

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 87-12057 Filed 5-22-87; 10:27 am]

BILLING CODE 4810-40-M

## Customs Service

[T.D. 87-68]

### Current Fee Charged Operators of Foreign Trade Zones

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of annual fee.

**SUMMARY:** This document advises the public of the 1987 annual fee charged operators of foreign trade zones. The fees are charged to reimburse the Customs budget for services rendered including audit, inspection, and related costs. The fees are projected on the basis of actual resources that have been allocated to the various Customs regions to support the positions authorized for the program.

**EFFECTIVE DATE:** June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Holl, Office of Inspection and Control, (202-566-8151) or Marcus Sircus, Regulatory, Audit Division (202-566-2812).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 146.5, Customs Regulations (19 CFR 146.5), provides that each operator of a foreign trade zone will be charged a nonrefundable annual fee for each activated zone as provided in section 81n, Tariff Act of 1930, as amended (19 U.S.C. 81n). This annual fee is separate and distinct from the user fee statute under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (19 U.S.C. 58c). This annual fee covers the cost of the additional Customs service required under the Act as

provided in 19 U.S.C. 81n and Part 146, Customs Regulations (19 CFR Part 146). The costs of entry processing are not included in this fee. The purpose of the annual fee is to reimburse the Customs appropriation for services rendered, including audit-inspection and related costs. The fee is projected on the basis of actual resources that have been allocated to the various Customs regions to support the positions authorized for the program.

The calculation included salary, plus 37 percent fringe benefits (§ 24.17(d), Customs Regulations (19 CFR 24.17(d)), plus 15 percent administrative overhead charges (§ 24.21(a), Customs Regulations (19 CFR 24.21(a)), and 1.3 percent Medicare compensation costs (§ 24.17(f), Customs Regulations (19 CFR 24.17(f)).

The first annual fee for foreign trade zone operators was set forth in the Appendix to T.D. 86-16, published in the Federal Register on February 11, 1986 (51 FR 5040), as a 3-tiered fee. Through negotiations with the foreign trade zone community, a 5-tiered structure was adopted for calendar year 1986. The 5-tiered structure was preferred to more equitably distribute the cost among zones in the middle tier of the original 3-tier structure. A 5-tier structure will continue for calendar year 1987. There are currently 70 Tier 1 locations, 25 Tier 2 locations, 16 Tier 3 locations, 9 Tier 4 locations, and 13 Tier 5 locations for a total of 133 locations.

The tier assignment for 1987 is based on the total number of admissions to the zone plus transfers from the zone (as defined in § 146.1, Customs Regulations (19 CFR 146.1)), during Fiscal year 1986, of merchandise in foreign or zone-restricted status. However, in the case of merchandise delivered directly to zones under §§ 146.39 and 146.40, Customs Regulations (19 CFR 146.39, 146.40), and weekly permits for transportation and/or exportation under § 146.68, Customs Regulations (19 CFR 146.68), the tier assignment is based on the number of shipments in foreign or zone restricted status to or from the

zone, as applicable, covered by immediate transportation or cartage documents during Fiscal Year 1986.

The foreign trade zone operators fee for 1987 is \$1,400 for Tier 1, \$3,850 for Tier 2, \$8,600 for Tier 3, \$17,660 for Tier 4, and \$33,800 for Tier 5. The fees were based on the actual resources for 18 Customs positions authorized for the audit-inspection program. The total calculation came to \$930,862, and was rounded to \$930,000. If Customs collects the above-stated fee from each zone, the total collected will be \$930,190.

#### New Facilities

New foreign trade zones approved or activated after October 1, 1986, will automatically pay the Tier 1 fee; however, if a new zone (never previously approved or activated) is approved or activated after December 31, 1986, the Tier 1 fee will be prorated over the full and fractional number of months remaining in Calendar Year 1987.

#### Determination

It has been determined that the annual fee for foreign trade zone operators for Calendar Year 1987 is as follows:

Tier 1 (0-300 transactions)=\$1,400  
Tier 2 (301-800 transactions)=\$3,850  
Tier 3 (801-1,500 transactions)=\$8,600  
Tier 4 (1,501-3,000 transactions)=\$17,660  
Tier 5 (3,001 or more transactions)=\$33,800

The annual fee shall be due and payable in accordance with §§ 113.73(d) and 146.5, Customs Regulations (19 CFR 113.73(d), 146.5).

