

**48 CFR Parts 1828, 1829, 1830, 1831, 1832, 1833 and 1852****Rewrite of the NASA FAR Supplement (NFS)**

**AGENCY:** Office of Procurement, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** As part of the National Performance Review initiative to streamline and clarify regulations, NASA is issuing a rewrite of those regulations in its Federal Acquisition Regulations Supplement relating to bonds and insurance (part 1828); taxes (part 1829); cost accounting standards (part 1830); contract cost principles and procedures (part 1831); contract financing (part 1832); and protests, disputes, and appeals (part 1833). In addition, conforming amendments are made to solicitation provisions and contract clauses (part 1852) regarding aircraft ground and flight risk and other provisions.

**EFFECTIVE DATE:** This rule is effective October 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas O'Toole, (202) 358-0478; Mr. Bruce King, (202) 358-0461.

**SUPPLEMENTARY INFORMATION:****Background**

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and issued through Procurement Notices (PNs). Upon completion of all parts, the NFS will be reissued in a new edition.

**Impact**

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

List of Subjects in 48 CFR Parts 1828, 1829, 1830, 1831, 1832, 1833, and 1852

*Government procurement.*

Tom Luedtke,  
Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR chapter 18 is amended as follows:

1.-2. Part 1828 is revised to read as follows:

**PART 1828—BONDS AND INSURANCE**

Sec.

**Subpart 1828.1 Bonds**

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.

1828.103-70 Subcontractors performing construction work under nonconstruction contracts.

1828.103-71 Solicitation requirements and contract clauses.

1828.106 Administration.

1828.106-6 Furnishing information.

**Subpart 1828.2 Sureties**

1828.202 Acceptability of corporate sureties.

1828.203 Acceptability of individual sureties.

**Subpart 1828.3 Insurance**

1828.307 Insurance under cost-reimbursement contracts.

1828.307-1 Group insurance plans.

1828.307-2 Liability.

1828.307-70 Insurance of industrial facilities.

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-1 Contract clause.

1828.311-2 Agency solicitation provisions and contract clauses.

1828.370 Fixed-price contract clauses.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

1828.372 Clause for minimum insurance coverage.

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

**Subpart 1828.1—Bonds****1828.101 Bid guarantees.****1828.101-70 NASA solicitation provision.**

The contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed \$100,000 and a performance bond or a performance and payment bond is required (see FAR 28.102 and 28.103). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed \$3 million.

**1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.****1828.103-70 Subcontractors performing construction work under nonconstruction contracts.**

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction work is in excess of \$1000,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102-1(b)(1) when the subcontract construction work is greater than \$25,000 but not greater than \$100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102-2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

**1828.103-71 Solicitation requirements and contract clause.**

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in FAR 28.102-3. When alternative payment protections are required, insert a clause substantially the same as FAR 52.228-13, Alternative Payment Protections, appropriately modified.

**1828.106 Administration.****1828.106-6 Furnishing information. (NASA supplements paragraph (c))**

(c) The contracting officer is the agency head's designee.

**Subpart 1828.2—Sureties****1828.202 Acceptability of corporate sureties. (NASA supplements paragraph (d))**

(d) Contracting officers may obtain access to Department of Treasury Circular 570 through the internet at <http://www.ustreas.gov/treasury/bureaus/finman/c570.html>.

**1828.203 Acceptability of individual sureties. (NASA supplements paragraph (g))**

(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Headquarters Office of Procurement (Code HS).

**Subpart 1828.3—Insurance****1828.307 Insurance under cost-reimbursement contracts.****1828.307-1 Group insurance plans. (NASA supplements paragraph (a))**

(a) The procurement officer is the approval authority.

**1828.307-2 Liability. (NASA supplements paragraph (b))**

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(b) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Associate Administrator for Procurement (Code HS) is the approval authority.

**1828.307-70 Insurance of industrial facilities.**

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the contracting officer, the contractor or lessee shall ensure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307-2.

**1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.****1828.311-1 Contract clause.**

The contracting officer shall insert the clause at FAR 52.228-7, Insurance-Liability to Third Persons, as prescribed in FAR 28.311-1 unless waived by the procurement officer.

**1828.311-2 Agency solicitation provisions and contract clauses.**

The contracting officer shall insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

**1828.370 Fixed-price contract clauses.**

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered

by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

**1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.**

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities, NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-

waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of \$100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of \$100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to that particular launch.

