**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted, as final, with no changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

**DATES:** *Effective Date*: December 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2008–017.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Federal Food Donation Act of 2008 (Pub. L. 110–247) encourages Federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The Act requires Federal contracts above $25,000 for the provision, service, or sale of food in the United States, to include a clause that encourages, but does not require, the donation of excess food to nonprofit organizations. The Act would also extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

The final rule is applicable to contracts above $25,000 for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service). The type of solicitations and contract actions anticipated to be applicable to this law will mostly be for fixed-price commercial services; however, there may be circumstances when a noncommercial and/or cost-reimbursement requirement may apply. For example, on an indefinite-delivery, indefinite-quantity cost-reimbursement contract for logistical support to be performed in the United States, there may be a task order needed to provide food service to feed personnel.

The interim rule was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, with an effective date of March 19, 2009, and a request for comments by May 18, 2009. Three respondents submitted comments in response to the interim rule. Below are the comments received on the interim rule along with the responses.

*Comment 1, FAR matrix*. One commenter had several comments about errors in the FAR matrix.

*Response*: There were several inadvertent errors that were made on the FAR clause matrix. These errors have been corrected and are reflected in the FAR clause matrix issued with the final rule.

*Comment 2, Applicability for non-appropriated funds*. The commenter expresses uncertainty as to whether this rule is applicable to their typical (non-appropriated funds) cafeteria contracts. The clause at FAR 52.226–6 is to be included in solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States. Is the $25,000 threshold intended to mean that amount of the appropriated funding, or can it also be satisfied by the sales volume? Will there be additional GSA financial management regulation guidance planned?

*Response*: The FAR only covers contracts made with appropriated funds. The rule is applicable to contracts greater than $25,000 for the provision, service, or sale of food in the United States. This means the dollar amount of the contract only, not sales volume. GSA has jurisdiction over changes to the Federal Management Regulation (FMR) and we anticipate a change in the FMR to address this requirement.

*Comment 3, Implementation of the Federal Food Donation Act of 2008*. The benefits of this rule's implementation are evident based on the widespread support the Act received. The assistance it will provide to food insecure persons is truly important. This is especially crucial during these difficult economic times. Food suppliers will receive the listed benefits, as well as be protected against litigation by the Bill Emerson Good Samaritan Food Donation Act. Based on these reasons, we urge you to encourage the passage of this rule and implement it as quickly as possible.

*Response*: The interim rule was effective on the publication date of March 19, 2009. This means the rule has been implemented and is effective as of that date. The final rule adopts the interim rule as final, without change.

This is a significant regulatory action and, therefore, was 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.*, because this rule is not mandatory for contractors, including small businesses.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

### List of Subjects in 48 CFR Parts 26, 31, and 52

Government procurement.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 26, 31, and 52 which was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, is adopted as a final rule without change.

[FR Doc. E9–28933 Filed 12–9–09; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 31

**[FAC 2005–38; FAR Case 2006–021; Item V; Docket 2009-0043, Sequence 1]**

**RIN 9000–AK84**

## Federal Acquisition Regulation; FAR Case 2006–021, Postretirement Benefits (PRB), FAS 106

**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 (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to permit the contractor to measure accrued PRB costs using either the criteria in Internal Revenue Code (IRC) 419 or the criteria in Financial Accounting Standard (FAS) 106.

**DATES:** *Effective Date*: January 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–021.

**SUPPLEMENTARY INFORMATION:**

## A. Background

FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis.

When the accrual basis is used, the FAR currently requires that costs must be measured based on the requirements of Financial Accounting Standard (FAS) 106.

However, the tax-deductible amount that is contributed to the retiree benefit trust, which is part of a welfare benefit plan, is determined using Internal Revenue Code (IRC) (Title 26 of the United States Code) sections 419 and 419A, which has different measurement criteria than FAS 106. As a result, the FAS 106 amount can often exceed the costs measured under IRC sections 419 and 419A, and contractors that choose to accrue PRB costs for Government reimbursement face a dilemma: whether to fund the entire FAS 106 amount to obtain Government reimbursement of the costs, regardless of tax implications; or fund only the tax deductible amount and not be reimbursed for the entire FAS 106 amount under their Government contracts.