The effective date for this Notice is (30 days after date of publication in the Federal Register).

Dated: May 15, 1987.

Michael H. Lane,

*Acting Commissioner of Customs.*

[FR Doc. 87-11957 Filed 5-26-87; 8:45 am]

BILLING CODE 4820-02-M



# Sunshine Act Meetings

Federal Register

Vol. 52, No. 101

Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, May 27, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

**STATUS:** Open to the Public.

### MATTERS TO BE CONSIDERED:

#### 1. Election of Vice Chairman

The Commission will elect a vice chairman for the term beginning June 1, 1987 and ending May 31, 1988.

#### 2. FY '89 Planning Issues

The Commission will consider fiscal year 1989 planning issues.

#### 3. Kerosene Heaters: '86 Report

The staff will brief the Commission concerning the project on kerosene heater flammability.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301-492-6800. May 21, 1987. [FR Doc. 87-12036 Filed 5-21-87; 4:32 pm] BILLING CODE 6355-01-M

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 20, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, May 28, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. NACCO Mining Company, LAKE 85-87-R, etc. (Issues include consideration of requirements for taking enforcement actions under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)

2. Emerald Mines Corporation, PENN 85-298-R. (Issues are same as above.)

3. White County Coal Corporation, LAKE 86-58-R, etc. (Issues are same as above.)

4. Greenwich Collieries, PENN 85-188-R, etc. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be heard in closed session.

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-12081 Filed 5-22-87; 10:48 am]

BILLING CODE 6735-01-M

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, June 1, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-12140 Filed 5-22-87; 3:26 pm]

BILLING CODE 6210-01-M

**TENNESSEE VALLEY AUTHORITY "FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Published May 20, 1987 (52 FR 19017).

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 3 p.m. (e.d.t.), Friday, May 22, 1987.

**PREVIOUSLY ANNOUNCED PLACE OF MEETING:** TVA Chattanooga Office Complex, Missionary Ridge Building, 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

**CHANGE IN DESCRIPTION OF ITEM:** The following is a clarification of an item on the previously announced agenda:

D—Personnel Items

2. Delegation of authority to Manager of Nuclear Power to enter into a contract for the services of G.L. Rogers to assume a TVA Office of Nuclear Power line management position, as a contract manager, not as a regular TVA employee.

### CONTACT PERSON FOR MORE

**INFORMATION:** Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000 or 632-6000 (News Desk), Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

### SUPPLEMENTARY INFORMATION:

#### TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires a clarification in the subject matter of the previously announced agenda item and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: May 21, 1987.

Approved.

C.H. Dean, Jr.,

Director and Chairman.

John B. Waters,

Director.

[FR Doc. 87-12045 Filed 5-22-87; 8:59 am]

BILLING CODE 8120-01-M



# Corrections

Federal Register

Vol. 52, No. 101

Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[FRL 3150-2]

### Underground Injection Control Programs for Certain Indian Lands

#### Correction

In proposed rule document 87-10048 beginning on page 17696 in the issue of Monday, May 11, 1987, make the following corrections:

#### § 147.3000 [Corrected]

1. On page 17702, in the second column, in § 147.3000(b), in the third line, the effective date "June 10, 1987" should not have appeared. Insert in its place "(30 days after publication of the final rule in the Federal Register)".

#### § 147.3100 [Corrected]

2. Make the same correction on page 17704, in the second column, in § 147.3100(b), in the sixth line.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-3006-8]

### Standards of Performance for New Stationary Sources

#### Correction

In rule document 86-13148 beginning on page 21164 in the issue of Wednesday, June 11, 1986, make the following correction:

#### Appendix A—[Corrected]

In Appendix A, on page 21171, Figures 6C-3, 6C-4, and 6C-5 should have appeared as set forth below:

Figure 6C-3.—Analysis of Calibration Gases

Date \_\_\_\_\_  
Analytic method used \_\_\_\_\_

|                                 | Gas concentration (indicate units) |                        |                         |
|---------------------------------|------------------------------------|------------------------|-------------------------|
|                                 | Zero <sup>a</sup>                  | Mid-range <sup>b</sup> | High-range <sup>c</sup> |
| Sample run:                     |                                    |                        |                         |
| 1 .....                         |                                    |                        |                         |
| 2 .....                         |                                    |                        |                         |
| 3 .....                         |                                    |                        |                         |
| Average .....                   |                                    |                        |                         |
| Maximum percent deviation ..... |                                    |                        |                         |

<sup>a</sup> Average must be less than 0.25 percent of span.  
<sup>b</sup> Average must be 50 to 60 percent of span.  
<sup>c</sup> Average must be 80 to 90 percent of span.

