

which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The information collection associated with the Cost Accounting Standards was approved by the Office of Management and Budget and assigned Control Number 0348-0051.

#### List of Subjects in 48 CFR Parts 28, 30, 32, 42, 44, and 52

Government procurement.

#### Words of Issuance

Interim Rule Adopted as Final with Changes.

For reasons set out in the preamble, the interim rule published in the *Federal Register* of August 31, 1992 (57 FR 39586) (amending 48 CFR parts 15, 30, 31, and 52) is adopted as final with the changes set forth in FAC 90-23, FAR case 93-27, item XX, which immediately follows this document.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.  
[FR Doc. 94-30650 Filed 12-27-94; 8:45 am]

BILLING CODE 6820-34-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 28, 30, 32, 42, 44, and 52

[FAC 90-23; FAR Case 93-27; item XX]

RIN 9000-AG01

#### Federal Acquisition Regulation; Cost Accounting Standards Applicability and Thresholds

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

ACTION: Final rule.

**SUMMARY:** This final FAR rule implements the final rule, issued by the Cost Accounting Standards (CAS) Board, which was published in the *Federal Register* at 58 FR 58798, November 4, 1993, and which revised the CAS applicability criteria, thresholds, and procedures for Government contractors. This document also amends the interim rule published in the *Federal Register* at 57 FR 39586, August 31, 1992. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** February 27, 1994, except for amendments to the following sections, which are effective November 4, 1993: 30.201-4 (b)(1) and (b)(2), 30.601(b), 52.230-1 "Note" statement, (c)(1) and (c)(3), (c)(4) "Caution" statement, and 52.230-3.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 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 90-23, FAR case 93-27.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On November 4, 1993, the Office of Federal Procurement Policy, Cost Accounting Standards (CAS) Board, issued a final rule revising 48 CFR Chapter 99 concerning the applicability criteria, thresholds, and procedures for the application of the CAS to negotiated Government contracts. The Board's final rule was effective upon publication in the *Federal Register* at 58 FR 58798, November 4, 1993. The Board's action adjusted the CAS applicability requirements and dollar thresholds to levels reflecting experience with price inflation since the thresholds were last promulgated by the previous Board on September 12, 1977. The Board also changed the criteria for determining which Standards apply at different threshold levels, the concept of what constitutes modified coverage, and the criteria that trigger full CAS coverage.

This final rule revises FAR 30.201-4 and the clauses at 52.230-1, and 52.230-3, as well as the FAR looseleaf edition of Appendix B, to incorporate the CAS Board's final rule published in 48 CFR Chapter 99. Major changes include establishing a \$25 million threshold for full CAS coverage, along with \$1 million "trigger contract" mechanism; revising modified CAS coverage by expanding it to include CAS 405, Accounting for Unallowable Costs, and CAS 406, Cost Accounting Standard—Cost Accounting Period, eliminating the alternative "10 percent or more" Government sales criterion for full coverage; and broadening the CAS exemption criteria in instances where the agency has waived the requirement for submission of certified cost or pricing data. The FAR is also revised to incorporate revisions to disclosure requirements for business segments which are otherwise subject to modified CAS coverage but which are required to disclose their cost accounting practices (normally a requirement only for full CAS coverage) because they are affiliated with other business segments

which are subject to full CAS coverage. The CAS rules now provide that the business segment has to file a disclosure statement only if, in its most recently completed cost accounting period, that segment's CAS-covered awards are 30 percent or more of total segment sales for the period and total \$10 million or more.

##### B. Regulatory Flexibility Act

The revisions in this final FAR rule will eliminate certain requirements associated with the administration of the Cost Accounting Standards. This rule does 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 small businesses are exempt from the application of the Cost Accounting Standards. A Regulatory Flexibility Analysis has, therefore, not been performed.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any reporting or recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### D. Public Comments

Public comments on this final FAR rule are not solicited because the policies and procedures contained in these amendments have already been publicized in the *Federal Register* by the Office of Federal Procurement Policy, Cost Accounting Standards Board's Notice of Proposed Rulemaking, made available for public comment in the *Federal Register* at 58 FR 18363, April 9, 1993. The FAR final rule simply mirrors the final rule published by the CAS Board in the *Federal Register* at 58 FR 58798, November 4, 1993.

#### List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

#### Words of Issuance

Interim Rule Adopted As Final With Changes

For reasons set out in the preambles of FAR cases 92-18 and 93-27, 48 CFR Parts 28, 30, 32, 42, 44, and 52 are amended as set forth below.

