

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 12

[FAR Case 96-310]

RIN 9000-AH01

**Federal Acquisition Regulation;
Inapplicability of Cost Accounting
Standards to Contracts and
Subcontracts for Commercial Items**

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 are proposing to amend the Federal Acquisition Regulation (FAR) Part 12 to implement Section 4205 of the fiscal year (FY) 96 National Defense Authorization Act. Section 4205 amends Section 26(f) of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 422(f)) by exempting contracts and subcontracts for commercial items from the application of Cost Accounting Standards (CAS) promulgated under 41 U.S.C. 422. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 20, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 96-310 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 96-310.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR part 12 to implement Section 4205 of the FY96 National Defense Authorization Act (Pub. L. 104-106). Section 4205 amends Section 26(f) of the OFPP Act (41 U.S.C. 422(f)), making the application of CAS to commercial items "nonmandatory." CAS requirements can still be invoked as a matter of policy by the CAS Board, pursuant to the authority provided in 41 U.S.C. 422. Any such guidance would be placed in 48 CFR Chapter 99. Therefore, the new coverage at FAR 12.214 indicates that CAS generally will not apply to commercial items unless so indicated at 48 CFR 9903.201. A cross-reference to FAR 12.214 is added at 12.503(c) and 12.504(c), to further clarify the effect of Section 4205.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from CAS. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96-310), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the

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

List of Subjects in 48 CFR Part 12

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 12 be amended as set forth below:

**PART 12—ACQUISITION OF
COMMERCIAL ITEMS**

1. The authority citation for 48 CFR Part 12 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 12.214 is added to read as follows:

12.214 Cost Accounting Standards (CAS).

CAS generally will not apply to commercial items. If CAS does apply pursuant to 48 CFR 9903.201 (appendix B, FAR loose-leaf edition), the contracting officer shall insert the appropriate provisions and clauses as prescribed in that section.

3. Section 12.503(c)(3) is revised to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(c) * * *

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

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4. Section 12.504(c)(3) is revised to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

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(c) * * *

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

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