Figure 6C-4.—Analyzer calibration data

Source identification: \_\_\_\_\_  
Test personnel: \_\_\_\_\_  
Date: \_\_\_\_\_  
Analyzer calibration data for sampling runs: \_\_\_\_\_  
Span: \_\_\_\_\_

|                      | Cylinder value (indicate units) | Analyzer calibration response (indicate units) | Absolute difference (indicate units) | Difference (percent of span) |
|----------------------|---------------------------------|--|--------------------------------------|------------------------------|
| Zero gas .....       |                                 |  |                                      |                              |
| Mid-range gas .....  |                                 |  |                                      |                              |
| High-range gas ..... |                                 |  |                                      |                              |

Figure 6C-5. System calibration bias and drift data.

Source identification: \_\_\_\_\_  
Test personnel: \_\_\_\_\_  
Date: \_\_\_\_\_  
Run number: \_\_\_\_\_  
Span: \_\_\_\_\_

|                   | Analyzer calibration response | Initial values              |                                    | Final values                |                                    | Drift (percent of span) |
|-------------------|-------------------------------|-----------------------------|------------------------------------|-----------------------------|------------------------------------|-------------------------|
|                   |                               | System calibration response | System cal. bias (percent of span) | System calibration response | System cal. bias (percent of span) |                         |
| Zero gas .....    |                               |                             |                                    |                             |                                    |                         |
| Upscale gas ..... |                               |                             |                                    |                             |                                    |                         |

$$\text{System Calibration Bias} = \frac{\text{System Cal. Response} - \text{Analyzer Cal. Response}}{\text{Span}} \times 100$$

$$\text{Drift} = \frac{\text{Final System Cal. Response} - \text{Initial System Cal. Response}}{\text{Span}} \times 100$$

BILLING CODE 1505-01-D

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# Federal Register

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Wednesday  
May 27, 1987

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## Part II

Department of Defense  
General Services  
Administration

National Aeronautics and  
Space Administration

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48 CFR Part 1 et al.  
Federal Acquisition Regulation; Final Rule



## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19,  
22, 25, 27, 28, 31, 32, 36, 49, 52, and 53

[Federal Acquisition Circular 84-26]

## Federal Acquisition Regulation

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

**ACTION:** Final rule.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-26 amends the Federal Acquisition Regulation (FAR) with respect to the following: Contract Reporting under \$25,000; Synopsis of Contract Award Update; Solicitations, Oral, Purchases over \$1,000; Price Negotiation Memoranda; Use of FAR 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts in Construction Contracts; Trade Agreements Act, Application to Ammunition, FAR 25.403; Change the word "bonds" to "guarantees"; Revision to FAR 31.105, Construction Cost Principles; Reasonableness of Contract Costs (FAR Part 31) and Cost Reasonableness Demonstration by Contractors; Stock Appreciation Rights; Legislative Lobbying Costs; Selling and Marketing; FAR Index; and Editorial Corrections.

**EFFECTIVE DATE:** July 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, General Services Administration, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

## SUPPLEMENTARY INFORMATION:

## A. Public Comments

FAC 84-26, Items I, II, III, V, VI, VII, XIII, and XIV. Public comments have not been solicited with respect to these revisions since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

FAC 84-26, Item IV. A notice of proposed rule was published in the Federal Register on April 22, 1986 (51 FR 15264), recommending revisions to FAR 15.808(a) (8) and (9) to expand the existing requirements to summarize

proposed recommended and negotiated amounts in price negotiation memoranda. As a result of these public comments, only minor changes were made to the proposed rule. The changes specifically require that the summary be in terms of major cost elements. Also specifically required is the summary of the Government's negotiation objective and the "considered negotiated" amounts. The additional set of requirements applies only where cost analysis is used to determine price reasonableness. The coverage does not define or list "major cost element" because of the many varied titles and descriptions of cost elements used by the thousands of contractors who are required to submit cost data to the Government in support of contract prices.

