

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations that Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a statement of energy effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a

determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 9, 2008.

William Joseph,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E9–204 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–05–P

GENERAL SERVICES ADMINISTRATION**41 CFR Part 102–192**

[FMR Amendment 200X–XXX; FMR Case 2008–102–4; Docket 2008–0001; Sequence 1]

RIN 3090–AI79

Federal Management Regulation; FMR Case 2008–102–4, Mail Management; Financial Requirements for All Agencies

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is amending the mail management section of the Federal Management Regulation (FMR). The proposed changes will help agencies show accountability for their costs regardless of whether they choose to use commercial payment processes.

DATES: Interested parties should submit comments in writing on or before March 10, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2008–102–4 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 “General Services Administration” as the agency of choice. At the “Keyword” prompt, type in the FMR case number (for example, FMR Case 2008–102–4) 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 “General Services Administration”, and typing the FMR case number in the keyword field. Select the “Submit” button.

- *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405. Instructions: Please submit comments only and cite FMR case 2008–102–4 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Henry Maury, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 208–7928 or e-mail at henry.maury@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501–4755; please cite FMR case 2008–102–4, Amendment XXXX.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 2002, the General Services Administration (GSA) published an interim rule for mail management in the **Federal Register** (67 FR 38896) that required agencies to stop using the U.S. Postal Service's Official Mail Accounting System (OMAS) and start using commercial payment for postage no later than October 31, 2003. A final rule published in the **Federal Register** on September 29, 2003 (68 FR 56112) extended the date for conversion to December 31, 2003. If agencies did not convert by that date, they were required to submit a deviation request that included a detailed plan of how they were going to make the conversion in order to be granted the deviation. Deviation requests could be for no longer than a period of two years. On August 25, 2008, GSA published a final rule (73 FR 49955) that completely replaced Federal Management Regulation 102–192, Mail Management; that final rule clarified the requirement to stop using OMAS.

The primary goal behind converting to commercial payment was to show accountability for postage, both in terms of who was spending money on postage within agencies as well as ensuring that agencies pay for postage costs up front like other individuals and private businesses, therefore encouraging better planning of resources. Reducing costs was also a key goal of the initiative. When commercial payment was introduced at the Department of Defense, dramatic reductions in postage costs were realized.

Rule's Unintended Effects Lead to New Solutions

Since the final rule was published in 2003, many agencies have successfully converted to commercial payment. However, some agencies have found it challenging to fully convert to commercial payment, and have submitted multiple requests for deviations as they worked toward a solution. Therefore, for these agencies, the interim rule has created the unintended effect of a cycle of deviation requests and paperwork between agencies and GSA, which was not the intent of the initiative and is not an efficient use of government resources.

As it became clear the deviation cycle was not going to end anytime soon, GSA needed to devise alternative strategies to ensure agencies could meet the primary goal of accountability and still achieve cost savings even if the agencies did not implement commercial payment processes. The impetus to make the change came from agencies that stated they can meet the intent of the initiative, either by continuing to use OMAS or through other means.

GSA issued a bulletin on April 11, 2008 that gave an automatic additional one-year deviation to all of the agencies with outstanding deviation requests as GSA developed additional options for meeting the intent of the initiative. (An announcement of this bulletin was published in the **Federal Register** on May 13, 2008 (73 FR 27540).) Upon implementation of this proposed rule, no further deviations will be granted for this subpart.

New Options Also Show Accountability

Before the final rule was implemented in 2003, many agencies did not use OMAS or any other process to track their costs. Especially in larger agencies, mail managers had no way to determine who was using postage or if there were any ways they could be saving money.

Even when the commercial payment process idea was first introduced, it was recognized that implementing it alone did not completely show accountability; implementing other measures also helps round out an agency's accountability picture. Therefore, this proposed rule allows agencies a choice of measures to best show their accountability portrait. The options, outlined more fully in the proposed rule, include:

1. Convert to commercial payment processes (unchanged).
2. Show quantified dollar savings in mail costs that result from management action, with a clear explanation of how the savings were achieved.
3. Provide a detailed breakdown of all agency mail costs.

4. Provide names, responsibility areas, and mail costs for program officials who are accountable for 75 percent (or more) of the agency's postage.

