registered products on the EPEAT Product Registry reported that they are small businesses. Data are not available on how many small businesses are reselling personal computer products to the Government, but according to the EPA's Office of Small Disadvantaged Business Utilization, at the time of publication of the interim rule, there were approximately 613 Service Disabled Veteran Owned Small Businesses (SDVOSBs) selling IT hardware to the Federal Government. These small businesses were not manufacturers of IT hardware, but resold IT hardware manufactured by other companies to the Federal Government. Many of the products these resellers sold could meet the IEEE 1680 Standard, and the manufacturers of these products had the option of getting these products EPEAT registered to verify that they do meet this standard.

Because manufacturers are the parties responsible for determining if their products meet the IEEE 1680 Standard or not, there will be little to no impact on small businesses selling IT products to the Federal Government, who are selling EPEAT-registered products. In addition, the EPEAT Product Registry has been designed to encourage small business manufacturer participation. There is a sliding scale for the annual EPEAT registration fee vendors pay to have their products EPEAT registered based on the annual revenue of the vendor.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 11, 23, 39, and 52 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.* (FAR case 2006–030), 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.*

List of Subjects in 48 CFR Parts 11, 23, 39, and 52

Government procurement.

Dated: December 24, 2008

Edward Loeb,

Acting Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 11, 23, 39, and 52 which was published in the **Federal Register** at 72 FR 73215 on December 26, 2007, is adopted as a final rule without change.

[FR Doc. E9–549 Filed 1–14–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 22, and 52

[FAC 2005–30; FAR Case 2005–012; Item VII; Docket 2006–0020; Sequence 25]

RIN 9000–AK31

Federal Acquisition Regulation; FAR Case 2005–012, Combating Trafficking in Persons

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 to adopt as final, with changes, the second interim rule published in the **Federal Register** at 72 FR 46335, August 17, 2007, amending the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts include a provision that authorizes the department or agency to terminate the contract, if the contractor or any subcontractor engages in trafficking in persons.

DATES: *Effective Date*: February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–30, FAR case 2005–012.

SUPPLEMENTARY INFORMATION:

A. Background

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, as amended by TVPRA of 2005, addresses the victimization of countless men, women, and children in the United States and abroad. In order to implement the law, DoD, GSA, and NASA published a second interim rule in the **Federal Register** at 72 FR 46335, August 17, 2007 with request for comments by October 16, 2007. Five respondents submitted comments on the second interim rule. Those comments, summarized as follows, were considered by the Councils in the formation of this final rule:

1. *Applicability to Commercial Items*. Four comments were received from three different respondents regarding the applicability of the rule to commercial items.

(a) One respondent is concerned that although the FAR Matrix indicates that FAR clause 52.222–50 is not applicable to commercial items, FAR 52.212–5 includes 52.222–50 as a clause that the contracting officer may mark as being applicable to commercial items.

Response: The Councils concur with the respondent's concern and agrees to indicate in the FAR clause matrix that clause 52.222–50 is required.

(b) One respondent believes that by making the rule applicable to commercial items, the Councils misinterpreted the separate Federal crimes created under Chapter 77 of Title 18, United States Code, as providing the necessary criminal or civil penalties for the contract violations to which the Federal Acquisition Streamlining Act was meant to apply. The respondent requests the Councils to reconsider the applicability to commercial items.

Response: The Councils note that application of the rule to all contracts for supplies and services, including those for commercial items, is consistent with the broad scope of the statutory directive and is in compliance with the Federal Acquisition Streamlining Act's (FASA) provision concerning commercial contracts. Specifically, the statutory language at 22 U.S.C. 7104(g) contained no exceptions or limitations with regard to its application to Federal contracts. While FASA governs and limits the applicability of laws to commercial items, it also provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council determines that it is not in the best interest of the Federal Government to exempt commercial item contracts, then the provision of law will apply to contracts for commercial items.

(c) Another respondent asked the Councils to give further consideration to not applying the rule to commercial items (subcontracts), indicating that the application will give rise to unintended consequences and create an effect inconsistent with Federal acquisition goals.

Response: The Councils believe that the TVPRA of 2003 and 2005 reflects Congress's intent to allow for the

termination of all U.S. contracts when specified prohibited acts take place. Although the intent of the Federal Acquisition Streamlining Act and the Clinger-Cohen Act is to limit the applicability of laws to commercial items and commercially available off-the-shelf (COTS) items, these laws also provide that if a provision of law contains criminal or civil penalties, then commercial items are not to be exempted. The Councils believe the rule corresponds to these laws and the mandate of the TVPRA.

