

recommendation to delete the redundant third sentence: "Capital leases under FAR 13 are subject to the requirements of 31.205-11." The Councils also agree that operating leases are covered in FAR 31.205-36, and, therefore, deleted the fourth sentence: "Operating leases are subject to the requirements of 31.205-36." However, the Councils believe a cross-reference in this cost principle is helpful because of the interchange of the two cost principles and, therefore, inserted a cross-reference after sentence one: "(See 31.205-36 for Operating Leases.)" The Councils disagree with deleting the language relative to sale and leaseback in paragraph (i)(1) since this language is closely related to depreciation costs, but changed the first word from "Rental" to "Lease." Finally, the Councils deleted most of the fifth sentence as duplicative, but changed "except as follows:" to "except that:"

FAR 31.205-11(j)

Comment 8: One respondent suggested revising proposed paragraph (j) in FAR 31.205-11, and asserted that the second sentence of the proposed rule would require contractors to change their depreciation method if different. The other respondent recommended deleting the entire paragraph and stated, "It is obsolete in that it only applies to assets acquired before the effective date of this cost principle (*i.e.*, pre-ASPR time frame)."

Councils' response: Partially concur. The Councils deleted paragraph (j) since the grandfather provision benefits industry and it is no longer needed.

FAR 31.205-36, Rental Costs

FAR 31.205-36(a)

Comment 9: Both respondents recommended deleting the second sentence of FAR 31.205-36(a) since depreciation issues are already covered under 31.205-11, Depreciation, and need not be repeated in FAR 31.205-36.

Councils' response: Concur. The Councils agree that the detailed language does not need to be repeated in FAR 31.205-36, but believe a cross-reference is useful to the users of the cost principles because of the interchange of the two cost principles. Therefore, the second sentence of FAR 31.205-36(a) is deleted and a cross-reference, "(See 31.205-11 for Capital Leases.)," is inserted.

FAR 31.205-36(b)(1)(iv)

Comment 9: Respondent recommended retaining the language at FAR 31.205-36(b)(1)(iv). They stated that no explanation was given for deleting the language.

Councils' response: Do not concur. The respondent appears to have misread the changes made. FAR 31.205-36(b)(4) was deleted, not FAR 31.205-36(b)(1)(iv).

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not 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.

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 contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

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. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Depreciation" to read as follows:

2.101 Definitions.

Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the

estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Revise section 31.205-11 to read as follows:

31.205-11 Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. 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. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under 31.205-26(e) may be