5. Provide cost-per-piece data for at least 75 percent of all outgoing mail.

If an agency can implement at least two of five of these options, GSA believes the agency will have shown accountability for its operations. GSA will use the annual reporting process to collect information about how the large agencies are meeting the requirements of this rule.

The additional strategies presented in this proposed rule do not imply that an agency now must choose two options other than commercial payment; if commercial payment has already been successfully implemented or will be implemented soon in an agency that spends less than \$1 million per year on postage, then commercial payment by itself will be deemed as meeting the accountability requirement.

B. Executive Order 12866

This proposed rule is excepted from the definition of "regulation" or "rule" under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553 (a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR 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.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–192

Government contracts, Mail, Performance measurement, Records management, Reporting and recordkeeping requirements, Security.

Dated: November 18, 2008.

Gary Klein,

Associate Administrator.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–192 as set forth below:

PART 102–192—MAIL MANAGEMENT

1. The authority citation for 41 CFR part 102–192 continues to read as follows:

Authority: 44 U.S.C. 2904; 40 U.S.C. 121(c).

2. Revise Subpart B of 41 CFR part 102–192 to read as follows:

Subpart B—Financial Requirements for All Agencies

§ 102–192.50 What payment processes are we required to use?

All payments to all service providers must be made through a process that ensures accountability to the program level, as defined in § 102–192.55.

§ 102–192.55 What options are available to show accountability?

(a) Your agency must show accountability by using at least two of the following methods:

- (1) Implement or continue using commercial payment processes.
- (2) Show quantified dollar savings in mail costs that result from management action, with a clear explanation of how the savings were achieved. Dollar savings must be recent, defined as occurring within the last five fiscal years. That is, after five fiscal years, additional information about how the agency has achieved recent savings and/or will continue to achieve dollar savings will be required in the annual mail management report.
- (3) Provide a detailed breakdown of all agency mail costs.
- (4) Provide names, responsibility areas, and mail costs for program officials who are accountable for 75 percent (or more) of the agency's postage.
- (5) Provide cost-per-piece data for at least 75 percent of all outgoing mail.

(b) Agencies that spend more than \$1 million per year on postage must describe how they are showing accountability by responding fully, beginning with the Fiscal Year 2009 report, to the questions on accountability in the annual report format. Agencies that do not respond fully or whose responses do not, in the judgment of the GSA Office of Governmentwide Policy, meet the standard established in this paragraph, will be considered out of compliance with this regulation.

§ 102–192.60 If my agency spends less than \$1 million per year on postage and has already converted to commercial payment processes, are we responsible for selecting one of the additional options?

Any agency that spends less than \$1 million on postage per year and has already successfully converted to commercial payment is in compliance with this regulation and does not need to select any additional options presented in § 102–192.55.

§ 102–192.65 If my agency still wants to implement the commercial payment process, how do we do so?

Guidance on implementing a compliant payment process is in the GSA Policy Advisory, Guidelines for Federal Agencies on Converting to Commercial Payment Systems for Postage, which can be found at <http://www.gsa.gov/mailpolicy>.

3. Amend § 102–192.90 by revising paragraph (f) read as follows:

§ 102–192.90 What must we include in our annual mail management report to GSA?

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(f) Describe how your agency is ensuring accountability for postage by identifying which two of the five methods (see § 102–192.55) you use to meet this objective and explaining in detail how these two apply to your agency.

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[FR Doc. E9–172 Filed 1–8–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2007–021; Docket 2009–0014; Sequence 1]

RIN 9000–AL14

Federal Acquisition Regulation; FAR Case 2007–021, Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses

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 specifically require the incorporation of the FAR clauses regarding Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-Year and Option Contracts) and Fair Labor Standards Act and Service Contract Act-Price Adjustment in time-and-materials and labor-hour service contracts that are subject to the Service Contract Act.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before March 10, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2007–021 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2007–021” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2007–021. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2007–021” on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2007–021 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 Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2007–021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the Federal Acquisition Regulation (FAR) to revise the clause prescriptions at FAR 22.1006(c)(1) and (2) to specifically require that time-and-materials and labor-hour service contracts subject to the Service Contract Act contain the appropriate price adjustment clauses set forth at 52.222–43 and 52.222–44.

Despite the current prescriptions which do not require use of the clauses in time-and-materials or labor-hour