1. The authority citation for 48 CFR parts 28, 30, 32, 42, 44 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 28—BONDS AND INSURANCE

2. Section 28.301 is amended by revising paragraph (a)(1) as follows:

### 28.301 Policy.

(a)(1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416 (appendix B, FAR loose-leaf edition)) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when (i) the Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances or (ii) the contract specifically relieves the contractor of liability for loss of or damage to Government property.

## PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

3. Section 30.201-4 is amended in paragraph (b)(1) by removing "\$10 million" and inserting "\$25 million" in its place; and by revising paragraphs (b)(2) and (d)(2) to read as follows:

### 30.201-4 Contract clauses.

(b) \*\*\*  
(2) The clause at 52.230-3 requires the contractor to comply with 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subparts 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(d) \*\*\*  
(2) The clause at 52.230-5 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

### 30.601 [Amended]

4. Section 30.601(b) is amended by removing the first use of the word "of" and inserting "after" in its place.

### 30.602-1 [Amended]

5. Section 30.602-1(c)(1) is amended in the second sentence by removing the word "offices" and inserting "officers" in its place.

6. Section 30.602-2(a)(4) is amended by adding a new sentence after the first to read as follows:

### 30.602-2 Noncompliance with CAS requirements.

(4) \*\*\* If the ACO determines that the contractor's practices are in noncompliance, a written explanation shall be provided as to why the ACO disagrees with the contractor's rationale.

7. Section 30.602-3(a) is revised to read as follows:

### 30.602-3 Voluntary changes.

(a) General. (1) The contractor may voluntarily change its disclosed or established cost accounting practices. (2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the interest of the Government.

## PART 32—CONTRACT FINANCING

8. Section 32.503-7 is amended by revising the introductory paragraph to read as follows:

### 32.503-7 Limitations on general and administrative expenses (G&A) for progress payments.

If the contractor established an inventory suspense account under Appendix A of Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (48 CFR 9904.410 (appendix B, FAR loose-leaf edition)), and the account is \$5 million or more, the following limitations shall apply to progress payments:

## PART 42—CONTRACT ADMINISTRATION

9. Section 42.203 paragraph (a) is revised to read as follows:

### 42.203 Retention of contract administration.

(a) Contracting offices shall retain for administration any contract (1) not requiring the performance of contract administration functions (see 42.302) at or near contractor facilities, or (2) for which retention by the contracting office is prescribed by agency acquisition regulations. However, 30.601(a) and (b) require that retained contracts to which Cost Accounting Standards (CAS) apply be assigned for CAS administration only. Instructions for marking and distributing these contracts are provided in 4.201(c).

10. In section 42.302, the introductory text of paragraph (a)(11) and paragraph (a)(11)(iv) are revised to read as follows:

### 42.302 Contract administration functions.

(a) \*\*\*  
(11) In connection with Cost Accounting Standards (see part 30 and 48 CFR chapter 99)—

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230-2, 52.230-3, and 52.230-5.

## PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

11. and 12. Section 44.305-3 paragraph (a)(2) is revised to read as follows:

### 44.305-3 Withholding or withdrawing approval.

(a) \*\*\*  
(2) Implementation of cost accounting standards (see 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition);

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.230-1 is amended in the provision by:

(a) Revising the provision date to read "(NOV 1993)";

(b) Removing in the provision's Note the word "four" and inserting "three" in its place, and by removing the Roman numeral "IV" and inserting "III" in its place;

(c) Revising paragraphs (c)(1) and (3);

(d) Removing in the CAUTION statement in paragraph (c)(4) "\$10 million" and inserting "\$25 million" in its place; and

(e) Removing part II and redesignating parts III and IV as II and III, respectively, and revising the newly designated part II.