(d) The respondent further commented that if the rule's applicability to commercial items is to be retained, that it be listed in FAR 52.244–6, Subcontracts for Commercial Items.

Response: The Councils agree with the respondent's comment to add FAR 52.222–50 at 52.244–6(c)(1), requiring flow-down to subcontracts for commercial items.

2. *Exemption.* One respondent recommended creating a general exemption from the rule where the Federal Government affirmatively contracts for services to support front-line intervention activities domestically or internationally. The respondent states that many contractors that are involved in both the health and international development arena may directly or indirectly be involved in front-line intervention contracts and even advocacy programs to increase awareness of these and related activities.

Response: The Councils note the respondent's concern as it relates to ''front-line'' intervention contracts. However, the councils are not aware of any conflict that this rule may present in relation to those efforts. The terms used throughout the rule reflect the terms used in the statute. Actions taken to help trafficking victims do not violate the rule. Therefore, the Councils do not believe that an exemption is necessary and the final rule remains unchanged.

3. *Contractor Employees.* Three comments were received regarding employees.

(a) One respondent is concerned with the term ''minimal impact or involvement in contract performance'' in the definition of employee. The respondent believes that in the acquisition of commercial items (commercially available off the shelf supplies), a contractor may not know which employees had a minimal impact on contract performance. The respondent suggests that a commercial item supplier make a ''good faith determination'' regarding the minimal impact requirement.

Response: The Councils agree that the contractor should make a first good faith determination of the employee's involvement. The Councils do not agree that use of the term ''minimal impact or involvement in contract performance'' is ambiguous. The term narrows the scope of the definition of employee and leaves the determination of impact/involvement to the contractor. The Councils do not agree that a contractor cannot determine if an employee had a ''minimal impact or involvement in contract performance'' in the acquisition of commercial items. The contractor is in the best position to know and determine what role an employee plays in the performance of a contract, major or minor. The contractor is responsible for work production as well as work assignments. In the case of a violation of the clause, the contractor can determine the employee's duties under the contract and associate those duties with performance under the contract.

(b) One respondent is concerned that as written, the rule fails to achieve the contractor-accountability provisions of the TVPRA of 2005 and requests that the Councils reinsert the requirements for contractors to obtain written notification of understanding of polices and procedures to combat human trafficking.

Response: As written, the rule requires the contractor to notify its employees and take appropriate action against employees that violate policies and procedures to combat human trafficking. The Councils appreciate the respondent's concern for ensuring that contractor employees who engage in trafficking are appropriately held accountable. However, the Councils do not believe that requiring the contractor to obtain written notification of employees' understanding of policies and procedures to combat human trafficking will ensure that no violations occur. In fact, such a requirement may impose an undue and unnecessary burden on the contractor and taxpayer. The requirement for the contractor to notify its employees of the prohibited trafficking and other behaviors, as well as the actions that may be taken for violations, satisfies the requirements of 22 U.S.C. 7104(g), to hold those engaged in trafficking accountable.

(c) Two respondents are concerned that the rule is directed to contractor employees not the contractor and requests that the rule be revised to limit it to the contractor and its employees during the performance of the contact, not to employee behavior outside work.

Response: As written, the rule reflects the statutory language prohibiting severe forms of trafficking in persons or the procurement of a commercial sex act during the period of performance of the contract. The Councils believe that limiting the rule in the manner suggested by the respondent would inadequately implement the statute since employee violations are more likely to occur after working hours. Furthermore, contractor employees are often perceived as representing the Government, and their actions reflect upon the Government's integrity and ethics. Therefore, to ensure that U.S. Government contractors do not contribute to trafficking in persons, the rule requires the contractor to notify its employees (as defined in the clause) of the U.S. zero tolerance policy, and take action against those employees who violate the U.S. policy.

4. *Scope of Contractor's Obligation.* One respondent suggested that the text of the clause at FAR 52.222–50 be revised to further elaborate on the scope of the contractor's obligations regarding what actions it may take against employees and subcontractors who violate the policy.