(d) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of \$100,000 or more when the work is to be performed involves "Protected Space Operations" (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extensions, to existing contracts under \$100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

**1828.372 Clause for minimum insurance coverage.**

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228-75, Minimum Insurance Coverage, in fixed-price solicitations and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

3. Part 1829 is revised to read as follows:

**PART 1829—TAXES**

Sec.

**Subpart 1829.1 General**

1829.101 Resolving tax problems.

**Subpart 1829.2 Federal Excise Taxes**

1829.203 Other Federal tax exemptions.

1829.203-70 NASA Federal tax exemptions.

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

**Subpart 1829.1—General****1829.101 Resolving tax problems. (NASA supplements paragraph (a))**

(a)(i) The Headquarters Office of the General Counsel (Code G) is the designated legal counsel for all external contacts on FAR part 29 tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

(ii) Tax problems that cannot be solved readily by reference to FAR Part 29 shall be forwarded to Code G through the installation's Office of Chief Counsel. The following material, as applicable, shall be forwarded to Code G with a copy to the Associate Administrator for Procurement (Code HS):

(A) A comprehensive statement of pertinent facts, including documents and correspondence.

(B) A copy of the contract.

(C) A thorough review of the legal issues involved and recommended action.

(D) If appropriate, a statement of the problem's effects on acquisition policies and procedures, with recommendations.

**Subpart 1829.2—Federal Excise Taxes**

1829.203 Other Federal tax exemptions.

**1829.203.70 NASA Federal tax exemptions.**

(a) The Associate Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially

denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Headquarters Office of Procurement (Code HS).

(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) The contracting officer shall post a copy of the permit for inspection.

4. Part 1830 is revised to read as follows:

**PART 1830—COST ACCOUNTING STANDARDS**

Sec.

**Subpart 1830.2 CAS Program Requirements**

1830.201-5 Waiver.

**Subpart 1830.70 Facilities Capital Employed for Facilities in Use and For Facilities Under Construction**

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Contract facilities capital estimates.

1830.7001-2 DD Form 1861 completion instructions.

1830.7001-3 Preaward FCCOM applications.

1830.7001-4 Postaward FCCOM applications.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Definitions.

1830.7002-2 Cost of money calculations.

1830.7002-3 Representative investment calculations.

1830.7002-4 Determining imputed cost of money.

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

**Subpart 1830.2—CAS Program Requirements**

1830.201-5 Waiver.

The procurement officer shall forward all requests for waiver of CAS requirements to the Associate Administrator for Procurement (Code HC).

**Subpart 1830.70—Facilities Capital Employed for Facilities in Use and for Facilities Under Construction**

**1830.7001 Facilities capital employed for facilities in use.**

**1830.7001-1 Contract facilities capital estimates.**

To estimate facilities capital cost of money (FCCOM), the contracting officer shall use DD Form 1861, Contract Facilities Capital Cost of Money, after evaluating the contractor's cost proposal, establishing cost of money factors, and developing a prenegotiation cost objective.

**1830.7001-2 DD Form 1861 completion instructions.**

(a) List overhead pools and direct-charging services centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective, and list them against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to compute the FCCOM estimated to be incurred each year. The sum of these products represents the estimated contract FCCOM for the year's effort.

(d) Add the yearly estimates to calculate the total contract FCCOM.

**1830.7001-3 Preaward FCCOM applications.**

Apply FCCOM in establishing cost and price objectives as follows:

(a) *Cost objective.* Use the FCCOM with normal, booked costs in establishing a cost objective or the target cost of an incentive type contract. Do not subsequently adjust these target costs when actual cost of money rates become available during the contract performance period.

(b) *Profit/fee objective.* Do not include FCCOM in the cost base when establishing a prenegotiation profit/fee objective. Use only normal, booked costs in this cost base.

**1830.7001-4 Postaward FCCOM applications.**

(a) *Interim billings based on costs incurred.* (1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of

money factors. These FCCOM calculations are interim estimates subject to adjustment.

(2) As actual cost of money factors are finalized, use the new factors to calculate FCCOM for the next accounting period.

(b) *Final settlements.* (1) Contract FCCOM for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB-CMF.

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

#### **1830.7002 Facilities capital employed for facilities under construction.**

##### **1830.7002-1 Definitions.**

(a) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92-41 (85 Stat. 97); or

(2) The time-weighted average of such rates for each cost accounting period during which the capital asset is being constructed, fabricated, or developed.

(b) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the capital asset.

