

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket FAR 2009–0001, Sequence 9]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–38;  
Introduction**

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

and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Summary presentation of rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–38. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–38 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

**LIST OF RULES IN FAC 2005–38**

| Item      | Subject                                                                                                        | FAR case | Analyst   |
|-----------|----------------------------------------------------------------------------------------------------------------|----------|-----------|
| I .....   | Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees. | 2009–017 | Cundiff.  |
| II .....  | Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts ...                     | 2006–026 | Jackson.  |
| III ..... | Internet Protocol Version 6 (IPv6) .....                                                                       | 2005–041 | Woodson.  |
| IV .....  | Federal Food Donation Act of 2008 (Pub. L. 110–247) .....                                                      | 2008–017 | Jackson.  |
| V .....   | Postretirement Benefits (PRB), FAS 106 .....                                                                   | 2006–021 | Chambers. |
| VI .....  | Travel Costs .....                                                                                             | 2006–024 | Chambers. |
| VII ..... | Technical Amendments .....                                                                                     |          |           |

**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 2005–38 amends the FAR as specified below:

**Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009–017)**

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

**Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006–026)**

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

**Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005–041)**

This final rule adopts the proposed rule published in the **Federal Register** at 71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M–05–22 provides guidance to agencies for transitioning to IPv6.

**Item IV—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017)**

This rule adopts as final, with no changes, the interim rule published in the **Federal Register** at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or

sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

#### **Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006–021)**

Currently FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

#### **Item VI—Travel Costs (FAR Case 2006–024)**

This final rule amends the FAR to change the travel cost principle (FAR 31.205–46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms “coach or equivalent” and “standard” from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a “coach” fare may be available, given the great variety of fares often available, the “coach” fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

#### **Item VII—Technical Amendments**

Editorial changes are made at FAR 6.302–2, 8.703, 15.305, 52.209–6, and 52.212–5.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

#### **Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005-38 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-38 is effective December 10, 2009, except for Items V and VI, which are effective January 11, 2010, and Item II, which is effective February 1, 2010.

Dated: November 25, 2009.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: November 24, 2009.

**David A. Drabkin,**

*Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: November 20, 2009.

**James A. Balinskas,**

*Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.*

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### **DEPARTMENT OF DEFENSE**

#### **GENERAL SERVICES ADMINISTRATION**

#### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 2, 22, and 52**

**[FAC 2005–38; FAR Case 2009–017; Item I; Docket 2009–0040, Sequence 1]**

**RIN 9000–AL47**

#### **Federal Acquisition Regulation; FAR Case 2009–017, Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees**

**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 (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to delete FAR Subpart 22.16 and the corresponding clause at FAR 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order (E.O.) 13201 of February 17, 2001, of the same title. E.O. 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. E.O. 13201 was revoked by E.O. 13496 of January 30, 2009, Notification of Employee Rights Under Federal Labor Laws.

**DATES:** *Effective Date:* December 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2009–017.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

On January 30, 2009, the President issued E.O. 13496 (74 F.R. 6107, February 4, 2009) which requires contractors to post a notice informing employees of their rights under Federal labor laws, including the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, allowing workers to freely associate, self-organize, and designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. E.O. 13496 revoked the prior E.O. 13201. The new E.O. sets forth a different policy that will be included in the FAR as a separate rule in conjunction with guidance from the Secretary of Labor on the appropriate content for a replacement notice to employees. Therefore, the language at FAR Subpart 22.16 that prescribes the policy and procedures of E.O. 13201 is no longer applicable.

This final rule amends the FAR to delete FAR Subpart 22.16 in its entirety as well as the corresponding clause at FAR 52.222–39. FAR clauses 52.212–5 and 52.244–6 are also amended to delete any references to the revoked E.O. 13201 and FAR clause 52.222–39. The Department of Labor rescinded its