

confusion. The IRS guidelines must be applied based on the particular facts and circumstances of each case, *i.e.*, on a “case-by-case basis.” Furthermore, the concerns of the respondent focus on the extent to which the auditor is required to rely upon the work of others, in this case the valuation expert. An independent audit requires that the auditor determine the scope of the audit, including the extent of reliance on the work of others. This issue is properly addressed in Generally Accepted Government Auditing Standards. It is not something that should be addressed in the FAR.

FAR 31.205–19—Insurance and Indemnification

FAR 31.205–19(c)(4)—Definition of Catastrophic Losses

Comment 10: One respondent asserts that self-insurance charges for catastrophic losses should be allowable, and that the definition in the proposed rule could be interpreted to include deductibles or over ceiling amounts for property insurance policies and other high dollar policies. Another respondent states that the new definition of catastrophic losses may cause contention and uncertainty in the field because it does not account for the relatively large losses among different sized contractors. The respondent also believes “very low frequency of loss” adds confusion. The respondent further contends that the definition should be deleted and existing practices that rely upon individual circumstances and general reasonableness should continue to be used.

Councils’ response: Concur in part. Upon further review, the Councils deleted the definition of catastrophic losses from the final rule. The Councils continue to believe that the proposed definition is consistent with the intent of the promulgators of the current language, as evidenced by the March 19, 1979, report underlying DAR case 78–400–7.

The intent of the proposed coverage was to distinguish catastrophic losses as used in the cost principle from the type of catastrophic loss anticipated by the illustration at CAS 416.60(h). In that illustration, motor vehicle liability losses in excess of a specified amount were absorbed by the home office and reallocated to all segments. In the particular case described, the specified amount was too low based on loss experience to be considered catastrophic under the provisions of CAS 416. However, the illustration appears to anticipate losses that may be catastrophic to a particular segment of a

company but not necessarily catastrophic in a more general sense. The Councils do not believe the drafters of the cost principle intended to disallow self-insurance charges for the type of loss anticipated by the CAS illustration. However, since CAS does not include a definition of catastrophic loss, defining the term in the FAR could cause confusion by the users of these regulations.

As to the respondent’s recommendation that self-insurance charges for catastrophic losses should be allowable, the Councils disagree. As was noted in the report on DAR case 78–400–7, the Government should not allow self-insurance charges for catastrophic losses, such as earthquakes, which have a very small likelihood of occurring for any particular contractor.

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 31 and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 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 31—CONTRACT COST PRINCIPLES AND PROCEDURES

- 2. Amend section 31.205–6 by—
- a. Removing from the second sentence of paragraph (g)(1) “(j)(7)” and adding “(j)(6)” in its place;
- b. Revising paragraph (j);
- c. Removing from the second parenthetical in paragraph (p)(2)(i) “paragraphs (j)(5) and (j)(8)” and adding “paragraphs (j)(4) and (q)” in its place; and
- d. Adding paragraph (q) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) *Pension costs.* (1) Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit pension plans and the costs of all defined-contribution pension plans in compliance with 48 CFR 9904.412—Cost Accounting Standard for Composition and Measurement of Pension Cost, and 48 CFR 9904.413—Adjustment and Allocation of Pension Cost. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) and in paragraphs (j)(2) through (j)(6) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed and to the terms and conditions of the established plan. The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.

(iii) Except as provided for early retirement benefits in paragraph (j)(6) of