

entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.<sup>291</sup>

83. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.<sup>292</sup> However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (e.g. where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

#### **X. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

84. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>293</sup> In this *NPRM*, we seek comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

85. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than \$10.00.

#### **XI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

None.

#### **XII. Ordering Clauses**

38. Accordingly, *it is ordered* that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Notice of Proposed Rulemaking* is hereby adopted.

39. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012-11890 Filed 5-16-12; 8:45 am]

**BILLING CODE 6712-01-P**

#### **DEPARTMENT OF DEFENSE**

##### **GENERAL SERVICES ADMINISTRATION**

##### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

##### **48 CFR Part 31**

[FAR Case 2011-019; Docket 2011-0019; Sequence 1]

**RIN 9000-AM23**

##### **Federal Acquisition Regulation; Updated Postretirement Benefit (PRB) References**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to remove references to specific paragraphs in an accounting standard that were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP). The immediate and delayed recognition procedures for the initial application transition obligation in paragraphs 111, 112, and 113, respectively, of superseded Financial Accounting Standard (FAS) 106, are

obsolete and no longer exist in the authoritative GAAP (the ASC). DoD, GSA, and NASA, therefore, propose replacing the current references with replacement criteria for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for postretirement benefits (PRBs) to an accrual method of accounting for the purposes of government contract cost accounting.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before July 16, 2012 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2011-019 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching "FAR Case 2011-019". Select the link "Submit a Comment" that corresponds with "FAR Case 2011-019." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2011-019" on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAR Case 2011-019, 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:** Mr. Edward N. Chambers, Procurement Analyst, at 202-501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2011-019.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In June of 2009, the FASB announced, in its Statement Number 168, that effective for financial statements issued for interim and annual periods ending after September 15, 2009, the FASB ASC would become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. The FASB stated that this codification in the ASC supersedes existing references in U.S. GAAP.

<sup>291</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>292</sup> 47 CFR 1.1166.

<sup>293</sup> 5 U.S.C. 603.

On February 16, 2011, DoD, GSA, and NASA issued a proposed rule under FAR Case 2010–005, published in the **Federal Register** at 76 FR 8989, which replaced the superseded GAAP references for three sections of the FAR, and also stated that the reference to “prior GAAP” in FAR 31.205–6(o)(2)(iii)(A)(1) would be handled in a separate case. This proposed rule is the separate case, FAR Case 2011–019.

The superseded GAAP provisions in FAR 31.205–6(o)(2)(iii)(A)(1) reference the description of “transition obligation” in paragraph 110 of FAS 106 and the “delayed recognition methodology” in paragraphs 112 and 113, also of FAS 106.

These references to FAS 106 in the cost principle were added in FAR Case 91–42, published in the **Federal Register** at 56 FR 41738 on August 22, 1991. At the time, DoD, GSA, and NASA decided not to allow contractors to claim the entire “transition obligation” associated with their initial application of FAS 106 as an allowable cost in accordance with the “immediate recognition” procedure (superseded paragraph 111) in FAS 106. (The transition obligation associated with initial application of FAS 106 is referred to hereafter as the “initial application transition obligation.”) Therefore, DoD, GSA, and NASA disallowed costs for the amortization of the initial application transition obligation in excess of the amount amortized using the delayed recognition method procedure in paragraphs 112 and 113 of FAS 106.

DoD, GSA, and NASA note that the immediate and delayed recognition procedures for the initial application transition obligation in paragraphs 111, 112, and 113, respectively, of superseded FAS 106, are obsolete because FAS 106 no longer exists in the authoritative GAAP (the ASC). When the FASB recodified FAS 106 into the ASC, paragraphs 111 through 114 were not included because public companies recognized the transition obligation in the first fiscal period beginning after December 15, 1994, or shortly thereafter if exempted from the initial effective date. While the existing provision at FAR 31.205–6(o)(2)(iii)(A)(1) remains in force because the referenced paragraphs can be found in the historical accounting literature, the passage of time raises concerns that these paragraphs may become less readily available. DoD, GSA, and NASA conclude, therefore, that replacement criteria are needed for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for PRBs to an accrual

method of accounting for the purposes of government contract cost accounting.

DoD, GSA, and NASA propose replacing the current reference to the recognition of the transition method in accordance with provisions of GAAP that no longer exist with explicit criteria that generally replicates the former GAAP methodology.

DoD, GSA, and NASA acknowledge that contractors have in the past and may continue to propose a change to their government contract cost accounting practice whereby the “pay-as-you-go” method is replaced by the “accrual” method and this may give rise to a transition obligation that is similar in its nature, but not its amount, to the initial application transition obligation that arose when (now superseded) FAS 106 first became applicable in the early 1990’s for financial reporting purposes.