FAC 84-26, Item VIII. The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) have considered the public comments solicited in the Federal Register on April 22, 1986 (51 FR 15264). The majority of the responses either supported or had no comment on the proposed rule. In response to one recommendation, FAR 31.105(d)(2)(i)(B) was amended to add additional examples of predetermined schedules of construction equipment use rates. No other changes were made to the proposed rule which specifically precludes the acceptance of unallowable costs as a result of using construction equipment ownership and operating cost schedules.

FAC 84-26, Item IX. The CAAC and the DARC have considered the public comments solicited in the Federal Register on March 3, 1986 (51 FR 7379). The Councils have concluded that an amendment to the FAR is necessary to ensure that only reasonable costs are paid under Government contracts. Moreover, the amendment is based on section 933 of Pub. L. 99-145. The revisions to FAR 31.201-3 shift the burden of proof on the issue of reasonableness of contract costs from the Government to the contractor and abolish the presumption of reasonableness which is sometimes attached to incurred costs. Additionally, the revisions simplify the list of considerations that impact reasonableness determinations.

FAC 84-26, Item X. The DARC and the CAAC have considered the comments solicited in the Federal Register on April 14, 1986 (51 FR 12676), and have approved revisions to FAR 31.205-6(i) as a final rule. Of 25 responses, 24 either concurred or had no comment. No substantive changes were made to the proposed rule.

FAC 84-26, Item XI. A proposed rule was published for comment in the Federal Register on May 29, 1986 (51 FR 19506). Twenty-four comments were received, of which 20 were from Federal agencies. Twenty of the 24 either concurred or had no comment. The DARC and the CAAC have considered the comments and incorporated technical changes to meet substantive recommendations in the 4 other comments.

FAC 84-26, Item XII. The revision to FAR 31.205-38 is not considered a significant change and therefore public comments were not solicited. The revision was based on a public comment received in connection with a revision to FAR 31.205-38 made in FAC 84-15. See FAC Item XII for a detailed explanation of this revision.

## B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

## C. Regulatory Flexibility Act

FAC 84-26, Items I, II, III, V, VI, VII, XIII, and XIV. Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

FAC 84-26, Item IV. The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply because the revision is not a "significant" revision as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Comments were solicited on the impact of the revision on small entities; however, no comments were received to indicate that there will be a significant economic impact on a substantial number of small entities.



**FAC 84-26, Item VIII.** It is certified that the revision to FAR 31.105 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 it represents no change in existing policy. FAR 31.109(c) already prohibits contracting officers from agreeing to a treatment of costs inconsistent with FAR Part 31. The revised wording of FAR 31.105 merely clarifies a policy which might be overlooked when predetermined equipment rate schedules are authorized for determining construction equipment ownership and operating costs.

**FAC 84-26, Item IX.** It is certified that the 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 the coverage is designed to clarify the term "reasonable cost" and to shift the burden of proof for establishing the reasonableness of a cost to the contractor when a cost is challenged by the contracting officer or the contracting officer's representative. A prudent business should already be maintaining adequate documentation to satisfy this burden of proof.

**FAC 84-26, Item X.** It is certified that this change to FAR 31.205-6(i) 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:

(a) The revisions dealing with deletion of the term "measurement date" are technical corrections resulting from improper use of the term and no change in policy is intended, and

(b) The new coverage on junior stock options only restates the policy of nonrecognition of market appreciation as contract cost.

**FAC 84-26, Item XI.** It is certified that the revision of FAR 31.205-22 will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it only clarifies the intent of the present coverage and makes no significant revision in the rules regarding legislative lobbying costs.

**FAC 84-26, Item XII.** It is certified that this rule will not have a significant impact on a substantial number of small entities for the following reasons:

(a) Most small entities do business with the Government on a fixed-price, competitive basis. None of the cost principles apply to these contracts.

(b) This rule simply clarifies that prior policy will be continued.

**List of Subjects in 48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 49, 52, and 53**

Government procurement.

Dated: May 20, 1987.

Harry S. Rosinski,  
*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

#### Federal Acquisition Circular

[Number 84-26]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-26 is effective July 30, 1987.

