

withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act.” The proposed revision would restore the appropriate FAR language to that which existed prior to the aforementioned FAR case.

The Councils endorsed the proposal to selectively insert in FAR parts 22.404–3 through 22.404–7, “for the primary site of the work,” to provide clarity when the requirements do not apply to the wage determination for the secondary site of the work.

Finally, the Councils have proposed plain language changes to the clause prescriptions at FAR 22.407, and the clause at 52.222–11.

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 Councils do not expect this proposed rule to 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 this rule only implements DoL regulation or clarifies the existing requirements. The Councils agree with the Department of Labor’s (DoL) December 20, 2000, determination that its regulation would not have a significant economic impact on a substantial number of small entities (see **Federal Register** at 65 FR 80277). DoL stated that the rule primarily implements modifications resulting from court decisions interpreting statutory language, which would reduce the coverage of Davis-Bacon prevailing wage requirements as applied to construction contractors and subcontractors, both large and small, on Davis-Bacon and Related Act covered contracts. In addition, the rule makes a limited amendment to the site of the work definition to address an issue not contemplated under the current regulatory language—those instances where significant portions of buildings or works may be constructed at secondary sites which are not in the vicinity of the project’s final resting place. DoL believes that such instances will be rare, and that any increased costs, which may arise on such projects, would be offset by the savings due to the other limitations on coverage provided by the rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils

will consider comments from small entities concerning the affected FAR parts 22, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–004), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies, but the Councils estimate that the current burden is unaffected by the revisions to the form. The form is being revised for clarification. The form (OMB Control Number 9000–0014) is currently approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 22, 52, and 53

Government procurement.

Dated: December 15, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 22, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 22, 52, and 53 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Amend section 22.401 by—
  - a. Adding, in alphabetical order, the definitions “Apprentice” and “Trainee”;
  - b. Removing from the first sentence of the definition “*Building or work generally*” and removing from the third sentence “*building or work*” and adding “*building or work*” in both places;
  - c. Revising the definitions “*Construction, alteration, or repair*”, “*Laborers or mechanics*” and “*Site of the work*”; and
  - d. Amending the definition “*Public building or public work*” by removing “*building or public work*” and adding “*building or public work*” in its place.

The added and revised text reads as follows:

### § 22.401 Definitions.

\* \* \* \* \*

*Apprentice* means a person—

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a

State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

\* \* \* \* \*

*Construction, alteration, or repair* means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the “site of the work” definition and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (1)(iii) of the “site of work” definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (1)(ii), and the physical place or places where the building or work will remain (paragraph (1)(i) in the “site of the work” definition).

*Laborers or mechanics*—(1) Means—

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards.

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic,