

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. However, comments on this section will be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.287(b–1) and add (c) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) Stickney Point (SR 72) Bridge, mile 68.6. The draw need only open on the hour, 20-minutes after the hour, and 40-minutes after the hour, from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays.

(c) The draw of the Siesta Drive Bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: September 21, 2006.

J. A. Watson,

*Captain, U.S. Coast Guard, Commander,
Seventh Coast Guard District Acting.*

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 30

[FAR Case 2005–027; Docket 2006–0020; Sequence 9]

RIN 9000–AK60

Federal Acquisition Regulation; FAR Case 2005–027, FAR Part 30—CAS Administration

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement recommendations to change the regulations related to the

administration of the Cost Accounting Standards (CAS).

DATES: Interested parties should submit written comments to the FAR Secretariat on or before December 4, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005-027 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the "Submit" button. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005-027 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Mr. Jeremy Olson, at (202) 501-3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-027.

SUPPLEMENTARY INFORMATION:

A. Background

On March 9, 2005, the Councils issued a final rule (FAR case 1999-025) revising FAR Part 30, "CAS Administration" which significantly streamlined the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices. Subsequent to this, a number of recommended changes to FAR Part 30 have been submitted by both government and industry representatives. These recommendations have been evaluated and, where warranted, changes are being proposed herein.

B. Discussion

The Councils are proposing to revise the following FAR provisions:

1. FAR 30.001 includes minor changes to the definitions of a number of terms. Related changes are made to the FAR clause at 52.230-6(a). These changes are made to ensure that each term is consistently defined in both locations.

2. FAR 30.601(c) is added to require that the cognizant Federal agency official (CFAO) request and consider the advice of the auditor, as appropriate, when administering the Cost Accounting Standards. As a result, the phrase "with the assistance of the auditor" is deleted from several other sections of FAR Part 30.

3. FAR 30.602(d) is revised to include references to FAR 30.603, 30.604, and 30.605.

4. FAR 30.604(g) and 30.605(f) are revised to specify that the CFAO must evaluate the Detailed Cost Impact (DCI) proposal for cost accounting practice changes or noncompliances when a contractor is required to submit a DCI.

5. FAR 30.604(h)(4) is revised to indicate that the Changes clause is to be used to negotiate equitable adjustments related to required or desirable changes.

6. 30.605(h)(6) is added (and the current (h)(6) is redesignated as (h)(7)) to specify that the cost impact of a noncompliance that affects both cost estimating and cost accumulation shall be determined by combining the separate cost impacts of both the cost estimating and cost accumulation noncompliances.

Two other related issues were considered by the Councils no changes will be made in response to those recommendations. These include the following:

Issue: The Councils were informed of a concern about precluding contract awards when a contractor has submitted a revised Disclosure Statement, but that Disclosure Statement has not yet been determined adequate by the contracting officer.

Councils' Position: The Councils believe that the regulations currently provide adequate flexibility to address any such circumstances that may arise, including the waiver authority contained in the CAS/FAR. Furthermore, to date the Councils are unaware of any instances in which awards have been delayed pending determinations about the adequacy and/or compliance of revised Disclosure Statements.

Issue: Currently, FAR 30.606(a) prohibits combining the cost impacts of two unilateral accounting changes

unless they both result in increased costs. The Councils were informed that such a rule may reduce contracting officer flexibility and may be contrary to established practices.

Councils' Position: FAR 30.606(a) is consistent with current statutory requirements which do not permit the combining of cost impacts for two or more unilateral changes. The Councils note that the contracting officer in such cases should separately determine whether each change is desirable, based on the criteria in FAR Part 30. Should the contracting officer determine that certain of the changes are desirable, the contracting officer would then have the authority to combine the cost impacts of those changes in determining the amount of the equitable adjustment resulting from the desirable changes.

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.

C. 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 contracts and subcontracts awarded to small businesses are exempt from the Cost Accounting Standards. 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 Part 30 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 2005-027), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that 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 30

Government procurement.

