



# Federal Register

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**Thursday,  
December 10, 2009**

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**Part II**

**Department of  
Defense**

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**General Services  
Administration**

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**National Aeronautics  
and Space  
Administration**

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**48 CFR Chapter 1 and Parts 2, 4, 7, et al.  
Federal Acquisition Regulations; Final  
Rules and Small Entity Compliance Guide**

**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](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.*

[FR Doc. E9–28928 Filed 12–9–09; 8:45 am]

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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