Eleanor R. Spector,  
*Deputy Assistant Secretary of Defense for Procurement.*

May 11, 1987.

Terence C. Golden,  
*Administrator, GSA.*

S.J. Evans,  
*Assistant Administrator for Procurement, NASA.*

Federal Acquisition Circular (FAC) 84-26 amends the Federal Acquisition Regulation as specified below.

#### Item I—Contract Reporting Under \$25,000

FAR 4.601(a) is being revised to eliminate the requirement to retain certain records for procurements of \$25,000 or less when small purchases are not used.

#### Item II—Synopsis of Contract Award Update

Pub. L. 98-577, Small Business and Federal Procurement Competition Enhancement Act of 1984, changed the law relating to the synopsis of contract awards. The language included as FAR 5.301 implements the law.

#### Item III—Solicitations, Oral, Purchases Over \$1,000

It is general policy to solicit quotations orally under small purchase procedures while recognizing that instances may arise where written solicitations are more practical or economical. FAR 13.106(b)(2) is being revised to remove redundancy and clarify this policy in simple terms.

#### Item IV—Price Negotiation Memoranda

FAR 15.808(a)(8) is revised to require that the price negotiation memorandum (PNM) clearly document the major cost elements of the contractor's proposal, the field or other pricing recommendations, and how the contracting officer used this information to establish the Government's negotiation position and reach the agreement. FAR 15.808(a)(9) is revised to

require that direction from external sources that has a significant bearing on the contract action be documented in the PNM.

#### Item V—Use of FAR 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts in Construction Contracts

FAR 22.810(g) is revised to be consistent with FAR 22.805 and the policies of the Office of Federal Contract Compliance Programs (OFCCP) as published in 41 CFR 60-1.20(d).

#### Item VI—Trade Agreements Act, Application to Ammunition, FAR 25.403

FAR 25.403, which specifies exemptions from the requirements of Subpart 25.4, Purchases Under the Trade Agreements Act of 1979, is being revised to make an appropriate adjustment in the description of the exemption for purchases of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes.

#### Item VII—Change the Word "Bonds" to "Guarantees"

FAR 28.101-1(b) is revised to make the language compatible with the language in FAR clause 52.228-1 by inserting the word "guarantees" for the word "bonds". FAR 28.101-1(b) and FAR 28.101-3(b) are revised to permit agencies to require only separate bid bonds as bid guarantees for construction contracts.

#### Item VIII—Revision to FAR 31.105, Construction Cost Principles

FAR 31.105 is amended to specifically preclude the acceptance of unallowable costs as a result of using a predetermined schedule of construction equipment use rates. Presently, contractors are permitted to use such schedules to determine construction equipment costs when actual costs cannot be determined from their accounting records. The revised wording clarifies an implicit policy which might be overlooked when the schedules are authorized and used. FAR 31.105 is also amended to add additional examples of predetermined schedules of construction equipment use rates.

#### Item IX—Reasonableness of Contract Costs (FAR Part 31) and Cost Reasonableness Demonstration by Contractors

FAR 31.201-3 is amended to shift the burden of proof on the issue of reasonableness of contract costs from the Government to the contractor and abolish the presumption of reasonableness which is sometimes



attached to incurred costs. In addition, the revision simplifies the list of considerations that impact reasonableness determinations. The amendment is considered necessary to ensure that only reasonable costs are paid under Government contracts. Moreover, the amendment is based on section 933 of Pub. L. 99-145.

#### Item X—Stock Appreciation Rights

FAR 31.205-6(i) is amended to make certain clarifying technical corrections and minor compatible expansions of existing policy.

The first change being made is a technical clarification of an existing rule regarding stock appreciation rights and phantom stock plans. While the date intended for cost measurement purposes was clear from the previous parenthetical coverage, use of the term "measurement date" had created a potential ambiguity in view of that term's different meaning under cost accounting standards and generally accepted accounting principles. The revision eliminates that term.

Another change introduces new coverage on the cost of junior stock conversions which is compatible with the policy in the rest of this subsection. That policy is to not recognize market appreciation or dividend equivalents as allowable contract costs.

The final change has an independent subparagraph for each of the four topics covered in paragraph 31.205-6(i).

