

encouraged to rescan their receivers for new channel assignments.

*Next Gen TV Broadcaster Written Notices to MVPDs (Third-Party Disclosure Requirement; 47 CFR 73.3801(h), 73.6029(h), and 74.782(i)):* Next Gen TV stations relocating their ATSC 1.0 signals (e.g., moving to a temporary host station's facilities, subsequently moving to a different host, or returning to its original facility) must provide notice to MVPDs that: (i) No longer will be required to carry the station's ATSC 1.0 signal due to the relocation; or (ii) carry and will continue to be obligated to carry the station's ATSC 1.0 signal from the new location. Broadcaster notices to multichannel video programming distributors (MVPDs) will be used to notify MVPDs that carry a Next Gen TV broadcast station about channel changes and facility information.

*Local Simulcasting Agreements (Recordkeeping Requirement; 47 CFR 73.3801(e), 73.6029(e), and 74.782(f)):* Broadcasters must maintain a written copy of any local simulcasting agreement and provide it to the Commission upon request. FCC staff will review the local simulcasting agreement (when applicable) to determine compliance with FCC rules and to determine whether the public interest would be served by grant of the application for a Next Gen TV station license.

Federal Communications Commission.

**Marlene Dortch,**  
Secretary.

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## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Part 9903

#### Cost Accounting Standards: Revision of the Exemption From Cost Accounting Standards for Contracts and Subcontracts for the Acquisition of Commercial Items

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is publishing a final rule revising the exemption for contracts or subcontracts for the acquisition of commercial items.

This final rule clarifies the types of contracts that are exempt from the application of Cost Accounting Standards when acquiring commercial items.

**DATES:** Effective August 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Raymond Wong, Staff Director, Cost Accounting Standards Board (telephone: 202-395-6805; email: [rwong@omb.eop.gov](mailto:rwong@omb.eop.gov)).

**SUPPLEMENTARY INFORMATION:** This final rule revises the exemption 48 CFR 9903.201-1(b)(6) for contracts or subcontracts for the acquisition of commercial items (hereafter referred to as the "(b)(6) commercial item exemption").

#### A. Regulatory Process—Changes to 48 CFR Part 9903

The CAS Board's regulations and Standards are codified at 48 CFR chapter 99. This final rule amends a CAS Board regulation other than a Standard and, as such, is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) [formerly, 41 U.S.C. 422(g)].

#### B. Background and Summary

In November 2012, the CAS Board issued a proposed rule to clarify the exemption from CAS when acquiring commercial items. 77 FR 69422. The exemption enumerates the contract types that are authorized when procuring commercial items. Over the years, the CAS Board has issued several rules addressing the exemption to reflect statutory changes regarding the types of contracts that may be used in commercial item acquisitions. See 61 FR 39360 (providing an exemption for firm-fixed-price contracts and subcontracts for the acquisition of commercial items as authorized by section 4305 of the Clinger-Cohen Act of 1996 (FARA), Pub. L. 104-106); 62 FR 31294 (adding fixed-price contracts with economic price adjustments other than those based on actual incurred costs for labor and materials); and 72 FR 36367 (expanding the list of exempt contract types to include time-and-material and labor-hour contracts, in response to changes made by section 1432 of the Services Acquisition Reform Act of 2003, Pub. L. 108-136, which authorized these types of contracts for the acquisition of commercial items).

Since enactment of the Federal Acquisition Streamlining Act in 1994 (Pub. L. 103-355), the Federal Acquisition Regulation (FAR) has included an enumerated list of contract types authorized for use in acquiring

commercial items. See 48 CFR part 12.207. Similar to the CAS Board, the Federal Acquisition Regulatory Council has amended FAR 12.207 several times to reflect statutory changes and clarify the intent of the regulation. An inconsistency has developed between the list of contract types recognized for use in acquiring commercial items set forth in paragraph (b)(6) and that commercial item exemption and contract types reflected in FAR 12.207. For example, FAR 12.207 allows the use of firmed fixed price contracts in conjunction with award fee incentives or performance or delivery incentives, known as fixed-price incentive (FPI) contracts, when the award fee or incentive is based solely on factors other than cost. However, the (b)(6) exemption does not expressly recognize FPI contracts on the enumerated list of exempt contracts. Because of this discrepancy, some commenters on a prior CAS Board rulemaking expressed concern that these types of FPI contracts might be excluded under a literal reading of the (b)(6) exemption. See 72 FR 36367.

In its proposed rule, the CAS Board sought to address the inconsistencies between the lists in the (b)(6) exemption and FAR 12.207 by removing reference to specific contract types in the (b)(6) exemption and instead making simple reference to "contracts and subcontracts for the acquisition of commercial items." The CAS Board explained that this generalized language would "obviate the continuing need to update and keep current a detailed listing of permissible contract types for the acquisition of commercial items, which continues to evolve with the passage of time." 77 FR 69424. The CAS Board further explained that this language tracks the exemption set forth in its authorizing statute at 41 U.S.C. 1502(b)(1)(C)(i) as well as the language in section 4205 of the Clinger-Cohen Act.

