

PRATT'S GOVERNMENT CONTRACTING LAW REPORT

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Cost Accounting Board Issues Advance Notice of Proposed Rulemaking to Conform Certain Cost Accounting Standards to Generally Accepted Accounting Principles

*By Edward V. Arnold**

In this article, the author explains that the Office of Federal Procurement Policy's Cost Accounting Standards Board has concluded that most of Cost Accounting Standard 408 and Cost Accounting Standard 409 have become unnecessary as the government's interests can be achieved through reliance on Generally Accepted Accounting Principles and existing requirements in other Cost Accounting Standards and the Federal Acquisition Regulation.

The Office of Federal Procurement Policy's Cost Accounting Standards (CAS) Board has issued an advanced notice of proposed rulemaking (ANPRM)¹ seeking public comments on proposed changes to the Cost Accounting Standards (CAS) on conformance to Generally Accepted Accounting Principles (GAAP) related to CAS 408 (Accounting for costs of compensated personal absence) and CAS 409 (Cost accounting standard depreciation of tangible capital assets).

The CAS Board has provisionally concluded that most of CAS 408 and CAS 409 have become unnecessary as the government's interests can be achieved through reliance on GAAP and existing requirements in other CAS and the Federal Acquisition Regulation (FAR).

Therefore, a proposed rule is being considered to eliminate most of CAS 408 and CAS 409. The Board invited public comments, due August 26, 2024, on these provisional determinations and any instances that had not been considered.

CAS BOARD—BACKGROUND

Congress created the CAS Board as a legislative agency authorized to establish Cost Accounting Standards designed to achieve uniformity and consistency in cost accounting practices used by contractors and subcontractors. Congress has given the Board the exclusive authority to prescribe, amend, and rescind the CAS and related interpretations. All existing CAS that the previous CAS Board promulgated, thus, remain in effect until superseded or changed.

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¹ <https://www.govinfo.gov/content/pkg/FR-2024-06-27/pdf/2024-13805.pdf>.

Once new Standards are promulgated, their use is mandatory by all executive agencies, both civilian and military, and by contractors and subcontractors for all negotiated prime contracts and subcontracts with the U.S. unless otherwise exempt. A significant exemption is that for negotiated contracts not in excess of the Truth in Negotiations Act threshold (i.e., \$2 million.). However, although there were attempts to grant the CAS Board authority to promulgate rules covering the allowability of costs currently covered by FAR Part 31, the authority of the Board is limited to establishing rules regarding allocation, not allowability, of costs.

Before promulgating new Standards and interpretations, the CAS Board must take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties:

- The probable cost of implementation;
- Advantages, disadvantages and improvements anticipated in the pricing, administration, and settlement of disputes under government contracts; and
- Possible acceptable alternatives to a CAS change.

The Fiscal Year (FY) 2017 National Defense Authorization Act,² § 820(a), amended 41 U.S.C. § 1501 to create new duties for the CAS Board, which is now required to:

- (1) Ensure that the cost accounting standards used by federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems;
- (2) Review any cost accounting standards established under 41 U.S.C. § 1502 and conform such standards, where practicable, to GAAP, on an ongoing basis; and
- (3) Annually review disputes involving such standards brought to the boards established in 41 U.S.C. § 7105 or federal courts, and consider whether greater clarity in such standards could avoid such disputes.

CAS 408—ACCOUNTING FOR COSTS OF COMPENSATED PERSONAL ABSENCE

CAS 408, originally published in 1974, primarily deals with the recognition of costs of compensated personal absence. The standard was created due to

² Pub. L. No. 114-328.

significant problems arising from the reliance of procurement regulations on the Internal Revenue Code (IRC) and income tax regulations. However, since its inception, GAAP have been significantly revised and now overlap almost entirely with CAS 408.

The ANPRM states that the Board has provisionally concluded that CAS 408 has become unnecessary as the government's interests can be achieved through reliance on GAAP and other CAS. Therefore, the proposed rule considers eliminating CAS 408. The ANPRM states that this move aligns with the Board's guiding principles to minimize the burden on contractors while protecting the interests of the federal government. It also seeks to rely on GAAP when it would materially achieve uniformity and consistency in cost accounting without bias or prejudice to either party.

The Board is also soliciting public comments on the treatment of changes to cost accounting practices to conform to GAAP that would be made by this action, such as assigning the costs to earlier cost accounting periods than CAS 408 permits. They are interested in views on the anticipated impact, if any, of these changes and whether these changes should be exempted from the required cost impact process.

CAS 409—DEPRECIATION OF TANGIBLE CAPITAL ASSETS

CAS 409 was promulgated in 1975 in response to the fact that depreciation cost had been a recognized issue since the 1960s. A number of contractors at that time primarily relied on the IRC to measure depreciation costs. The IRC contained accelerated depreciation methods for tax purposes, and the Board viewed this as inequitable and improper cost accounting because the methods did not match the depreciation expense over the useful life of the asset.

GAAP now prohibits using the accelerated depreciation methods in the IRC for financial reporting purposes if the amounts do not fall within a reasonable range of the asset's useful life. Thus, the ANPRM recognizes that the principal concern for the promulgation of CAS 409 may no longer exist, as GAAP has added significant content since the initial promulgation of CAS 409, while CAS for the most part has not changed subsequent to the initial promulgation.

The ANPRM notes that a comparison of the current requirements in CAS 409 with GAAP reveal nearly completely equivalent content. Additionally, the FAR includes substantive content regarding the allowability of depreciation costs in certain circumstances that may further protect the interests of the government. The Board reasoned that where such comparable requirements exist between CAS and GAAP, the CAS 409 requirement could be eliminated. With respect to the three requirements in CAS 409 for which there is no equivalent content in GAAP, the Board concluded that content in other CAS is not adequate to protect the government's interests.

Thus, the Board has provisionally concluded that most of CAS 409 has become unnecessary to protect the government's interests which may be achieved through reliance on GAAP and existing requirements in other CAS and the FAR. Therefore, the Board is considering a proposed rule that would eliminate CAS 409 with the exception of three requirements in CAS 409-50(e)(5), CAS 409-50(j)(1), and CAS 409-50(j)(4), which would be retained.

Because of the limited amount of content that would be proposed for retention, the Board is considering a proposed rule that would relocate the three requirements to other Standards, specifically a new CAS 406-50(g)(1) and (2) and a new CAS 418-50(h), instead of maintaining an entire Standard 409. This proposed action would be consistent with the Board's guiding principles to eliminate content from CAS where GAAP, other CAS, or other relevant rules may protect the interests of the government.

In addition, the Board provisionally concluded that moving the retained requirement to another Standard, rather than maintain CAS 409 with minimal content, would best achieve the goal of streamlining CAS. The ANPRM states that the Board has not identified any instance where the elimination of CAS 409, as contemplated, would result in a change to a contractor's disclosed cost accounting practices for government contracts, but invites comments on this provisional determination, and any instances that have not been considered.

CONCLUSION

Although one has to await final agency action, the purpose of this ANPRM, i.e., to reduce redundancy and create consistency is a laudatory goal in light of the fact that many consider the CAS to be complicated as it currently stands.