Response: The Councils do not believe that further elaboration is necessary. The clause is clear that contractors must notify their employees regarding the policy and the actions that may be taken for violations. The clause lists examples of actions that contractors may take, but does not limit the actions to only those listed. Furthermore, the clause already provides contractors with flexibility as to what actions they may choose to impose against either employees or subcontractors in subparagraph (c)(2) by stating that the contractor shall take ''appropriate'' action.

5. *Reporting Allegations and Employment.* Three comments were received regarding the procedures for reporting allegations and employment issues.

(a) One respondent objected to the obligation in the FAR clause 52.222–50(d)(1), which requires contractors to notify the contracting officer immediately when they learn of allegations that the policy has been violated. The respondent proposed that contractors be obligated to notify only when they have ''adequate evidence'' of a violation.

Response: The Councils believes that it is important for the contracting officer to learn immediately of alleged violations of U.S. trafficking policy. Many such allegations become a subject of interest quickly, and it is important in those situations that the contracting officer be informed. The Councils further believes that the ''adequate evidence'' standard contained in FAR 22.1704(b) properly limits the

contracting officer's ability to exercise the available remedies with respect to allegations of conduct that violate U.S. policy.

(b) One respondent is concerned that the rule does not provide guidance on how employees found to have engaged in trafficking will be prevented from working on another Government contract. The respondent believes that some ''stop-gap'' measure is required until the Government deals with the investigations and prosecution issue.

Response: The Councils disagree that the rule should provide guidance on how employees found to have engaged in trafficking are to be prevented from working on another Government contract. Providing such guidance would be outside the scope of the rule. Each acquisition carries its own unique and special contract requirements and terms and conditions for which the contractor is responsible and liable. This responsibility and liability includes the contractor's hiring of responsible employees and subcontractors that meet the performance requirements, and terms and conditions specified in the acquisition. This responsibility may include the contractor's responsibility to conduct appropriate background investigations prior to hiring its employees and subcontractors.

(c) Another respondent is concerned that the rule provides the potential for wrongful discharge filings and collective bargaining issues.

Response: A contractor may need to update the employment contracts it forms (whether with unions or non-unionized employees) to reflect the anti-trafficking statute, which is intended to have an impact on the behavior of Government contractor employees.

6. *Prescriptive Language Applicability*. One respondent noted that the prescriptive language at FAR 22.1703 and 22.1704(a) provides that ''Government contracts shall prohibit contractors, contractor employees, subcontractors and subcontractor employees'' from taking the listed actions. However, the clause at FAR 52.222–50(b) is limited to ''contractor and contractor employees.'' The prescriptive language and clause language should be reconciled.

Response: It should be noted that provisions and clauses are directed to the offeror or contractor. The term ''contractor and contractor employees'' refers to the prime contractor only. When a prime contractor issues a subcontract, the clause would then be applicable to the subcontractor using the term ''contractor and contractor employees.'' However, the prescriptive language provides all conditions, requirements, and instructions for using the provision or clause and is applicable to both contractors and subcontractors. The Councils recommends that the final rule remain unchanged.

7. *Administrative Issues*. One respondent recommended several administrative changes, as follows:

(a) FAR 22.1703 uses the word ''and'' while FAR 52.222–50(b) uses the word ''or.'' This should be reconciled;

(b) Move the reference to FAR clause 52.222–50 from FAR 52.212–5(b)(24)(i) and (ii) to FAR 52.212–5(a) because the clause applies to all contracts;

(c) FAR 52.212–5(e)(1)(vii) needlessly cites a reason for listing the flow-down clause. By incorporating the clause in paragraph (e), by definition the clause flows down to subcontractors; and

(d) FAR 52.222–50(e) should be reworded to remove awkwardness.

Responses:

(a) FAR language at 22.1703(a)(2) has been changed to read ''or'' instead of ''and.'' All other conjunctions are used correctly throughout the rule.

(b) FAR clause 52.222–50 has been moved to 52.212–5(a).

(c) FAR language at 52.212–5(e)(1)(vii) has been revised to remove the reason for flow-down.

(d) FAR 52.222–50(e) has been revised to remove awkward wording of remedies.

8. *Clarification of Definitions*. Two respondents recommended further revisions regarding definitions. One respondent recommended adding a definition for ''forced labor'' as defined in the criminal statute at 18 U.S.C. § 1589, and another recommended more elaboration to the definitions of ''sex act'' and ''employee'' and offered suggested language as well.

