



Federal Register

**Thursday,
June 27, 2002**

Part V

**Department of
Defense
General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Chapter 1, et al.
Federal Acquisition Circular 2001-08;
Final Rule**

DEPARTMENT OF DEFENSE
GENERAL SERVICES
ADMINISTRATION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–08;
Introduction

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

ACTION: Summary presentation of final rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–08. 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.arnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–08 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Definition of “Claim” and Terms Relating to Termination	2000–406	Klein.
II	Federal Supply Schedule Order Disputes and Incidental Items	1999–614	Nelson.
III	Relocation Costs	1997–032	Olson.
IV	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. 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.

FAC 2001–08 amends the FAR as specified below:

Item I—Definition of “Claim” and Terms Relating to Termination (FAR Case 2000–406)

The purpose of this final rule is to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and streamline the process for locating definitions. This rule is not intended to change the meaning of any FAR text or clause. Movement of various definitions to FAR 2.101 is not intended to change the operation of the cost principles and, specifically, the movement of the definition of “claim” to FAR 2.101 is not intended to change the scope or context of FAR 31.205–47(f)(1).

This final rule—

- Revises and moves the definitions of “claim” from FAR 33.201; “continued portion of the contract,” “partial termination,” “terminated portion of the contract” from FAR 49.001; and “termination for convenience” from FAR 17.103;
- Adds a definition of “termination for default” at FAR 2.101 and a new paragraph (d) at FAR 17.104 that explains the distinction between “termination for convenience” and “cancellation” that was deleted from the definition of “termination for convenience” that was moved from FAR 17.103;

- Revises FAR 33.213(a) to clarify the distinction between claims “arising under a contract” and claims “relating to a contract”

- Revises the definition of “claim” in the FAR clause at 52.233–1 to conform to the definition at FAR 2.101; and
- Makes other editorial revisions for clarity.

Item II—Federal Supply Schedule Order Disputes and Incidental Items (FAR Case 1999–614)

This final rule amends the FAR to add policies on disputes and incidental items under Federal Supply Schedule contracts and to remove the requirement to notify GSA when a schedule contractor refuses to honor an order placed by a Government contractor. This rule affects all ordering offices acquiring supplies or services subject to the procedures of FAR Subpart 8.4.

Item III—Relocation Costs (FAR Case 1997–032)

This final rule amends the relocation cost principle at FAR 31.205–35. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of costs.

The relocation cost principle addresses the allowability of costs incurred by an existing contractor employee incident to the permanent change of the employee’s assigned work location for a period of 12 months or more, or upon recruitment of a new employee. The final rule revises the cost principle by making allowable payments for spouse employment

assistance and for increased employee income and Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs, increasing the ceiling for allowance of miscellaneous costs of relocation, and making a number of editorial changes.

Item IV—Technical Amendments

These amendments update sections and make editorial changes at FAR 52.202–1, 52.212–3, and 52.225–11.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–08 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 2001–08 are effective July 24, 2002.

Dated: June 18, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: June 10, 2002.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: June 10, 2002.

Tom Luedtke,

Assistant Administrator for 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, 17, 31, 33, 49, and 52

[FAC 2001-08; FAR Case 2000-406; Item I]

RIN 9000-AJ19

Federal Acquisition Regulation; Definition of "Claim" and Terms Relating to Termination

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 clarify and move the definitions of "claim" and certain terms relating to termination to the FAR part regarding definitions.

DATES: *Effective Date:* July 29, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 2001-08, FAR case 2000-406.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and streamline the process for locating definitions. This rule is not

intended to change the meaning of any FAR text or clause. Movement of various definitions to FAR 2.101 is not intended to change the operation of the cost principles, and specifically the movement of the definition of "claim" to FAR 2.101 is not intended to change the scope or context of FAR 31.205-47(f)(1).

This final rule—

- Revises and moves the definitions of "claim" from 33.201; "continued portion of the contract," "partial termination," "terminated portion of the contract" from FAR 49.001; and "termination for convenience" from FAR 17.103;

- Adds a definition of "termination for default" at FAR 2.101 and a new paragraph 17.104(d) that explains the distinction between "termination for convenience" and "cancellation" that was deleted from the definition of "termination for convenience" that was moved from FAR 17.103;

- Revises FAR 33.213(a) to clarify the distinction between claims "arising under a contract" and claims "relating to a contract";

- Revises the definition of "claim" in the clause at FAR 52.233-1 to conform to the definition at FAR 2.101; and
- Makes other editorial revisions for clarity.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 42922, August 15, 2001, with a request for comment. One respondent submitted two comments to the proposed rule. The Councils considered and accepted both comments. The rule was modified as a result. The first comment recommended that the parenthetical reference at FAR 31.205(f)(1) be changed to reflect the new location of the definition of "claim" at FAR 2.101. This was done. The second comment recommended that a clarifying statement be added to the **Federal Register** notice stating that the movement of the various definitions to FAR 2.101 is not intended to change the operation of the cost principles, and specifically the movement of the definition of "claim" to FAR 2.101 is not intended to change the scope of FAR 31.205-47(f)(1). This was also done.

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 rule does not change policy. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on August 15, 2001 (66 FR 42922).

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 2, 17, 31, 33, 49, and 52

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 17, 31, 33, 49, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 17, 31, 33, 49, and 52 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).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Claim," "Continued portion of the contract," "Partial termination," "Termination for convenience," "Termination for default," and "Terminated portion of the contract" to read as follows:

2.101 Definitions.

* * * * *

Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in