##### **1830.7002-2 Cost of money calculations.**

(a) The interest rate referenced in 1830.7002-1(a)(1) is established semi-annually and published in the Federal Register during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate referenced in 1830.7002-1(a)(2), multiply the rates in effect during the months of construction by the number of months each rate was in effect, and then divide the sum of the products by the total number of months.

##### **1830.7002-3 Representative investment calculations.**

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If the majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either:

(1) Determine a representative investment for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may either:

(1) Determine a representative investment for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(d) The method chosen by the contractor to determine the representative investment amount may be different for each capital asset being constructed, fabricated, or developed, provided the method fits the expenditure pattern of the costs incurred.

##### **1830.7002-4 Determining imputed cost of money.**

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 1830.7002-2) to the representative investment (see 1830.7002-3).

(1) When a representative investment is determined for a cost accounting period in accordance with 1830.7002-3(b)(1) or 1830.7002-3(c)(1), the cost of money rate shall be the time-weighted average rate.

(2) When a monthly representative investment is used in accordance with 1830.7002-3(b)(2) or 1830.7002-3(c)(2), the cost of money rate shall be that in effect each month. Under this method, the FCCOM is determined monthly, and the total for the cost accounting period is the sum of the monthly calculations.

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the accounting period or the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction, fabrication, or development of an asset takes more than one accounting period, the cost of money capitalized for the first accounting period will be included in determining the representative investment for any future cost accounting periods.

5. Part 1831 is revised to read as follows:

#### **PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES**

Sec.

#### **Subpart 1831.2 Contracts With Commercial Organizations**

1831.205 Selected costs.

1831.205-18 Independent research and development and bid and proposal costs.

1831.205-32 Precontract costs.

1831.205-70 Contract clause.

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

#### **Subpart 1831.2—Contracts with Commercial Organizations**

##### **1831.205 Selected costs.**

##### **1831.205-18 Independent research and development and bid and proposal costs. (NASA supplements paragraph (e))**

(e) A class deviation exists to permit costs contributed by a contractor under a cooperative arrangement with NASA to be considered as allowable IR & D costs if the work performed would have been allowed as contractor IR & D had there been no cooperative arrangement. This deviation does not apply to costs contributed by the contractor under cost-sharing contracts described in FAR 16.303 and 1816.303.

##### **1831.205-32 Precontract costs.**

(1) Precontract costs are applicable only to sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts.

(2) The procurement officer is the approval authority for the use of precontract costs. Authorization shall be in writing and shall address the following:

(i) The necessity for the contractor to initiate work prior to contract award;

(ii) The start date of such contractor effort;

(iii) The total estimated time of the advanced effort; and

(iv) The cost limitation.

(3) Authorization to incur precontract costs shall be provided to the contractor in writing and shall include the following:

(i) The start date for incurrence of such costs;

(ii) The limitation on the total amount of precontract costs which may be incurred;

(iii) A statement that the costs are allowable only to the extent they would have been if incurred after formal contract award; and

(iv) A statement that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

##### **1831.205-70 Contract clause.**

The contracting officer shall insert the clause at 1852.231-70, Precontract

Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

6. Part 1832 is revised to read as follows:

## **PART 1832—CONTRACT FINANCING**

Sec.  
1832.006–2 Definitions.

### **Subpart 1832.1 Non-Commercial Item Purchase Financing**

1832.111 Contract clauses for non-commercial purchases.  
1832.111–70 NASA contract clause.

### **Subpart 1832.2 Commercial Item Purchase Financing**

1832.202–1 Policy.  
1832.206 Solicitation provisions and contract clauses.

### **Subpart 1832.4 Advance Payments For Non-Commercial Items**

1832.402 General.  
1832.406 Letters of credit.  
1832.407 Interest.  
1832.409 Contracting officer action.  
1832.409–1 Recommendation for approval.  
1832.409–170 NASA procedure for approval.  
1832.410 Findings, determination, and authorization.  
1832.412 Contract clause.

### **Subpart 1832.5 Progress Payments Based on Costs**

1832.501 General.  
1832.501–1 Customary progress payment rates.  
1832.501–2 Unusual progress payments.  
1832.502 Preaward matters.  
1832.502–2 Contract finance office clearance.  
1832.502–4 Contract clauses.  
1832.502–470 NASA contract clause.  
1832.504 Subcontracts.