The revised text reads as follows:

### 52.230-1 Cost Accounting Standards Notices and Certification.

### Cost Accounting Standards Notices and Certification (Nov 1993)

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement. The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) One copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement \_\_\_\_\_



Name and Address of Cognizant ACO where filed \_\_\_\_\_

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

\* \* \* \* \*

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$25 million (of which at least one award exceeded \$1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately

\* \* \* \* \*

**II. Cost Accounting Standards—Eligibility for Modified Contract Coverage**

If the offeror is eligible to use the modified provisions of 48 CFR subpart 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR subpart 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding \$1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately

**CAUTION:** An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$25 million or more.

\* \* \* \* \*

14. Section 52.230-3 is amended in the clause by revising the clause date to read "(NOV 1993)"; and by revising paragraph (a)(1) to read as follows:

**52.230-3 Disclosure and Consistency of Cost Accounting Practices.**

\* \* \* \* \*

**Disclosure and Consistency of Cost Accounting Practices (Nov 1993)**

\* \* \* \* \*

(a) \* \* \*

(1) Comply with the requirements of 48 CFR subpart 9904.401, Consistency in

Estimating, Accumulating, and Reporting Costs; 48 CFR subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR subpart 9904.405, Accounting for Unallowable Costs; and 48 CFR subpart 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904.

\* \* \* \* \*

**52.230-5 [Amended]**

15. Section 52.230-5 is amended in the clause by revising the clause date to read "(DEC 1994)"; in the introductory paragraph by removing "(f)" and inserting "(g)" in its place; in paragraph (a)(1) by inserting after "new" the words "or modified"; in paragraph (b)(1) by removing the words "each additional" and inserting "the applicable" in their place; in paragraph (d) by removing the second reference to "CAS"; and in paragraph (f) by removing the word "contractor's" and inserting "contract" in its place.

[FR Doc. 94-30649 Filed 12-27-94; 8:45 am]

BILLING CODE 6820-34-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAC 90-23; FAR Case 91-45; Item XXI]

RIN 9000-AE81

**Federal Acquisition Regulation; Advance Agreements, Composition of Total Cost, and Accounting for Unallowable Costs**

**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 (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on revisions of the Federal Acquisition Regulation (FAR) concerning advance agreements, cost principles, composition of total cost, and accounting for unallowable costs. This final rule represents the first in a series resulting from the Councils' ongoing review of industry recommendations concerning the FAR's contract cost principles and procedures. This regulatory action was not subject to

Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** February 27, 1995

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 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 90-23, FAR case 91-45.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the *Federal Register* at 56 FR 43739, September 4, 1991. The proposed rule, which amends FAR 31.109, Advance agreements; 31.201-1, Composition of total cost; and 31.201-6, Accounting for unallowable costs, is being adopted as a final rule without change.

This rule is the first in a series resulting from the Councils' ongoing review of industry recommendations, submitted as part of the Defense Management Review, concerning FAR Part 31, Contract Cost Principles and Procedures. After considering public comments, the Councils have agreed to finalize and publish FAR changes as the deliberations on each increment are completed.

Language is added at FAR 31.109(a) to address the use of advance agreements to clarify allowability issues under the specific cost principles, in order to minimize subsequent disputes. The phrase in FAR 31.109(a), "particularly for firms or their divisions that may not be under effective competitive constraints," is deleted because the determination of the reasonableness, allocability, or allowability of a cost under the specific cost principles is not significantly impacted by the business environment in which the industry operates. Changes in FAR 31.201-1 include deleting the word "allowable" in its first sentence; redesignating the existing paragraph as "(a)"; and inserting a new paragraph "(b)" which makes it clear that while the total cost of a contract includes all allocable costs, the total allowable costs on a Government contract are limited to those allocable costs which are allowable pursuant to Part 31 and agency supplements. FAR 31.201-6(c) is revised to clarify that there is no intended difference in the accounting and presentation of unallowable costs between contracts which are covered by the Cost Accounting Standards and those which are not.



**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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

**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.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR part 31 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 31.109 is amended by revising paragraph (a) to read as follows:

**31.109 Advance agreements.**

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7 of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7, contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7 of that cost.

3. Section 31.201-1 is amended by revising the first sentence of the existing paragraph and designating the paragraph as paragraph (a); and adding paragraph (b) to read as follows:

**31.201-1 Composition of total cost.**

(a) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to 31.205-10. \* \* \*

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to part 31 and applicable agency supplements.

4. Section 31.201-6 is amended by revising paragraph (c) to read as follows:

**31.201-6 Accounting for unallowable costs.**

\* \* \* \* \*

(c) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405-50, Accounting for Unallowable Costs.