#### Item XI—Legislative Lobbying Costs

FAR 31.205-22, Legislative lobbying costs, paragraph (f), is rewritten to clarify that detailed activity records for an individual employee need not be maintained during any particular calendar month when *both*: (1) The employee engages in lobbying activities 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding 5-year period the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

The "25 percent" rule is an extraordinary waiver of only the special recordkeeping requirements. It is extended only to those contractors who have demonstrated that their cost representations are fair and accurate over an extended time period. Complaints have been received that some contractors have denied Government auditors access to records regularly maintained (e.g., time, attendance, and other payroll records), on the basis of the "25 percent" rule in FAR 31.205-22(f). Accordingly,

paragraph (f) is revised to clarify its original intent that records usually maintained to demonstrate the allowability of costs must continue to be maintained and made available for audit.

#### Item XII—Selling and Marketing

FAR 84-15 dated April 7, 1986, substantially revised FAR 31.205-38, Selling Costs. This revision responded to Section 911 of Pub. L. 99-145, which directed that the cost principle be clarified. As revised, FAR 31.205-38 establishes a comprehensive Government policy on the allowability of selling costs. In so doing, the new cost principle specifically incorporates elements of cost that are treated in separate cost principles, such as advertising, public relations, and bid and proposal costs. While incorporating separate cost principles into FAR 31.205-38 makes it more coherent and definitive, this express recognition has expanded the scope of "selling costs" beyond that covered previously by FAR 31.205-38.

After reviewing public comments on the original proposal, as well as internal input, the DARC and the CAAC have concluded that paragraph (f) of FAR 31.205-38 may, because of the expanded concept of "selling costs," have unintended side effects. More specifically, paragraph (f) disallows foreign selling costs on U.S. Government contracts for U.S. Government requirements. While the Councils intended this statement simply to preserve prior policy concerning foreign selling costs, as directed by Section 8071 of Pub. L. 99-190, FAR 31.205-38's generally expanded scope has the effect of making costs, principally bid and proposal costs associated with foreign sales, unallowable on U.S. Government contracts for U.S. Government requirements. To correct this unintended effect (i.e., expansion of the disallowance to categories of cost beyond those addressed by Congress when the funding limitation was enacted), the Councils have modified paragraph (f) to limit the restriction associated with foreign sales to "direct selling efforts," as defined in FAR 31.205-38(c). This category of costs most closely approximates those foreign selling costs which were made unallowable by paragraph (b) of FAR 31.205-38 as in effect on April 1, 1984, and whose compensation is prohibited by Pub. L. 99-190.

#### Item XIII—FAR Index

Replacement pages are provided for the looseleaf version of the FAR Index to effect changes made necessary by

FAC's 84-1 through 84-23. (The index is provided for information only; it is not regulatory and is not codified in 48 CFR.)

#### Item XIV—Editorial Corrections

Therefore, 48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 49, 52, and 53 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 49, 52, and 53 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

#### 1.105 [Amended]

2. Section 1.105 is amended by removing FAR segment 9.5 and corresponding OMB control number.

### PART 2—DEFINITIONS OF WORDS AND TERMS

#### 2.101 [Amended]

3. Section 2.101 is amended by removing in the fourth sentence of the definition "Contract" the reference "41 U.S.C. 501" and inserting in its place the reference "31 U.S.C. 6301".

### PART 4—ADMINISTRATIVE MATTERS

#### 4.601 [Amended]

4. Section 4.601 is amended by removing in paragraph (a) the words "other than small purchases," and inserting in their place the words "exceeding \$25,000".

### PART 5—PUBLICIZING CONTRACT ACTIONS

#### 5.206 [Amended]

5. Section 5.206 is amended by removing in paragraph (a)(2) the words "formal advertising" and inserting in their place the words "sealed bidding".

6. Section 5.301 is revised to read as follows:

#### 5.301 General.

(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopses in the CBD awards exceeding \$25,000 that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required under paragraph (a) of this section if—



(1) The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(4) The contract action is an order placed under a requirements contract;

(5) The award is made for perishable subsistence supplies; or

(6) The award is for utility services, other than telecommunications services, and only one source is available.

### PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

#### 13.106 [Amended]

7. Section 13.106 is amended by inserting in paragraph (b)(2) following the word "when" the words "obtaining oral quotations is not considered economical or practical," and removing the remainder of the paragraph.

