

[FR Doc. 03-30472 Filed 12-10-03; 8:45 am]

BILLING CODE 6820-EP-C

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2 and 31**

[FAC 2001-18; FAR Case 2001-026; Item II]

RIN 9000-AJ56

**Federal Acquisition Regulation;
Depreciation Cost Principle**

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) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the depreciation cost principle to improve clarity and structure, and remove unnecessary and duplicative language.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501-0650. Please cite FAC 2001-18, FAR case 2001-026.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4876, January 30, 2003, with request for comments. Two respondents submitted public comments; a discussion of the major comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with changes. Differences between the proposed rule and final rule are discussed below.

B. Public Comments*FAR 31.205-11, Depreciation**FAR 31.205-11(a)*

Comment 1: Both respondents suggested that the cost principle should allow flexibility in the use of residual values less than 10 percent and,

therefore, the word “shall” in the second sentence of proposed FAR 31.205-11(a) should be changed.

Councils’ response: Concur. The Councils changed the word “shall” in sentence two of FAR 31.205-11(a) to “need,” which conforms with the wording of Cost Accounting Standard (CAS) 409-50(h).

Comment 2: Respondent believes that for clarification and consistency purposes in this area, language in CAS 409-50(h) should be added to the cost principle. Respondent recommended adding the statement regarding the recognition of residual values when certain depreciation methods are used, and the term “significantly” when referring to the allowability of depreciation costs that reduce assets below their residual value.

Councils’ response: Concur. The Councils believe the FAR should not be more restrictive than the CAS in this area. Therefore, the Councils added the following sentence as the third sentence of proposed FAR 31.205-11(a): “Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs.” In addition, the Councils added the term “significantly” to the last sentence of proposed FAR 31.205-11(a).

Comment 3: Respondent suggested deleting the last sentence of FAR 31.205-11(a) since it appears to be contradictory to the previous sentence and this requirement is already covered in the definition of “depreciation.”

Councils’ response: Do not concur. The Councils believe that the sentence does not contradict the previous sentence, and the definition of “depreciation” does not adequately cover this requirement.

FAR 31.205-11(d)

Comment 4: Both respondents suggested deleting the entire proposed paragraph 31.205-11(d). One respondent stated, “Depreciation, by definition, requires a ‘cost.’ If there is no cost, there is no depreciation. Comments on rental or use charges are already covered in Part 45 and should be covered under 31.205-36, Rental Costs, if considered necessary, and not under the Depreciation Cost Principle.”

Councils’ response: Do not concur. The Councils believe that in those instances where contractors might put an asset on their books without incurring a cost, *i.e.*, a donated asset, it must be clear that any costs associated with that asset are unallowable.

FAR 31.205-11(f)

Comment 5: Both respondents suggested deleting the third sentence of the proposed FAR 31.205-11(f). They believe the requirements in the sentence are overly prescriptive and instructional. One respondent stated, “FAR 31.109 already provides guidance on how to arrive at advance agreements.”

Councils’ response: Do not concur. The Councils believe that while FAR 31.109 provides information on advance agreements, it does not address items that should be considered in determining a reasonable amount for a use charge. The Councils believe the guidance is helpful in determining a reasonable charge. However, the last sentence of proposed FAR 31.205-11(f) inappropriately limited the scope of this provision with the words, “the contractor shall consider * * *.” Therefore, the Councils have replaced this language with broader guidance, “consideration shall be given to * * *.”

FAR 31.205-11(g)

Comment 6: Both respondents recommended revising proposed FAR 31.205-11(g) to more closely reflect the requirements of FAR 31.205-52, Asset valuations resulting from business combinations. They maintain that FAR 31.205-52 does not necessarily “limit” allowability as stated in the proposed words.

Councils’ response: Partially concur. It is not necessary to characterize FAR 31.205-52 here as limiting allowability. Therefore, the Councils deleted the words “which limit the allowability of depreciation” from FAR 31.205-11(g). However, the proposed rule inappropriately limited the scope of this provision with the words, “the contractor shall comply with the requirements of 31.205-52.” Therefore, the Councils replaced this language with broader guidance, “the requirements of 31.205-52 shall be observed.”

FAR 31.205-11(i)

Comment 7: Both respondents recommended deleting the third sentence of FAR 31.205-11(i) as redundant. They also recommended deleting the fourth sentence, as well as paragraph (i)(1), because operating leases and sale and lease back arrangements are already covered under FAR 31.205-36, Rental costs, and need not be repeated in the depreciation cost principle. Finally, they recommended deleting the fifth sentence as repetitive of the first two sentences.

Councils’ response: Partially concur. The Councils agree with the