### **Subpart 1832.7 Contract Funding**

1832.702 Policy.  
1832.702–70 NASA policy.  
1832.704 Limitation of cost or funds.  
1832.704–70 Incrementally funded fixed-price contracts.  
1832.705 Contract clauses.  
1832.705–2 Clauses for limitation of cost or funds.  
1832.705–270 NASA clauses for limitation of cost or funds.

### **Subpart 1832.9 Prompt Payment**

1832.903 Policy.  
1832.906 Contract financing payments.  
1832.908 Contract clauses.  
1832.970 Payments to Canadian Commercial Corporation.

### **Subpart 1832.10 Performance-Based Payments**

1832.1004 Procedures.  
1832.1005 Contract clauses.  
1832.1006 Agency approvals.  
1832.1009 Title.  
Authority: 42 U.S.C. 2473(c)(1).

### **1832.006–2 Definitions.**

The Associate Administrator for Procurement is the Agency remedy coordination official.

### **Subpart 1832.1—Non-Commercial Item Purchase Financing**

#### **1832.111 Contract clauses for non-commercial purchases.**

#### **1832.111–70 NASA contract clause.**

The contracting officer shall insert the clause at 1852.232–79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

### **Subpart 1832.2—Commercial Item Purchase Financing**

#### **1832.202–1 Policy. (NASA supplements paragraph (b))**

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts. (see 1832.402).

#### **1832.206 Solicitation provisions and contract clauses. (NASA supplements paragraph (g))**

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232–30.

### **Subpart 1832.4—Advance Payments for Non-Commercial Items**

#### **1832.402 General. (NASA supplements paragraph (e))**

(e)(1) The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is \$25,000,000 or less, and for all increases to such contracts over \$25,000,000 previously approved by Code HC as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I

contracts. A class deviation has been signed, effective through September 30, 2000 (for SBIRs) and September 30, 1997 (for STTRs), authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HC).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorize advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

#### **1832.406 Letters of credit. (NASA supplements paragraph (b))**

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

#### **1832.407 Interest. (NASA supplements paragraph (d))**

(d)(1) Advance payments without interest are authorized.

#### **1832.409 Contracting officer action.**

#### **1832.409–1 Recommendation for approval.**

#### **1832.409–170 NASA procedure for approval.**

In addition to the items listed in FAR 32.409–1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

- (a) Name of the cognizant NASA Headquarters program or staff office;
- (b) Name and phone number of the contracting officer or negotiator;
- (c) A copy of the proposed advance payments clause;
- (d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see subpart 1815.9);
- (5) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

#### **1832.410 Findings, determination, and authorization. (NASA supplements paragraph (b))**

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase “Advance payments (In an amount not to exceed \$\* \* \* at any time outstanding)” in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance

payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account if no special bank account is required.

(iii) Use format subparagraph (a)(6), and not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use "is in the public interest."

(v) In format paragraph (c), use the phrase "(the amount at any time outstanding)" in all determinations and findings.

**1832.412 Contract clause. (NASA supplements paragraphs (a), (e) and (f))**

(a) When the clause at FAR 52.232-12, Advance Payments, is used, make the following modifications:

(i) In the "Maximum Payment" paragraph (either paragraph (d) or (e)), in the sentence that begins "When the sum of", change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed \$. \* \* \* at any time outstanding. In addition \* \* \*".

(ii) In paragraph (m)(1) delete "in the form prescribed by the administering office" and substitute "on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation".

(iii) Annotate the clause "as modified by NASA (October 1996)".

(e) See 1832.412(f).

(f) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs. Annotate the clause "as modified by NASA (October 1996)", delete paragraph (a) of Alternate V, and substitute the following:

(f) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked "Small Business Innovation Research Contract" or "Small Business Technology Transfer Contract," as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract

requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments.

**Subpart 1832.5—Progress Payments Based on Costs**

**1832.501 General.**

**1832.501-1 Customary progress payment rates. (NASA supplements paragraph (a))**

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232-16.

**1832.501-2 Unusual progress payments.**

The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for the use of unusual progress payments.

**1832.502 Preaward matters.**

**1832.502-2 Contract finance office clearance.**

The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for the actions in FAR 32.502-2, except the Associate Administrator for Procurement (Code HC) is the approval authority for any deviations addressed in FAR 32.502-2(b).

**1832.502-4 Contract clauses.**

**1832.502-470 NASA contract clause.**

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

**1832.504 Subcontracts. (NASA supplements paragraph (c))**

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

**Subpart 1832.7—Contract Funding**

**1832.702 Policy.**

**1832.702-70 NASA policy.**

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are

deliverable, only the condition in paragraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is \$1,000,000 or more.