Consequently, DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 64185, November 15, 2007 to address this matter.

The Councils are amending FAR 31.205–6(o) to alleviate this dilemma. This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC sections 419 and 419A rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion potentially disallowed because it did not meet the FAR's current measurement criteria. The Councils note that this amendment will not change the total measured PRB costs, *i.e.*, the total measured PRB costs over the life of the PRB plan would be the same whether the contractor chose to apply the criteria in FAS 106 or IRC sections 419 and 419A.

The Councils note that in this final rule the Government will not pay higher PRB costs, since the resulting difference from contractors previously funding the lower IRC amount rather than the full FAS amount will continue to be an unallowable cost. This final rule does permit contractors to electively switch to the IRC 419 accrual basis and avoid any current or future disallowances.

## B. Public Comments

Public comments were received from two industry associations and one contractor.

The commenters made specific remarks but generally agreed with the purpose of the proposed rule.

One commenter wrote that they:

''generally agree with the concept of revising FAR 31.205–6(o) to better align FAR allowability provisions for Postretirement Benefit (PRB) Plans accounted for on an accrual basis with payments made to benefit trusts for tax purposes. We see this as a positive step toward allowing appropriate flexibility and equity in measuring, assigning and allocating allowable PRB costs.''

Another commented:

''We support the Councils' proposal to amend the Federal Acquisition Regulation 31.205–6(o) (''FAR'') to permit contractors to measure postretirement benefit (''PRB'') costs using either the criteria in Internal Revenue Code section 419 (''IRC'') or the criteria in the Statement of Financial Accounting Standards No. 106 (''FAS'').''

Specific Comments:

*Comment 1*: Two commenters objected to the 15 year minimum amortization period for PRB costs, stating:

''The proposed rule specifying that assignment of PRB costs be made over ''the working lives of employees or fifteen years, whichever is longer'' may not be appropriate. In our opinion, the proposed FAR requirement for costs measured in accordance with the deductibility measurement under the Internal Revenue Code (IRC) Section *419/419A* has the potential for mismatching PRB costs with the underlying causal activity, that is, the labor of active employees covered by PRB plans. The IRC requires that the costs be assigned over the working lives of the employees, whereas the proposed rule would require that the costs be assigned over the working lives of employees or fifteen years, whichever is longer. We are concerned about extending the assignment of costs beyond the working lives of employees, as this would cause costs to be charged to contracts that are not getting the benefit of those employees' services.''

*Response*: The Councils believe the language in the proposed rule is appropriate. Many PRB plans cover no or few active employees, as contractors have closed their PRB plans to new entrants. FAS 106 requires that if a plan is comprised predominantly of inactive participants, then the cost should be spread over the future life expectancy of the inactive employees. FAR 31.205–6(o)(2)(ii) requires that if terminal funding is used then the liability must be spread over 15 years. For contractors who elect to use the proposed alternative accrual accounting method, the Councils believe that the FAS 106 requirement that plans predominantly comprised of inactive participants be spread over future periods should be maintained. For consistency, the proposed rule uses the same amortized recognition as required for terminally funded plans. The proposed rule adopted a simple ''greater-of'' rule to avoid any disputes concerning when a plan is predominantly comprised of inactive employees.

However, if the plan population comprises only inactive participants, the cost shall be spread over the average future life expectancy of the participants. This ensures that the accruals do not extend beyond the period when benefits are paid and the trust is dissolved. Therefore, the final rule revises FAR 31.205–6(o)(2)(iii)(A)(*2*)(*ii*) to state: ''However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants.''

*Comment 2*: The proposed rule does not address several issues of assignment of credits to a period that can arise when the accrual is based on FAS 106.