Dated: September 22, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 30 as set forth below:

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

1. The authority citation for 48 CFR part 30 continues to read as follows:

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

2. Amend section 30.001 by—

a. Adding to the definition “Cognizant Federal agency official (CFAO)” “the ” following “administer”;

b. Removing from the definition “Desirable change” “unilateral” and adding “compliant” in its place; and

c. Revising paragraph (1) of the definition “Required change” to read as follows:

30.001 Definitions.

* * * * *

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently becomes applicable to an existing CAS-covered contract or subcontract due to the receipt of another CAS-covered contract or subcontract; or

3. Amend section 30.601 by removing from paragraph (b) “52.230–6(b)” and adding “52.230–6(l)” in its place; and by adding paragraph (c) to read as follows:

30.601 Responsibility.

* * * * *

(c) In performing CAS administration, the CFAO shall request and consider the advice of the auditor as appropriate (see also 1.602–2).

4. Amend section 30.602 by revising paragraph (d) to read as follows:

30.602 Materiality.

* * * * *

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall follow the applicable provisions in 30.603, 30.604, 30.605, and 30.606.

5. Amend section 30.604 by—

a. Removing from the introductory text of paragraphs (b) and (f) “, with the assistance of the auditor,”;

b. Revising the introductory text of paragraph (g);

c. Revising the introductory text of paragraph (h)(4) and removing paragraphs (h)(4)(i) and (h)(4)(ii); and

d. Removing from paragraph (i)(1) “With the assistance of the auditor, estimate” and adding “Estimate” in its place.

The revised text reads as follows:

30.604 Processing changes to disclosed or established cost accounting practices.

* * * * *

(g) *Detailed cost-impact proposal.* If the contractor is required to submit a DCI proposal, the CFAO shall promptly evaluate the DCI proposal and follow the procedures at 30.606 to negotiate and resolve the cost impact. The DCI proposal—

* * * * *

(h) * * *

(4) For required or desirable changes, negotiate an equitable adjustment as provided in the Changes clause of the contract.

* * * * *

6. Amend section 30.605 by—

a. Removing from the introductory text of paragraph (c)(2) “, with the assistance of the auditor,”;

b. Revising the introductory text of paragraph (f); and

c. Redesignating paragraph (h)(6) as (h)(7) and adding a newly designated paragraph (h)(6).

The revised text reads as follows:

30.605 Processing noncompliances.

* * * * *

(f) *Detailed cost-impact proposal.* If the contractor is required to submit a DCI proposal, the CFAO shall promptly evaluate the DCI proposal and follow the procedures at 30.606 to negotiate and resolve the cost impact. The DCI proposal—

* * * * *

(h) * * *

(6) The cost impact of each noncompliance that affects both cost estimating and cost accumulation shall be determined by combining the cost impacts in paragraphs (h)(3), (h)(4), and (h)(5) of this section; and

* * * * *

PART 52—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.230–6 by—

a. Revising the date of the clause;

b. Removing from the definition “Fixed-price contracts and subcontracts” the word “FAR” each time it appears (4 times);

c. Amending the definition “Flexibly-priced contracts and subcontracts” by revising paragraph (1); and by removing from paragraphs (2) through (5) the word “FAR”; and

d. Revising paragraph (1) of the definition “required change”.

The revised text reads as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (DATE)

* * * * *

(a) * * *

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.203–1(a)(2), 16.204, 16.205, and 16.206;

* * * * *

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

* * * * *

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAR Case 2006–004; Docket 2006–0020; Sequence 10]

RIN 9000–AK58

Federal Acquisition Regulation; FAR Case 2006–004, FAR Part 30 - CAS Administration

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement recommendations to revise the regulations related to the administration of the Cost Accounting Standards (CAS).

DATES: Interested parties should submit written comments to the FAR Secretariat on or before December 4, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–004 by any of the following methods: