

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR-2021-0051, Sequence No. 7]

Federal Acquisition Regulation;
Federal Acquisition Circular 2022-03;
Introduction

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

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2022-03. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202-501-1448 or by email at curtis.glover@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2022-03, FAR Case 2022-001.

Rule Listed in FAC 2022-03

Subject: Trade Agreements Thresholds.

FAR Case: 2022-001.

ADDRESSES: The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2022-03 amends the FAR as follows:

Trade Agreements Thresholds (FAR
Case 2022-001)

This final rule amends the Federal Acquisition Regulation to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to predetermined formulae under the agreements.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2022-03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2022-03 is effective December 30, 2022 except for FAR Case 2022-001, which is effective January 1, 2022.

Linda W. Neilson,
Director, Defense Acquisition Regulations System, Department of Defense.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.
Karla Smith Jackson,
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 22, 25, and 52

[FAC 2022-03; FAR Case 2022-001; Docket No. FAR-2021-0054; Sequence No. 1]

RIN 9000-AO38

Federal Acquisition Regulation: Trade
Agreements Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202-501-1448 or by email at curtis.glover@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2022-03, FAR Case 2022-001.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately every two years, the trade agreements thresholds for the World Trade Organization Government Procurement Agreement (WTO GPA) and the free trade agreements (FTAs) are adjusted according to predetermined formulae under the agreements. These thresholds become effective on January 1, 2022. On November 26, 2021 (86 FR 67579), the United States Trade Representative (USTR) published new procurement thresholds. DoD, GSA, and NASA are not changing the Canada thresholds because of the United States-Mexico-Canada Agreement Implementation Act, which is being implemented in FAR Case 2020-014, United States-Mexico-Canada Agreement. FAR Case 2020-014 was published as a proposed rule on December 13, 2021.

The United States Trade Representative has specified the following new thresholds:

	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
Trade agreement			
WTO GPA	\$183,000	\$183,000	\$7,032,000
FTAs:			

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
Australia FTA	2,319	92,319	7,032,000
Bahrain FTA	183,000	183,000	12,001,460
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	92,319	92,319	7,032,000
Chile FTA	92,319	92,319	7,032,000
Colombia FTA	92,319	92,319	7,032,000
Korea FTA	100,000	100,000	7,032,000
Morocco FTA	183,000	183,000	7,032,000
NAFTA:			
Canada	25,000	83,099	10,802,884
Mexico	92,319	92,319	12,001,460
Oman FTA	183,000	183,000	12,001,460
Panama FTA	183,000	183,000	7,032,000
Peru FTA	183,000	183,000	7,032,000
Singapore FTA	92,319	92,319	7,032,000
Israeli Trade Act	50,000		

II. Discussion and Analysis

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (*i.e.*, 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

In addition, changes are required to the provision at 52.204–8, Annual Representations and Certifications, and the clause at 52.222–19, Child Labor-Cooperation with Authorities and Remedies, with conforming changes to the clause dates in 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, and 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adjusts the thresholds according to predetermined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect

beyond the internal operating procedures of the Government.

IV. Expected Impact of the Rule

This final rule will adjust the thresholds for application of the WTO GPA and FTAs, as determined by the USTR. For acquisitions covered by the WTO GPA or FTAs, the USTR has waived the Buy American statute and other discriminatory provisions for eligible products. As a result, eligible products and services will receive equal consideration with domestic offers if the estimated value of the contract meets or exceeds the new thresholds set by the USTR. This rule is not expected to significantly impact domestic offerors or offerors covered by the WTO GPA or a FTA, because the threshold adjustments made under this rule simply accommodate changes in economic conditions while maintaining the status quo.

V. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Products, Including Commercially Available Off-the-Shelf Items, or for Commercial Services

This rule amends the FAR to make minor revisions in the thresholds for application of the WTO GPA and the FTAs. The revisions do not add any new burdens or, except for the thresholds changes themselves, impact applicability of clauses and provisions at or below the simplified acquisition threshold, to acquisitions of commercial products (including commercially available off-the-shelf items), or to acquisition of commercial services.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VII. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VIII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

IX. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at 52.225–2, 52.225–4, 52.225–6 and 52.225–10, and the clauses at FAR 52.225–9, 52.225–11, 52.225–21, and 52.225–23, currently approved under OMB Control Number 9000–0024, entitled “Buy American Act, Trade Agreements, and Duty-Free Entry, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521). The impact, however, is negligible, because the threshold changes are in line with inflation and maintain the status quo. As a result, there is no change to the estimated burden.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**22.1503 [Amended]**