Two commenters remarked as follows regarding contract credits that might arise:

''Measuring PRB costs in accordance with FAS 106 can result in credits being assigned to cost accounting periods. FAS 106 dictates these credits be immediately assigned to cost accounting periods. However, contractors have no ability to extract irrevocably funded PRB contributions from their trusts. * * *''

Commenters were also concerned that the proposed rule does not address conflicts between the FAR and FAS 106

when there is a curtailment, settlement or payment of ''special termination benefits.'' As a commenter noted:

''In the event of a curtailment, settlement or payment of ''special termination benefits'' (i.e., early retirement enhancements, FAS 106 mandates immediate recognition. This assignment of income was also one of the issues with FAS 106, which the failed promulgation of CAS 419 sought to moderate.''

On the other hand, another commenter correctly noted that the proposed rule permits a contractor to elect to account for its PRB costs following the welfare benefit fund provisions of the IRC as an alternative to the current rule that limits accrual accounting to the provisions of FAS 106. The commenter discusses the advantages of having a choice as follows:

''Under existing FAR rules, contractors under accrual basis of accounting must use FAS 106 (so long as the transition obligation cost is amortized) for measuring PRB costs and fund this FAR expense to the PRB plan in order for the FAS expense to be considered an allowable cost.

''We believe this amendment will promote simplification of the funding of PRB plans by avoiding the dilemma of whether to fund the IRC limit or the FAS expense when there is conflict with each other. The contractor would not need to be worried about running afoul of tax rules or under-billing the contract.

''In addition, one advantage of permitting the PRB cost to be either FAS or IRC basis is that in the first year of a PRB funded plan, the amendment gives the contractor the flexibility to fund the larger of the two bases in order to lower PRB costs in the future as assets grow with investment returns. Done consistently under the same accounting basis, this approach would benefit the contract with lower PRB costs in the long run rather than limiting funding due the current dilemma of funding FAS or IRC.

''And finally, the amendment will promote an equitable measure of allowable PRB costs during the life of the PRB plan. Whether choosing FAS or IRC basis for funding, both methods would arrive at the same aggregate allowable cost over the life of the PRB plan.''

*Response*: The Councils believe that the issues regarding credits, curtailments, and settlements do not need to be addressed in the proposed rule. No evidence has been presented that this issue has been a problem. Furthermore, these issues are outside the scope of this case. As noted in the background section of **Federal Register** notice:

''* * * This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC 419 rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion disallowed because it did not meet the FAR's current measurement criteria. * * *''

The proposed rule provides an alternative for measuring PRB costs on an accrual accounting basis. The proposed rule and **Federal Register** notice do not address the existing provisions which, first published as 56 FR 29127 on June 25, 1991, adopted generally accepted accounting principles (FAS 106). The original rule was amended by 56 FR 41738 on August 22, 1991 to add a limitation only on the choice of recognizing the transition obligation.

*Comment 3*: Commenters expressed a concern with the provision allowing use of a healthcare inflation assumption as follows:

''The proposed rule's specific authorization of the use of a healthcare inflation assumption for measurement of costs which would otherwise be in accordance with IRC Sections 419/419A creates a mismatch of FAR allowable costs and IRS deductibility limitations. If the intent of the rule was to better align funding with FAR requirements, we find this provision, while not detrimental, is inconsistent with the stated purpose of the proposed rule, which is to better align the FAR allowability rules with the IRC for those contractors that choose to use IRC 419/419a.''

*Response*: The Councils believe that the proposed rule should be revised to clarify the intent of this language. Generally accepted accounting principles currently require the use of a healthcare inflation assumption. For consistency, the intent of the proposed rule was to require use of a health care assumption unless the IRC welfare benefit fund rules prohibited it. The Councils are revising the wording in the proposed rule to assure clarity on this issue. Thus, the final rule revises FAR 31.205–6(o)(2)(iii)(A)(*2*)(*i*) to state that the costs shall ''be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds.''

