

prices are adjusted for any reason other than the application of the waiver.

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3. Section 225.7019-3 is amended by adding paragraph (b)(4) to read as follows:

225.7019-3 Waiver.

* * * * *

(b) * * *

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(1) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

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[FR Doc. 98-13741 Filed 5-21-98; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1816

Revision to the NASA FAR Supplement on Technical Performance Incentive Guidance.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to correct inconsistencies on technical performance incentive guidance.

EFFECTIVE DATE: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Office of Procurement, Contract Management Division (Code HK), (202) 358-0478.

SUPPLEMENTARY INFORMATION:

Background

NFS section 1816.402-270, NASA Technical Performance Incentives, requires the use of positive and negative performance incentives in hardware contracts greater than \$25M unless waived in writing by the Center Director. New section 1816.402, Application of Predetermined, Formula-Type Incentives, was added as a final rule in the March 17, 1998 **Federal Register** (63 FR 12997-12998). This section provided guidance on the appropriate selection and use of positive and negative performance incentives,

but did not change the mandatory requirement in 1816.402-270 which appears to preempt those guidelines in certain circumstances. This incongruity is rectified by adding language to 1816.402-270 stating that NASA has considered the guidelines in 1816.402 and has determined that performance incentives are appropriate for, and must be used in, hardware contracts greater than \$25M. Additional administrative revisions are made to indicate that this policy does not apply to commercial acquisitions under FAR Part 12 and that negative incentives are not required for contracts which already require total contractor liability for product performance.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting requirements or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1816

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1816 is amended as follows:

PART 1816—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 1816 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. In section 1816.402-270, paragraphs (a), (b), and (c) are revised to read as follows:

1816.402-270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than \$25 million. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under \$25 million acquired under procedures other than FAR Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure

hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and

unpaid and promptly remit it to the contractor.

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[FR Doc. 98-13778 Filed 5-21-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 365, 372, 373, 374, and 377

RIN 2125-AE41

Federal Motor Carrier Regulations; Authority Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document makes technical amendments to the authority statements for various FHWA motor carrier regulations in order to remove the obsolete authority citations provided in the subparts. This correction is necessary due to changes required by the ICC Termination Act of 1995 (ICCTA) and the transfer of certain regulatory functions to the FHWA from the former Interstate Commerce Commission (ICC). The effect of these amendments is to remove the outdated authority citations listed in the subparts.

DATES: This final rule is effective May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Falk, Office of the Chief Counsel, Motor Carrier Law Division, (202) 366-1384, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On October 21, 1996, the FHWA published a final rule that transferred and redesignated certain motor carrier transportation regulations from chapter X of title 49, Code of Federal Regulations, to the FHWA in chapter III of that title. See Motor Carrier Transportation; Redesignation of Regulations From the Surface Transportation Board Pursuant to the ICC Termination Act of 1995 [61 FR 54706]. Another document also made technical amendments to former ICC regulations and was published on April 1, 1997. Technical Amendments to Former Interstate Commerce Commission Regulations in Accordance With the ICC Termination Act of 1995. [62 FR 15417]. The technical changes made in both of these documents were

required by section 204 of the ICCTA, Public Law 104-88, 109 Stat. 803. Part 365, Rules for governing applications for operating authority, subpart D (formerly part 1181); part 372, Exemptions, commercial zones, and terminal areas, subparts A, B, and C (formerly parts 1047, 1048, and 1049, respectively); part 373, Receipts and bills, subparts A and B (formerly parts 1051 and 1081, respectively); part 374, Passenger carrier regulations, subparts A, B, C, and D (formerly parts 1055, 1061, 1063, and 1064, respectively); and part 377, Payment of transportation charges, subparts A and B (formerly parts 1052 and 1320, respectively) included in the new statutory authority at the part level, but inadvertently failed to remove the former ICC authority at the subpart levels. Accordingly, the FHWA removes the obsolete ICC authority citations in the subpart levels noted above and retains the current authority citations in the part levels which reflect the changes mandated by the ICCTA.

Rulemaking Analyses and Notices

This final rule makes only minor technical corrections to existing regulations by removing obsolete ICC authority citations at the subpart levels of FHWA regulations. This rule replaces outdated authority citations with current statutory authority and the regulatory standards are not changed in any way. Therefore, the FHWA finds good cause to adopt the rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)]. The Department of Transportation's regulatory policies and procedures also authorize promulgation of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making this rule effective upon publication in the **Federal Register** because it imposes no new burdens and merely corrects existing regulations.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, and since this rulemaking action makes only technical corrections to the authority citations in current regulations, the FHWA hereby certifies that this action will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 432 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda for Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.