

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Federal Acquisition Circular 90-38]

**Federal Acquisition Regulation; Introduction of Miscellaneous Amendments**

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

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of rules.

**SUMMARY:** This document serves to introduce the rules which follow and which comprise Federal Acquisition Circular (FAC) 90-38. The Federal Acquisition Regulatory Council has agreed to issue FAC 90-38 to amend the Federal Acquisition Regulation (FAR).

**DATES:** For effective dates, see individual documents following this one.

**FOR FURTHER INFORMATION CONTACT:** The individual whose name appears in relation to each FAR case or subject

area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-38 and FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 90-38 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Contact point
I .....	Modification of Existing Contracts .....	94-723	Al Winston, (703) 602-2119.
II .....	Application of Cost Accounting Standards Board Regulations to Educational Institutions.	95-002	Jeremy Olson, (202) 501-3221.
III .....	Assignment of Claims—Presidential Delegation .....	94-767	John Galbraith, (703) 697-6710.
IV .....	Interest Clause Revisions .....	92-045	Jeremy Olson, (202) 501-3221.

**Case Summaries**

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

*Item I—Modification of Existing Contracts (FAR Case 94-723)*

This interim rule amends FAR 43.102 to implement section 10002 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (FASA). Section 10002 states that final regulations implementing FASA may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by FASA. Section 10002 also states that nothing in FASA requires the renegotiation or modification of existing contracts to incorporate changes authorized by FASA. The interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by FASA, the modification should insert the current version of the applicable FAR clauses.

*Item II—Application of Cost Accounting Standards Board Regulations to Educational Institutions (FAR Case 95-002)*

This final rule amends FAR Parts 1, 30, 42, and 52 to implement changes made to the Cost Accounting Standards. The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), has amended the regulatory provisions contained in Chapter 99 of Title 48 of the Code of Federal Regulations (FAR Appendix B). The amendments apply to educational institutions receiving a negotiated Federal contract or subcontract award in excess of \$500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations) and require that such educational institutions comply with certain specified CASB rules, regulations, and Cost Accounting Standards. The amendments to the CASB regulations became effective on January 9, 1995. (The entire FAR Appendix B will be issued in the loose-leaf pages of FAC 90-38.)

*Item III—Assignment of Claims—Presidential Delegation (FAR Case 94-767)*

This final rule amends FAR Subpart 32.8 to reflect the Presidential delegation of authority to make determinations of need for contractual no-setoff commitments, and to provide guidance for determinations of need made in accordance with the

Presidential delegation dated October 3, 1995.

*Item IV—Interest Clause Revisions (FAR Case 92-045)*

This final rule amends FAR Subpart 32.6 and the clause at 52.232-17 to clarify that certain cost accounting standards clauses provide for the use of differing interest rates under differing circumstances.

Dated: April 18, 1996.  
Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Federal Acquisition Circular  
Number 90-38

Federal Acquisition Circular (FAC) 90-38 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.

FAR Cases 94-723 and 95-002 are effective April 29, 1996; and FAR Cases 94-767 and 92-045 are effective June 28, 1996.

Dated: April 17, 1996.  
Eleanor R. Spector,  
Director, Defense Procurement.

Dated: April 16, 1996.  
Ida M. Ustad,  
Deputy Associate Administrator, Office of  
Acquisition Policy, GSA.

Dated: April 18, 1996.  
Deidre A. Lee,  
Associate Administrator for Procurement,  
National Aeronautics and Space  
Administration.  
[FR Doc. 96-10427 Filed 4-26-96; 8:45 am]  
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#### 48 CFR Part 43

[FAC 90-38; FAR Case 94-723; Item I]

RIN 9000-AG90

#### Federal Acquisition Regulation; Modification of Existing Contracts

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103-355) to amend the Federal Acquisition Regulation (FAR). It implements Section 10002 of FASA which authorizes regulations to provide for modification of existing contracts without requiring consideration, upon request of the contractor, to incorporate changes authorized by FASA. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

**DATES:** *Effective Date:* April 29, 1996.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before June 28, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-38, FAR case 94-723, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Al Winston at (703) 602-2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building,

Washington, DC 20405 (202) 501-4755. Please cite FAC 90-38, FAR case 94-723.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 10002 of FASA states that regulations implementing FASA may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by FASA. Section 10002 also states that nothing in FASA requires the renegotiation or modification of existing contracts to incorporate changes authorized by FASA. The interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by FASA, the modification should insert the current version of the applicable FAR clauses.

##### B. Regulatory Flexibility Act

The changes may 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 will require contractors seeking to amend existing contracts to so notify the contracting officer. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-38, FAR case 94-723), in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space

Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because immediate implementation as an interim rule will provide significant benefits to industry and the Government. Section 10002 of FASA, authorizes contracting officers, if requested by the prime contractor to modify contracts without requiring consideration, to incorporate changes authorized by FASA. The regulatory implementation of FASA has been a success for both industry and the Government. Implementation of FASA Section 10002 as an interim rule will enable industry and the Government to gain immediate benefits, including the potential reduction of procurement costs. The interim rule authorizes the adoption of any of the FASA rules that will benefit the contracting parties. The interim rule should involve no substantial risk to industry, since contractors must affirmatively request adoption of the FASA rules to an existing contract. It has been through the process of the consideration and adoption of the FAR rules to implement FASA, that the potential benefits from this interim rule became apparent. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

#### List of Subjects in 48 CFR Part 43

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 43 is amended as set forth below:

#### PART 43—CONTRACT MODIFICATIONS

1. The authority citation for 48 CFR Part 43 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).

2. Section 43.102 is amended by adding paragraph (c) to read as follows:

##### 43.102 Policy.

\* \* \* \* \*

(c) The Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (FASA), authorizes, but does not require, contracting officers, if requested by the prime contractor, to