Response: The Councils concur that a definition of ''forced labor'' should be added. The statute prohibits severe forms of trafficking in persons and, separately, forced labor. While forced labor is a severe form of trafficking in persons, as defined in 22 U.S.C. 7102, the Councils agree that defining the specific term ''forced labor'' would add more clarity. Therefore, a definition of ''forced labor'' has been added to 22.1702 and the clause at 52.222–50.

Because the FAR rule reflects the definition of ''commercial sex act'' in accordance with 22 U.S.C. 7102, the Councils believe that the statutory definition of commercial sex acts should remain as stated in the rule without further elaboration.

Lastly, a respondent requested clarifications in the definition of ''employee'' to more clearly outline what is meant by ''directly engaged'' and ''minimal impact or involvement''. The original rule issued on April 19, 2006 (71 FR 20301) used the phrase ''including all direct cost employees'' in the definition of ''employee'', similar to the language used in FAR 23.503 implementing the Drug-Free Workplace Act. The Councils subsequently removed this phrase in the second interim rule based on public comment that the phrase caused confusion since the term ''direct cost'' appeared to refer to cost-reimbursement contracts only. The phrase ''minimal impact or involvement'' is also used in the definition of ''employee'' under FAR 23.503 and is not further defined. The Councils are not aware that the lack of more definitive elaboration has caused any problems in the implementation of the drug-free workplace requirements. Also see the discussion under Paragraph 3.

9. *Facilitation of Investigations and Prosecutions*. One respondent suggested the creation of an anti-trafficking hotline that would link directly to the Department of Justice to allow contractor employees to report trafficking allegations.

Response: This comment goes beyond the statutory requirements of the Act, which requires only that contracts contain provisions allowing for termination if the contractor or subcontractor engages in conduct that violates U.S. policy on trafficking. However, the Councils recommend adding a link to the Department of State's Office to Monitor and Combat Trafficking in Persons' (DOS G/TIP) (*http://www.state.gov/g/tip*) at FAR 22.1703 for further information on human trafficking and links to other Government websites.

10. One respondent suggested making a distinction between trafficking abuses and the procurement of a commercial sex act. The respondent further states that trafficking in persons is a felony while procurement of a commercial sex act is not covered by Federal law and is treated in most states as a misdemeanor, unless it involves a child. The lack of distinction in the rule heightens confusion and becomes difficult to implement.

Response: The statute requires that the Government have the authority to terminate a contract in cases where the contractor or subcontractor engages in severe forms of trafficking in persons, or in cases involving the procurement of a commercial sex act. The rule seeks to implement both statutory directives and remains unchanged.

11. *Enforcement Issues Where Commercial Sex Acts are Legal*. One respondent was concerned that certain

types of sex acts are legal in several jurisdictions of the U.S. and in some foreign countries and urged that careful attention be given to how the remedies in this rule intersect with otherwise lawful conduct.

Response: The Councils recognize the challenges contractors face in monitoring employee actions during non-work hours. However, contractors and their employees need to understand that procuring commercial sex acts is an unacceptable behavior that carries penalties. The Councils do not believe that a change in the language to distinguish enforcement actions for ''unlawful commercial sex acts'' and ''lawful commercial sex acts'' is consistent with the statute and therefore the final rule remains unchanged.

12. *Investigation and Punishment of Violators*. One respondent submitted two comments regarding the investigation of trafficking violators.

(a) The respondent recommends revising the text to include specific procedures governing the investigation and punishment of contractors for violating the rule. The respondent also questions whether there is a requirement for the contractor to investigate if the company learns that an employee may have been involved in a commercial sex act.

Response: Violations of the rule should be handled in the same manner that the contractor handles other allegations of employee misconduct.

(b) The respondent also suggests creating a decision-tree for contracting officers attempting to apply the rule.

Response: In cases where trafficking is alleged, the FAR is clear on what actions the contracting officer may take. After making a determination in writing that adequate evidence exists to suspect any of the violations in paragraph (a) of FAR 22.1704, the contracting officer may pursue any of the remedies specified in paragraph (e) of FAR clause 52.222–50.

13. *Public Meeting*. One respondent requested that the Councils seek an active dialogue with the contractor community in developing the final rule.

Response: The Councils have solicited the public several times for comments to assist with the development of this rule. Public comments were solicited on April 16, 2006 and August 17, 2007.