The CAS Board received several comments in response to the proposed rule. A discussion of the comments and the Board's responses are set forth in section C. Of particular note, some commenters raised concern that more general language may perpetuate ambiguities regarding what contract types are covered by the exemption. After review of the public comments and further deliberation, the CAS Board has concluded that the desired goal of clarification can be more effectively achieved by adding language to the exemption that cross references to FAR 12.207 and its enumeration of contract types authorized for the acquisition of commercial items. The CAS Board

believes this approach has multiple benefits. This linkage will eliminate disparities between the FAR and CAS Board rules regarding the description of contract types authorized for commercial item acquisitions. In addition, by maintaining reference to an enumerated list of authorized contract types for commercial item acquisitions, this formulation will avoid the ambiguity that could have been created if the more generalized language in proposed rule were adopted. The CAS Board also hopes that this change will avoid the need for additional CAS Board rulemakings in the event of future statutory actions addressing allowable contract types for commercial item procurements.

Accordingly, this final rule amends the language at 9903.201–1(b)(6) to exempt contracts and subcontracts authorized in 48 CFR 12.207 for the acquisition of commercial items. The CAS Board intends to monitor the effectiveness of this rule in achieving the intent of the law regarding CAS exemptions.

### C. Public Comments

The CAS Board published a Notice of Proposed Rulemaking (NPR) on November 19, 2012, proposing to revise the (b)(6) commercial item exemption to read: “[c]ontracts and subcontracts for the acquisition of commercial items,” (77 FR 69422). In response to the NPR, the CAS Board received comments from four entities, one of which supported the proposed rule without change and three of which raised concerns. A summary of concerns and the CAS Board’s response are below.

1. *Lack of clarity.* Three commenters raised concern that deletion of the more detailed explanation of what contract types are exempt from CAS will increase confusion. One commenter stated that the change “may be confusing to the inexperienced, including both contractors and Government representatives” who may not immediately understand how to interpret the phrase “contracts and subcontracts for the acquisition of commercial items” without further explanation. This commenter suggested that the exemption include a specific cross reference to statute or regulation so that the reader could more easily determine the exempt contract types. Other commenters warned that a blanket exemption could lead to overpayment. One of these commenters admonished the Board on the need to preserve a more tailored exemption that continues to clarify that the exemption does not apply to specific contract types

that involve reimbursement or pricing based on actual costs.

*Response:* The Board agrees that readers need to be made aware of the specific contracts that are covered by the exemption. This specificity will help ensure easy, clear, and consistent application. As explained above, the Board believes that reference to FAR 12.207, which identifies contract types that may be used to acquire commercial items should accomplish this objective. In this regard, the CAS Board notes that amendments to the CAS Board’s authorizing statute made by section 820 of the National Defense Authorization Act for FY 2017 make clear that the Board bears a responsibility to “minimize the burden on contractors while protecting the interests of the Federal Government.” The Board believes this goal is shared by the FAR Council, especially in light of direction provided in Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, which directs agencies to “manage costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.”

The Board intends to monitor the effectiveness of this final rule in achieving the intent of the law regarding CAS exemptions and retains the right to change the approach in the future should any changes to FAR 12.207 that the Board believes are inconsistent with this objective occur.

2. *Disclosure statements.* Two commenters recommended the CAS Board develop Cost Accounting Standards and Disclosure Statement requirements for commercial item acquisitions, as Congress had required in the Clinger-Cohen Act. One of those commenters stated that such steps were needed before the permissible contract types are expanded to include certain cost type contracts.

*Response:* Creating CAS and Disclosure Statements for commercial item acquisitions would be outside the scope of this rulemaking effort. The CAS Board is aware of the direction contained in the Conference Report to the Federal Acquisition Streamlining Act to “establish guidance, consistent with commercial accounting systems and practices, to ensure that contractors appropriately assign costs to contracts (other than firm, fixed-price contracts) that are covered by the exemption for contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.” That assessment was made by the CAS Board when

promulgating the 1997 final rule. However, since the law currently prohibits the use of cost type contracts for the acquisition of commercial items, the Board believes there is little to be gained from developing and imposing Cost Accounting Standards and Disclosure Statement requirements at this time. However, the CAS Board continues to reserve the right to issue such cost accounting standards and disclosure statement requirements should the need arise in the future.

3. *Hybrid and indefinite-delivery-indefinite-quantity (IDIQ) contracts.* One commenter raised the question of how to determine whether CAS is triggered on a “hybrid” contract that contains contract line item numbers (CLINs) for both commercial items and non-commercial items where the total value of the contract exceeds the CAS applicability threshold. The commenter suggested that CAS be clarified to ensure CLINs for commercial items on a hybrid contract are not covered by CAS, irrespective of the value of the contract. The commenter further recommended clarification of the CAS triggers for IDIQ contracts, which are often used to acquire commercial items—in particular whether to value the contract based on the size of orders or the size of the umbrella contract.

