

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)

[FR Doc. 2010–24156 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

### 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]

BILLING CODE 6820–EP–P

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