Consequently, DoD, GSA, and NASA are removing the obsolete references to paragraphs 110, 112, and 113 in FAR 31.205–6(o)(2)(iii)(A)(1). The revision is intended to allow a general continuation of the obsolete GAAP delayed recognition method for contractors that move from a pay-as-you-go method of accounting to an accrual basis of accounting for PRB costs for government contract cost accounting.

## II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Regulatory Flexibility Act

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only removes references to specific paragraphs in an accounting standard that were deleted in the Financial

Accounting Standards Board’s (FASB’s) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP) and replaces these references with explicit criteria that generally replicates the former GAAP methodology. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2011–019) in correspondence.

## IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 14, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA propose amending 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 31.205–6 by revising the introductory text of paragraph (o)(2)(iii)(A) and paragraph (o)(2)(iii)(A)(1) to read as follows:

### 31.205–6 Compensation for personal services.

\* \* \* \* \*

(o) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(A) Be measured and assigned in accordance with one of the following two methods described under paragraphs (o)(2)(iii)(A)(1) or (o)(2)(iii)(A)(2) of this subsection:

(1) Generally accepted accounting principles. However, transitions from the pay-as-you-go method to the accrual

accounting method must be handled according to paragraphs (o)(2)(iii)(A)(1)(i) through (iii) of this section:

(i) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with subparagraph (E) of this section; the fair value must be reduced by the prepayment credit as determined in accordance with subparagraph (o)(2)(iii)(F) of this subsection.

(ii) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(iii) For a plan that transitioned from pay-as-you-go to accrual accounting for government contract cost accounting prior to (Date of Final Rule), the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

\* \* \* \* \*

[FR Doc. 2012-11959 Filed 5-16-12; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 219

[Docket No. FRA-2010-0155]

RIN 2130-AC24

#### Control of Alcohol and Drug Use: Addition of Post-Accident Toxicological Testing for Non-Controlled Substances

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT)

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Since 1985, FRA has conducted post-accident toxicological testing (post-accident testing) on blood, urine, and, if an employee is deceased, tissue samples from railroad employees involved in serious train accidents. If an accident qualifies for post-accident testing, FRA routinely conducts tests for alcohol, marijuana, cocaine, phencyclidine (PCP), and certain amphetamines, opiates, barbiturates, and benzodiazepines. FRA is proposing to add certain potentially impairing non-controlled substances to its standard post-accident testing panel because FRA's research indicates that use of prescription and over-the-counter (OTC) drugs, most of which are non-controlled substances, is prevalent among railroad employees.

**DATES:** Submit comments on or before July 16, 2012.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA-2010-0155 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information. Please see the Privacy Act heading in the "Supplementary Information" section of this document for Privacy Act information related to any submitted comments or materials.

**FOR FURTHER INFORMATION CONTACT:** For program and technical issues, contact Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202-493-6313), [lamar.allen@dot.gov](mailto:lamar.allen@dot.gov). For legal issues, contact Patricia V. Sun, Trial Attorney, Office of Chief Counsel, Mail Stop 10, FRA, 1200 New Jersey Avenue SE.,

Washington, DC 20590 (telephone 202-493-6060), [patricia.sun@dot.gov](mailto:patricia.sun@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Since 1985, as part of its accident investigation program, FRA has conducted post-accident alcohol and drug tests on railroad employees who have been involved in serious train accidents (50 FR 31508, August 2, 1985). If an accident meets FRA's criteria for post-accident testing (see 49 CFR 219.201), FRA conducts tests for alcohol and for certain drugs classified as controlled substances under the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention Substances Act of 1970 (CSA, 21 U.S.C. 801 et seq.). Controlled substances are drugs or chemicals that are prohibited or strictly regulated because of their potential for abuse or addiction. The Drug Enforcement Administration (DEA), which is primarily responsible for enforcing the CSA, oversees the classification of controlled substances into five schedules. Schedule I contains illicit drugs, such as marijuana and heroin, which have no legitimate medical use under Federal law. Schedules II-V contain legal drugs which are available only by prescription because of their potential for abuse. Currently, FRA routinely conducts post-accident tests for the following drugs: marijuana, cocaine, phencyclidine (PCP), and certain opiates, amphetamines, barbiturates, and benzodiazepines.

As detailed below, FRA research indicates that prescription and OTC drug use has become prevalent among railroad employees. For this reason FRA is proposing to add certain non-controlled substances to its standard post-accident testing program, which currently routinely tests only for alcohol and controlled substances. At this time, FRA intends to add two types of non-controlled substances, tramadol (a synthetic opioid) and sedating antihistamines. Publication of this NPRM, however, in no way limits FRA's post-accident testing to the identified substances or in any way restricts FRA's ability to make routine amendments to its standard post-accident testing panel without prior notice. Furthermore, in addition to its standard post-accident testing panel, FRA always has the ability to test for "other impairing substances specified by FRA as necessary to the particular accident investigation." See 49 CFR 219.211(a). This flexibility is essential, since it allows FRA to conduct post-accident tests for any substance (e.g., carbon