■ 2. Amend section 22.1503 by—

TABLE 1 TO PARAGRAPH (b)

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$183,000	\$183,000	\$7,032,000
FTAs:			
Australia FTA	92,319	92,319	7,032,000
Bahrain FTA	183,000	183,000	12,001,460
CAFTA-DR (Costa Rica, Dominican Republic, El-Salvador, Guatemala, Honduras, and Nicaragua)	92,319	92,319	7,032,000
Chile FTA	92,319	92,319	7,032,000
Colombia FTA	92,319	92,319	7,032,000
Korea FTA	100,000	100,000	7,032,000
Morocco FTA	183,000	183,000	7,032,000
NAFTA:			
—Canada	25,000	83,099	10,802,884
—Mexico	92,319	92,319	12,001,460
Oman FTA	183,000	183,000	12,001,460
Panama FTA	183,000	183,000	7,032,000
Peru FTA	183,000	183,000	7,032,000
Singapore FTA	92,319	92,319	7,032,000
Israeli Trade Act	50,000		

25.603 [Amended]

■ 5. Amend section 25.603 by removing from paragraph (c)(1) “\$7,008,000” and adding “\$7,032,000” in its place.

25.1101 [Amended]

■ 6. Amend section 25.1101 by—

■ a. Removing from paragraph (b)(1)(i)(A) “\$182,000” and adding “\$183,000” in its place;

■ b. Removing from paragraphs (b)(1)(iii) and (iv) “\$83,099” and adding “\$92,319” in its place;

■ c. Removing from paragraphs (b)(2)(iii) and (iv) “\$83,099” and adding “\$92,319” in its place;

■ d. Removing from paragraph (c)(1) “\$182,000” and “WTO GPA applies” and adding “\$183,000” and “WTO GPA” in their places, respectively; and

■ e. Removing from paragraph (d) “\$182,000” and adding “\$183,000” in its place.

25.1102 [Amended]

■ 7. Amend section 25.1102 by—

■ a. Removing from the paragraph (a) introductory text paragraph (c) introductory text “\$7,008,000” and adding “\$7,032,000” in its place; and

■ b. Removing from paragraphs (c)(3) and (d)(3) “\$7,008,000” and “\$10,802,884” adding “\$7,032,000” and “\$12,001,460” in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.204–8 by—

■ a. Removing from paragraph (b)(3) “\$83,099” and adding “\$92,319” in its place; and

■ b. Removing from paragraph (b)(4) “\$182,000” and adding “\$183,000” in its place.

PART 25—FOREIGN ACQUISITION**25.202 [Amended]**

■ 3. Amend section 25.202 by removing from paragraph (c) “\$7,008,000” and adding “\$7,032,000” in its place.

■ 4. Amend section 25.402 by revising table 1 to paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

■ a. Revising the date of the provision; and

■ b. Removing from paragraphs (c)(1)(xxi)(C) and (D) “\$83,099” and adding “\$92,319” in its place.

The revision reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Jan 2022)

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■ 9. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (b)(28) “(JAN 2020)” and adding “(JAN 2022)” in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (Jan 2022)

* * * * *

- 10. Amend section 52.213–4 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (b)(1)(ii) “(JAN 2020)” and adding “(JAN 2022)” in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (Jan 2022)

* * * * *

- 11. Amend section 52.222–19 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (a)(3) “\$83,099” and adding “\$92,319” in its place; and
- c. Removing from paragraph (a)(4) “\$182,000” and adding “\$183,000” in its place.

The revision reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

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Child Labor—Cooperation With Authorities and Remedies (Jan 2022)

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[FR Doc. 2021–28083 Filed 12–29–21; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2021–0051, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2022–03; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. 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 the rule appearing in Federal Acquisition Circular (FAC) 2022–03, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2022–03, which precedes this document.

DATES: December 30, 2021.

ADDRESSES: The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448 or by email at curtis.glover@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2022–03, FAR Case 2022–001.

Rule Listed in FAC 2022–03

Subject: Trade Agreements Thresholds.

FAR Case: 2022–001.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2022–03 amends the FAR as follows:

Trade Agreements Thresholds (FAR Case 2022–001)

This final rule amends the Federal Acquisition Regulation to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to predetermined formulae under the agreements.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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