*Comment 4*: Finally, two commenters opined that the requirement that assets be restricted is unnecessary. One of the commenters wrote: ''Our recommended changes to the proposed rule are shown in Attachment I. It should be noted that we have also proposed the elimination of the last sentence in 31.205–6(o)(2)(iii)(B). We do not believe that this asset restriction language is necessary to protect the Government's interests.''

*Response*: The Councils disagree with the commenter. The Councils believe that the Government must assure there is adequate protection of the assets. If the fund holding the PRB plan can be cancelled or diverted to other purposes, then deposits to the fund can not be recognized as incurred. Moreover, this language is consistent with the FAS 106 definition of ''plan assets,'' and with the IRC 419/419A criteria for tax-exempt funding.

The Councils note that even if an appropriately restricted fund is used, once all obligations for benefits have been settled the remaining assets may revert to the contractor or else inure to the contractor's benefit if diverted to provide other employee benefits. However, the Councils believe that the Government's interests are protected by existing FAR 31.205–6(o)(5) which states:

The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to Subpart 31.2.

*Comment 5*: One commenter expressed its concern with how the transition between accounting methods would be accomplished, writing:

''However, we are not certain if this proposal addresses changes of accounting methods, particularly from FAS to IRC basis; whether such resulting costs will be fully allowed immediately or transitioned over a period of time. Under the concept that both methods should yield the same aggregate cost over time, an immediate change of accounting method may misalign this relationship, and thus, new transition rules may be designed to preserve the equality. If this occurs, we believe it would be advisable for the Councils to promulgate new transition rules—preferably short-term ones in order to avoid prolonged complexity in cost calculations for many years, and incorporate them in FAR Part 31.205–6(o).''

This commenter further explained:

''FAS 106 allows either the immediate expensing or the amortization of the transition obligation. However, for Government contract costing purposes,

the transition obligation must be capitalized and subsequently amortized. The parenthetical clause ''so long as the transition obligation cost is amortized'' could be more clearly stated as ''provided the transition obligation cost is amortized rather than expensed.''''

The commenter also noted that actuaries and mathematicians have stated that both accrual accounting methods would result in the same aggregate costs over the life of the PRB plan when either method is applied to a separate PRB plan as of ''day one.'' But they then expressed their concern that changing the accounting method ''midstream'' might cause misalignment of costs due to differences of timing arising from the two computational methodologies.

Finally they expanded their written comment by observing that the rule will permit a change of accrual accounting method and that this transition will result in a higher or lower amount of PRB costs in subsequent years than would have resulted without a change in methods. The commenter explained they were asking if there will be a ''phase-in period'' when changing methods of accounting for PRB costs, *i.e.*, would the change of costs be recognized in a single accounting period or amortized over future periods.

*Response*: The Councils agree that the language in the proposed rule should be revised to address the transition issue.

The Councils believe that the existing FAR 31.205–6(o)(2)(iii) provision regarding recognition of the FAS 106 Transition Obligation clearly articulates that the transition obligation cost is amortized rather than expensed.

The comment does raise two issues. First, a paraphrase of the existing policy at FAR 31.205–6(o)(2)(iii)(A) follows:

Accrued PRB costs shall be measured and assigned in accordance with generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110;

The cost impact of the change in cost accounting practice is addressed by the Cost Accounting Standards, rather than the FAR, for those contracts covered by the CAS. Under the CAS this would be a unilateral change in cost accounting practice; as such, the Government would not pay any increased costs resulting from this change unless the contracting officer has determined it to be a desirable change. For those contracts not covered by the CAS, the FAR does not provide for price adjustments resulting from a change in cost accounting practice. The Councils do not believe this change is so unique as to require an alteration to this long-standing set of regulations regarding the treatment of changes in cost accounting practice. Thus, the language in the proposed rule has not been revised to address this issue.