*Response:* While issues related to the applicability of CAS to hybrid and IDIQ contracts are outside the scope of this rulemaking effort, the CAS Board takes note of these issues. The Board intends to review these issues more carefully to determine whether clarification of its rules is needed to ensure appropriate application of CAS coverage.

### D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this rule will impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this rule is to clarify the application of CAS to contracts for commercial items. In addition, this rule is consistent with the intent of the objectives of the “Streamlined Applicability of Cost Accounting Standards” set forth in Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65).

### E. Executive Orders 12866 and 13771, the Congressional Review Act, and the Regulatory Flexibility Act

This rule provides technical clarification on the application of exemptions from CAS for commercial

item acquisitions consistent with authorities in the Clinger-Cohen Act. By cross referencing FAR 12.207 and its enumeration of contract types authorized for the acquisition of commercial items, the CAS Board expects to eliminate disparities between the FAR and CAS Board rules that has created confusion for contractors and subcontractors. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the Board has determined that this rule will not result in the promulgation of an “economically significant rule” under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required, and the requirements of E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs*, do not apply. For the same reason, this final rule is not a “major rule” under the Congressional Review Act, 5 U.S.C. Chapter 8. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

#### List of Subjects in 48 CFR Part 9903

Cost Accounting Standards,  
Government procurement.

**Lesley A. Field,**

*Acting Chair, Cost Accounting Standards Board.*

For the reasons set forth in this preamble, 48 CFR part 9903 is amended as follows:

#### PART 9903—CONTRACT COVERAGE

■ 1. The authority citation for part 9903 continues to read as follows:

**Authority:** Pub. L. 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

■ 2. Section 9903.201–1 is amended by revising paragraph (b)(6) to read as follows:

##### 9903.201–1 CAS applicability.

\* \* \* \* \*

(b) \* \* \*

(6) Contracts and subcontracts authorized in 48 CFR 12.207 for the acquisition of commercial items.

\* \* \* \* \*

[FR Doc. 2018–15176 Filed 7–16–18; 8:45 am]

**BILLING CODE 3110–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180205129–8129–01]

RIN 0648–BH50

#### Atlantic Highly Migratory Species

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This final rule makes editorial corrections amending the regulations for Atlantic highly migratory species (HMS). This final action will make the rules easier to use by making the cross-references in the regulations accurate, correcting grammatical and punctuation issues, and reformatting the regulations where needed to be consistent with **Federal Register** guidelines. The action also in several instances simplifies regulatory text by removing unnecessary language. The rule is administrative in nature and does not make any change with substantive effect to the regulations for HMS fisheries.

**DATES:** This final rule is effective on July 17, 2018.

**ADDRESSES:** Documents related to HMS fisheries management, such as the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or upon request from the HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Lauren Latchford, Larry Redd, or Karyl Brewster-Geisz by phone at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, (ATCA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) regulations implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries; these management measures have been amended or otherwise modified numerous times. The implementing

regulations for Atlantic HMS are at 50 CFR part 635.

#### Background

The regulations at 50 CFR part 635 are promulgated under ATCA and the Magnuson-Stevens Act for the conservation and management of Atlantic highly migratory species, including species of tunas, billfish, sharks, and swordfish. In 2006, NMFS consolidated Atlantic HMS management into one fishery management plan, the 2006 Consolidated HMS FMP. Since then, NMFS has amended the FMP ten times through the fishery management plan amendment process and has made numerous other regulatory changes through framework actions. With this volume of regulatory action, some small grammatical and other errors have accumulated over time. As described in the sections below, this technical amendment corrects grammatical, punctuation, consistency, cross-reference errors in the HMS regulations at 50 CFR part 635. As explained in the Consistency section below, it also simplifies regulatory text by removing unnecessary language in several limited instances.

#### Typographical Corrections

The following grammatical, punctuation, or clerical errors (*i.e.*, typographical errors) in the HMS regulations are corrected by this final rule:

The definition of “CK” at § 635.2 does not spell out the words for which it is an acronym. This final action therefore adds “Cleithrum to Caudal Keel” before the acronym “CK.” The definition of “Hammerhead Sharks” at § 635.2 capitalizes the word “shark(s).” This final action changes to lowercase the word “shark(s).” The regulation at § 635.4(l)(2)(viii) does not capitalize the word “tunas” in the permit title, “Atlantic Tunas Longline category LAP.” This final action capitalizes the word “Tunas.” The regulation at § 635.5(b)(1)(i) has commas incorrectly after the words “all” and “swordfish” in the sentence, “All reports must be species-specific and must include the required information about all, swordfish, and sharks received by the dealer.” This final action removes the misplaced commas. The regulation at § 635.5(c)(2) is missing apostrophes and has extra parentheses in three places where the text should read, “owner’s designee.” This final action adds apostrophes and removes the mistaken parentheses to correct this text. The regulations at § 635.6(b)(1)(ii) and (c)(1) do not capitalize the word “Arabic.” This final action corrects this error and