This is a significant regulatory action and, therefore, was subject to review under 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 impact will be minimal unless the contractor or its employees or subcontractors engage in forms of trafficking in persons, use forced labor, or procure commercial sex acts that are illegal within the U.S. Although not considered significant, additional impact may be associated with contract performance in counties/states and locations outside the U.S. where certain commercial sex acts are legal. However, the termination authorities at 22 U.S.C. 7104(g) apply to Government contracts performed in these areas.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. Accordingly, the Regulatory Secretariat will forward a request for approval of a new information collection requirement to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 12, 22, and 52

Government procurement.

Dated: December 24, 2008

Edward Loeb,

Acting Director, Office of Acquisition Policy.

■ Accordingly, the interim rules published in the **Federal Register** at 71 FR 20301, April 19, 2006, and at 72 FR 46335, August 17, 2007, are adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 22 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 2. Amend section 22.1702 by adding, in alphabetical order, the definition ''Forced Labor'' to read as follows:

22.1702 Definitions.

* * * * *

Forced labor means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

* * * * *

■ 3. Amend section 22.1703 by revising the introductory paragraph; and by removing from the end of paragraph (a)(2) ''and'' and adding ''or'' in its place. The revised text reads as follows:

22.1703 Policy.

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Additional information about trafficking in persons may be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons' at *http://www.state.gov/g/tip*. Government contracts shall—

* * * * *

■ 4. Amend section 22.1704 in paragraph (b) by adding a new sentence after the first sentence to read as follows:

22.1704 Violations and remedies.

* * * * *

(b) * * * The contracting officer may take into consideration whether the contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining the appropriate remedies. * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(1) and (a)(2) as (a)(2) and (a)(3), respectively; and adding a new paragraph (a)(1);

■ c. Removing paragraph (b)(25); and redesignating paragraphs (b)(26) through (b)(42) as (b)(25) through (b)(41), respectively; and

■ d. Revising paragraph (e)(1)(viii) 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 (FEB 2009)

(a) * * *

(1) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

____Alternate I (Aug 2007) of 52.222–50 (22 U.S.C. 7104(g)).

* * * * *

(e)(1) * * *

(viii) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

____Alternate I (Aug 2007) of 52.222–50 (22 U.S.C. 7104(g)).

* * * * *

■ 6. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(1)(iv); and removing from paragraph (a)(2)(vi) ''(DEC 2008)'' and adding ''(FEB 2009)'' in its place to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS (FEB 2009)

(a) * * *

(1) * * *

(iv) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

* * * * *

■ 7. Amend section 52.222–50 by—

■ a. Revising the date of the clause;

■ b. Adding, in alphabetical order, the definition ''Forced Labor'';

■ c. Removing from the introductory text of paragraph (e) ''render the Contractor subject to'' and adding ''result in'' in its place; and revising paragraphs (e)(1) and (e)(2); and

■ d. Adding paragraph (g) to read as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

COMBATING TRAFFICKING IN PERSONS (FEB 2009)

(a) * * *

* * * * *

Forced Labor means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

* * * * *

(e) * * *

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

* * * * *

(g) *Mitigating Factor*. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at *http://www.state.gov/g/tip*.

(End of clause)

■ 8. Amend section 52.244–6 by revising the date of the clause; by redesignating paragraph (c)(1)(vii) as paragraph (c)(1)(viii); and adding a new paragraph (c)(1)(vii) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2009)

* * * * *

(c)(1) * * *

(vii) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

* * * * *

[FR Doc. E9–548 Filed 1–14–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–30; FAR Case 2007–016; Item VIII; Docket 2008–0001; Sequence 3]

RIN 9000–AK89

Federal Acquisition Regulation; FAR Case 2007–016, Trade Agreements—New Thresholds

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 increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date*: January 15, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–30, FAR case 2007–016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 73 FR 10962 on February 28, 2008, to implement the biannual changes specified by the United States Trade Representative (USTR) to the trade agreements thresholds. A correction was published in the **Federal Register** at 73 FR 16747, March 28, 2008.

No comments were received by the close of the public comment period on April 28, 2008. Therefore, the Councils agreed to convert the interim rule 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 dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements that affect the prescriptions for use of the certifications at FAR 52.225–4 (OMB Control No. 9000–0130) and FAR 52.225–6 (OMB Control No. 9000–0025) and the clauses at FAR 52.225–9 and 52.225–11 (OMB Control No. 9000–0141), which contain information collection requirements approved under the specified OMB control numbers by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, there is no impact on the estimated burden hours, because the threshold changes are in