The second issue regards the treatment of the change in actuarial liability and normal cost and recognition of accruals assigned to prior periods. Language has been added at FAR 31.205–6(o)(2)(iii)(G) to require that the Government has an opportunity to review and approve how the change in accounting method will be implemented. The new provision at FAR 31.205–6(o)(2)(iii)(G) reads:

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(*1*) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(*2*) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with subparagraphs (D), (E), and (F) to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

It is clear that the final rule must address how the transition from one cost method to another is accomplished. As one commenter observed, at ''day one'' the cost of the PRB plan, on a present value basis, will be the same under any of the methods permitted by FAR 31.205–6(o). However, after day one, this equivalence can only be maintained if there is a full accounting for costs assigned to prior periods, adjusted for interest, benefit payments, and administrative expenses. Only if prior funding and unfunded accrued costs are fully recognized will the costs assigned to future periods produce equivalent results, on a present value basis, over the life of the PRB plan. And to avoid any misunderstandings, the final rule at FAR 31.205–6(o)(2)(iii)(D) makes it clear that any prior period unfunded accrual becomes and remains unallowable under either accrual accounting method. FAR 31.205–6(o)(2)(iii)(D) reads:

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (3), adjusted for interest under paragraph(4).

The assets do fully account for prior accrued costs that were funded and the accumulated value of unallowable costs fully account for any prior unfunded accruals. To the extent that prior contract costs were always based on accrual accounting, prior accruals can be recognized in the current value of the plan assets plus the accumulated value of prior unallowable costs, adjusted for interest cost due to delayed funding.

And, finally, some contractors may have made deposits to voluntary employee benefit associations or other trusts in prior periods but used pay-as-you-go or terminal funding for contract costing purposes during those prior periods. To the extent that assets are attributable to costs that have never been recognized as Government contract cost, such assets must be excluded from the assets that have been accumulated by prior assigned costs. Otherwise, the contractor would be inequitably prevented from claiming a cost that has not yet been reimbursed.

Therefore, to ensure that prior funded accrued costs are fully recognized, paragraph FAR 31.205–6(o)(2)(iii)(E) has been added to the final rule. This provision reads:

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

Likewise, FAR 31.205–6(o)(2)(iii)(F) specifies that assets accumulated by deposits that were not used to claim contract costs are identified as prepayment credits and excluded from the plan assets used to determine the unfunded actuarial liability. FAR 31.205–6(o)(2)(iii)(F) reads:

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

**C. Regulatory Planning and Review**

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1933. This rule is not a major rule under 5 U.S.C. 804.

**D. 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.*, because most small entities do not accrue PRB costs for Government contract costing purposes.

**E. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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. chapter 35, *et seq.*

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

Government procurement.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.001 by adding, in alphabetical order, the definition ''welfare benefit fund'' to read as follows:

**31.001 Definitions.**

* * * * *

*Welfare benefit fund* means a trust or organization which receives and accumulates assets to be used either for the payment of postretirement benefits, or for the purchase of such benefits, provided such accumulated assets form a part of a postretirement benefit plan.

■ 3. Amend section 31.205–6 by revising paragraph (o)(2)(iii) to read as follows:

**31.205–6 Compensation for personal services.**

* * * * *

(o) * * *

(2) * * *

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods:

(*1*) Generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110; or

(*2*) Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code. Allowable PRB costs based on such contributions shall—

(*i*) Be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds;

(*ii*) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(*iii*) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of 26 USC § 501(c).

(B) 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 assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(*1*) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(*2*) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

* * * * *

[FR Doc. E9–28934 Filed 12–9–09; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 31

**[FAC 2005–38; FAR Case 2006–024; Item VI; Docket 2009–0044, Sequence 1]**

**RIN 9000–AK86**

## Federal Acquisition Regulation; FAR Case 2006–024, Travel 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 and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to change the travel cost principle to ensure a consistent application of the limitation on allowable contractor airfare costs.

**DATES:** *Effective Date*: January 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–024.