

**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 subjectarea. 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 Institu- tions.	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]  
BILLING CODE 6820-EP-P

#### 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