#### 13.402 [Amended]

8. Section 13.402 is amended by removing in the second sentence the words "Treasury Fiscal Requirements" and inserting in their place the words "Treasury Financial" and by removing in the third sentence the words "Bureau of Financial Operations, Fiscal Service" and inserting in their place the words "Financial Management Service".

### PART 15—CONTRACTING BY NEGOTIATION

9. Section 15.808 is amended by revising paragraphs (a)(8) and (a)(9) to read as follows:

#### 15.808 Price negotiation memorandum.

(a) \* \* \*

(8) A summary of the contractor's proposal, the field pricing report recommendations, and the reasons for any pertinent variances from the field pricing report recommendations. Where the determination of price reasonableness is based on cost analysis, the summary shall address the amount of each major cost element: (i) proposed by the contractor, (ii) recommended by the field or other pricing assistance report (if any), (iii) contained in the Government's

negotiation objective, and (iv) considered negotiated as a part of the price.

(9) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions. To the extent such direction is received, the price negotiation memorandum (PNM) shall discuss and quantify the impact of direction given by Congress, other agencies, and higher level officials (i.e., officials who would not normally exercise authority during the award and review process for the instant contract action) if the direction has had a significant effect on the action.

### PART 16—TYPES OF CONTRACTS

#### 16.203-4 [Amended]

10. Section 16.203-4 is amended by inserting in paragraph (b)(1)(i) the word "contract" following the word "price".

### PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

#### 19.705-6 [Amended]

11. Section 19.705-6 is amended by removing in paragraph (c)(1) the words "formally advertised" and inserting in their place the words "sealed bid".

### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

#### 22.807 [Amended]

12. Section 22.807 is amended by removing in paragraph (d)(2) the words "formally advertised" and inserting in their place the words "sealed bid" and by removing the words "formal advertising" and inserting in their place the words "sealed bidding".

13. Section 22.810 is amended by revising paragraph (g) to read as follows:

#### 22.810 Solicitation provisions and contract clauses.

\* \* \* \* \*

(g) The contracting officer shall insert the clause at 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts, in solicitations and contracts, except for construction, when the amount of the contract is expected to be for \$1 million or more and the contract includes the clause prescribed in paragraph (a), (b), or (c) of 44.204.

\* \* \* \* \*

#### 22.1303 [Amended]

14. Section 22.1303 is amended by removing in the third sentence of paragraph (d) the words "formal advertising" and inserting in their place the words "sealed bidding".

#### 22.1403 [Amended]

15. Section 22.1403 is amended by removing in the third sentence of paragraph (d) the words "formal advertising" and inserting in their place the words "sealed bidding".

### PART 25—FOREIGN ACQUISITION

16. Section 25.403 is amended by revising paragraph (d) to read as follows:

#### 25.403 Exceptions.

\* \* \* \* \*

(d)(1) Purchases of arms, ammunition or war materials, or purchases indispensable for national security or for national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

\* \* \* \* \*

### PART 27—PATENTS, DATA, AND COPYRIGHTS

#### 27.204-1 [Amended]

17. Section 27.204-1 is amended by removing in paragraph (a)(2) the words "formally advertised" and inserting in their place the words "sealed bid".

### PART 28—BONDS AND INSURANCE

18. Section 28.101-1 is amended by revising paragraph (b) to read as follows:

#### 28.101-1 Policy on use.

\* \* \* \* \*

(b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds and annual performance bonds coverage in 28.001). Only separate bid guarantees are acceptable in connection with construction contracts. Agencies may specify that only separate bid bonds are acceptable in connection with construction contracts.

19. Section 28.101-3 is amended by adding in paragraph (b) a final sentence to read as follows:

#### 28.101-3 Contract clause.

\* \* \* \* \*

(b) \* \* \* This clause may be appropriately modified for use in connection with construction



solicitations and contracts when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101-1(b).