\* \* \* \* \*

[FR Doc. 94-30648 Filed 12-27-94; 8:45 am]  
BILLING CODE 6820-34-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 31 and 52**

[FAC 90-23; FAR Case 91-42; Item XXII]

RIN 9000-AE69

**Federal Acquisition Regulation; Postretirement Benefits-Transition Costs**

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

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to convert the interim rule published in the Federal Register at 56 FR 41738, August 22, 1991, as Item IX of FAC 90-7, to a final rule with minor modifications. The final rule addresses the treatment of costs for postretirement benefits other

than pensions (PRB) which are attributable to employees' past service. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** February 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 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 90-23, FAR Case 91-42.

**SUPPLEMENTARY INFORMATION:****A. Background**

An interim rule was published in the Federal Register at 56 FR 41738, August 22, 1991, as item IX of FAC 90-7. This interim rule changed FAR 31.205-6 to add a new paragraph (j)(3)(v), revised the first sentence of paragraph (j)(4), redesignated the existing paragraph (o)(4) as (o)(5), and added a new paragraph (o)(4).

The final rule differs from the interim rule in that it also amends FAR 31.205-6(o)(2) to allow costs generated using the terminal funding method allowed for CAS-covered contractors. Both the terminal funding method and cash basis (pay-as-you-go) accounting are allowable assignment methods under CAS but are not sanctioned by the Generally Accepted Accounting Principles. It is intended that the methods allowed by CAS for prefunding retiree insurance programs be allowable for all contractors. Subsequent paragraphs are redesignated as (o)(3) through (o)(6) with minor clarifications made in paragraphs (o)(3) and (o)(5). A change is made in the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), to reflect the change in paragraph numbering at FAR 31.205-6(o).

The amended cost principle provides guidance for any transfer of pension funds to another employee benefit fund. In effect, the cost principle requires any increase in current or future Government costs for the pension fund due to such a withdrawal to be offset by equivalent decreases in Government costs for the employee benefit fund receiving the transfer. Transfers made without an advance agreement shall be treated as if the contractor withdrew the funds and are subject to FAR 31.205-6(j)(4), and the deposit to the receiving fund is subject to the cost allowability rules governing the receiving fund in regard to measurement and assignment of costs. Under 31.205-6(j)(4), the Government is entitled to its equitable



share of the gross amount withdrawn from pension fund assets. FAR 31.205-6(o)(5) limits the allowable amount of contractor PRB transition costs for any fiscal year to the amount which would be assigned to that year using the amortization method described in Financial Accounting Standards Board Statement 106. This limitation is necessary because Government fiscal policy dictates that the past service cost element be amortized rather than immediately recognized.

#### 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

#### 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.*

#### List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 31 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 31 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 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205-6 is amended by revising paragraph (o)(2); redesignating paragraphs (o)(3) through (o)(5) as (o)(4) through (o)(6) and adding a new paragraph (o)(3); and amending the newly designated paragraph (o)(5) by inserting the words "in paragraph (o)(2)(iii) of this section" after "benefits" to read as follows:

31.205-6 Compensation for personal services.

(o) \* \* \*

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this section.

(i) *Cash basis.* Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.

(iii) *Accrual basis.* Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

\* \* \* \* \*

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 52.215-39 [Amended]

3. Section 52.215-39 is amended in the clause heading by revising the date to read "(FEB 1995)"; and in the second sentence of the clause by removing the reference "31.205-6(o)(5)" and inserting "31.205-6(o)(6)" in its place.

[FR Doc. 94-30647 Filed 12-27-94; 8:45 am]

BILLING CODE 6820-34-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 32

[FAC 90-23; FAR Case 93-309; Item XXIII]

RIN 9000-AG12

#### Federal Acquisition Regulation; Advance Payment Reporting

**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 have agreed on an amendment to the Federal Acquisition Regulation (FAR) to remove an obsolete reporting requirement associated with advance payments under 10 U.S.C. 2307. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** February 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-23, FAR case 93-309 in correspondence.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

FAR 50.203(b)(4) currently requires advance notice to Congress and a subsequent 60-day waiting period prior to obligating the Government under Public Law 85-804 for an amount in excess of \$25 million. The advance notice to Congress requirement currently is imposed on advance payments under 10 U.S.C. 2307, by reference in FAR 32.402(a) to the requirement in 50.203(b)(4). Section 1322(a)(4) of the 1991 Defense Authorization Act (Public Law 101-510) deleted 10 U.S.C. 2307(d), which had contained the notification and waiting period requirements for advance payments made under the authority of 10 U.S.C. 2307. FAR 32.402(a) has been revised to delete the second sentence concerning the limitation on advance payments prescribed at 50.203(b)(4).