

error, has occurred, and there is no threshold involved. Notification helps to reinforce the public's trust that taxpayer dollars are being properly expended and is important, even for smaller dollar transactions, because there may be a mistake in the payment process that will cause future payment errors. Notification will enable the Government to identify and correct any systemic problems that may have arisen. The Councils also do not believe the rule needs to specify a notification timeframe. If it is not clear to the contractor that an overpayment has actually occurred, the contractor could double-check its records expeditiously prior to notification. On the other hand, if the contractor provides notification and later determines that it was in error, the contractor can retract the notification as easily and as swiftly as it was made. The Councils believed that further disposition instructions should be addressed on a case-by-case basis.

3. *Comment:* The analyses required by the Regulatory Flexibility Act and Paperwork Burden Act should be revised since they do not adequately address the burden that the proposed rule places on contractors, especially small businesses.

Councils' response: The Councils believe that it is a normal business practice for contractors to have billing systems in place that identify what is owed them, and to submit payment requests to the Government accordingly. Consequently, the inclusion of notification of overpayment language in payment and financing clauses is the formalization of a practice that normally is already followed by most contractors, *i.e.*, to inform the entity that pays you when you believe a mistake has been made. Therefore, the proposed case, and the notification requirement (already instituted in FAR case 1999-023 published in the **Federal Register** at 66 FR 65353, December 18, 2001, for most invoicing payments), would only reflect a new burden for contractors that routinely ignore payment mistakes. The Councils believe the increase in the paperwork burden, as stated in the proposed rule, adequately reflects this impact.

In addition, it is not expected that this change will impact a substantial number of small entities since the overpayments cited by GAO in its July 1999 report GAO/NSIAD-99-131, Greater Attention Needed to Identify and Recover Overpayments, were all related to large businesses.

4. *Comment:* Government inaction when overpayments occur is a major problem in addition to the overpayment itself. Therefore, it is recommended that

the words "promptly" and "timely" be added to the rule, as indicated below, to emphasize the need for quick response on the part of a contracting officer to the contractor's notification of overpayment.

"If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment."

Councils' response: Concur. The proposed rule has been changed at FAR 12.215 and FAR 32.008.

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.*, since the overpayments cited by GAO in its report GAO/NSIAD-99-131 were all related to large businesses (*see* reconciliation of comment #3).

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements. This final rule requires the contractor to notify the contracting officer if the contractor becomes aware that the Government has overpaid on a financing payment under a contract for noncommercial items, and on financing and invoice payments under a contract for commercial items. Although this estimated burden requires approval under the Act, it is so small (less than 1 percent increase) that it does not substantially impact the estimated total burden under Office of Management and Budget Control Number 9000-0102 (in lieu of OMB Control Number 9000-0070, which was inadvertently listed in the proposed rule). (*See* reconciliation of comment #3.)

List of Subjects in 48 CFR Parts 12, 32, and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 32, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Add section 12.215 to read as follows:

12.215 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

PART 32—CONTRACT FINANCING

■ 3. Add section 32.008 to read as follows:

32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212-4 by revising the date of the clause and paragraph (i) to read as follows (the undesignated paragraph following paragraph (i) is removed):

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Oct. 2003)

* * * * *

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and