## PART 31—CONTRACT COST PRINCIPLES

20. Section 31.105 is amended by revising paragraph (d)(2)(i)(A) and the first sentence of (d)(2)(i)(B) to read as follows:

### 31.105 Construction and architect-engineer contracts.

(d) \* \* \*  
(2) \* \* \*  
(i) \* \* \*

(A) Actual cost data shall be used when such data can be determined for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. \* \* \*

21. Section 31.201-3 is revised to read as follows:

### 31.201-3 Determining reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with

particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including—

(1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;

(2) Generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;

(3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and

(4) Any significant deviations from the contractor's established practices.

22. Section 31.205-6 is amended by revising paragraph (i) to read as follows:

### 31.205-6 Compensation for personal services.

\* \* \* \* \*

(i) *Stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.*

(1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (k) of this subsection. The allowable cost of stock options is limited to the difference between the option price and the market price on the first date on which the option price and the number of shares are known. Accordingly, when the stock option price is equal to or greater than the market price on that date, then no costs are allowable for contract costing purposes.

(2) Stock appreciation rights are rights granted to employees by contractors to receive the increase in value, or appreciation, of company stock even though the employee neither purchases the stock nor receives title to it. Stock appreciation rights will be treated as deferred compensation and must comply with the requirements of paragraph (k) of this subsection. The allowable cost of stock appreciation rights is limited to the difference between the stock-appreciation-right base price from which appreciation will be measured and the market price on the first date on which

both the number of shares and the stock-appreciation-right base price are known. Accordingly, when the stock-appreciation-right base price is equal to or greater than the market price on that date, then no costs are allowable for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends paid and any appreciation in the market price of the stock over the price of the stock on the first date on which the number of shares awarded is known. Such increases in employee accounts for dividend equivalents and market price appreciation are unallowable.

(4) Junior stock is a class of equity stock that (i) is sold to employees at a price below that of the contractor's common stock, (ii) carries reduced dividend and voting rights, and (iii) is convertible to common stock upon the attainment of specified corporate goals. Costs associated with the conversion of junior stock into common stock are not allowable, whether or not they are accounted for as compensation costs.

23. Section 31.205-22 is amended by revising paragraph (f) to read as follows:

### 31.205-22 Legislative lobbying costs.

\* \* \* \* \*

(f) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this subsection during any particular calendar month when—

(1) The employee engages in lobbying (as defined in paragraphs (a) and (b) of this subsection) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding 5-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

When the conditions of subparagraphs (f)(1) and (2) of this subsection are met, contractors are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when the conditions of subparagraphs (f)(1) and (2) of this subsection are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of



lobbying time spent by employees during a calendar month.

24. Section 31.205-38 is amended by revising paragraph (f) to read as follows:

**31.205-38 Selling costs.**

\*(\*)  
(f) Notwithstanding any other provision of this subsection, costs of direct selling efforts, as defined in paragraph (c) of this subsection, incurred in connection with potential and actual Foreign Military Sales, as defined by the Arms Export Control Act, or foreign sales of military products or services are unallowable on U.S. Government contracts for U.S. Government requirements.  
\*(\*)

**PART 32—CONTRACT FINANCING**

**32.406 [Amended]**

25. Section 32.406 is amended by removing in the second sentence of paragraph (a) the words "Treasury Fiscal Requirements" and inserting in

their place the words "Treasury Financial".

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**36.701 [Amended]**

26. Section 36.701 is amended by adding in the first sentence of paragraph (a) within the parentheses the word "Contract" following the word "Construction"; by removing in the second sentence of paragraph (b) the word "advertised" and inserting in its place the words "sealed bid"; and by removing in paragraph (d) the words "an advertised" and inserting in its place the words "a sealed bid".

**PART 49—TERMINATION OF CONTRACTS**

**49.109-7 [Amended]**

27. Section 49.109-7 is amended by removing in the first sentence of paragraph (g) the words "Court of Claims" and inserting in their place the words "Claims Court".

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

**52.219-9 [Amended]**

28. Section 52.219-9 is amended by removing in the introductory text of *Alternate 1* of the clause the words "formal advertising" and inserting in their place the words "sealed bidding".

**52.228-1 [Amended]**

29. Section 52.228-1 is amended by inserting a period in the introductory text following the word "contracts" and removing the remainder of the sentence.

**PART 53—FORMS**

**53.214 [Amended]**

30. Section 53.214 is amended by redesignating the existing paragraphs (d), (e), (f), and (g) as paragraphs (e), (f), (g), and (h), and by reserving paragraph (d).

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