(2) The period of performance under the contract overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at award.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions in 1832.702-70(a) (1) through (3) are met and the initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702-70 (a) through (c). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(e) A class deviation from the conditions set forth in paragraphs 1832.702-70 (a) through (c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program (through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30, 1997). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

**1832.704 Limitation of cost or funds.**

**1832.704-70 Incrementally funded fixed-price contracts.**

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of

Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

#### **1832.705 Contract clauses.**

##### **1832.705-2 Clauses for limitation of cost or funds.**

##### **1832.705-270 NASA clauses for limitation of cost or funds.**

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

#### **Subpart 1832.9—Prompt Payment**

##### **1832.903 Policy.**

Invoice and contractor financing payments for contracts (other than Fixed-Price Architect-Engineer Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates. (See 1832.970).

##### **1832.906 Contract financing payments. (NASA supplements paragraph (a))**

(a) Except as authorized in 1832.903, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the

Federal Register (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

##### **1832.908 Contract clauses. (NASA supplements paragraphs (c) and (d))**

(c) When the clause at FAR 52.232-25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.903, make the following modifications:

(i) Insert "17" in lieu of "30" in paragraphs (a)(2) (i) and (a)(2) (ii); and

(ii) Insert "17th" in paragraph (b) (2).

(iii) Annotate the clause "as modified by NASA (October 1960)".

(d) When a clause at FAR 52.232-25, 52.232-26 or 52.232-27 is used, the clause at 52.232-28 shall be used, modified as follows:

(i) Delete the words "and contract number" from paragraph (d).

(ii) Insert the following language in lieu of paragraph (b)(4):

"The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA."

(iii) Annotate the clause "as modified by NASA (October 1996)".

##### **1832.970 Payments to Canadian Commercial Corporation.**

As authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of the "the 30th day" at FAR 32.905(a)(1), 32.905(a)(2) and 32.906(a).

#### **Subpart 1832.10—Performance-Based Payments**

##### **1832.1004 Procedure. (NASA supplements paragraph (b))**

(b) (2) In determining the amount of performance-based payments, contracting officers shall ensure that the payments will not result in an unreasonably low or negative level of contractor investment. To make this assessment, contracting officers shall request the contractor to submit with its proposal a numeric and graphic funding profile showing the cash flow and contractor investment in the contract.

##### **1832.1005 Contract clauses. (NASA supplements paragraph (a))**

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232-32 in accordance with 1832.1009.

#### **1832.1006 Agency approvals.**

Performance-based payments shall be approved in accordance with field installation procedures.

#### **1832.1009 Title.**

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

7. Part 1833 is revised to read as follows:

### **PART 1833—PROTESTS, DISPUTES, AND APPEALS**

Sec.

#### **Subpart 1833.1—Protests**

1833.103 Protests to the agency.

1833.104 Protest to GAO.

1833.106 Solicitation provision and contract clause.

#### **Subpart 1833.2—Disputes and Appeals**

1833.209 Suspected fraudulent claims.

1833.211 Contracting officer's decision.

1833.215 Contract clause.

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

#### **Subpart 1833.1—Protests**

##### **1833.103 Protests to the agency. (NASA supplements paragraph (b))**

(b)(1) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Officer of the General Counsel (Code GK) of the receipt of the protest and the planned and actual dispositions.

##### **1833.104 Protests to GAO. (NASA supplements paragraphs (a), (b), (c), and (f))**

The Associate Administrator for Procurement is the sole authority for deciding whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part and other guidance provided by NASA Headquarters.

(a)(2) The Headquarters Office of Procurement (Code HS) shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the



contracting officer shall also send a copy of the written confirmation to Code HS, the Headquarters Office of the General Counsel (Code GK), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to Code GK within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except the actions defined in paragraph (a)(3)(ii) (a) and (b) are not required if already accomplished:

(a) Send a copy of the protest file index to Code GK within 10 days of receipt of the request.

(b) Send a copy of the protest file to Code GK within 15 days of receipt of the request.

(c) With Code GK concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iii) Code GK shall submit the protest file to GAO.

(4)(i) Code GK shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) The Associate Administrator for Procurement (Code HS) is the approval authority for contract award.

(c)(1) The contracting officer shall consult Code HS before terminating a protested contract.

(2) See 1833.104(b)(1).

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to Code GK within 6 days of issuance of the GAO decision.

#### **1833.106 Solicitation provision and contract clause. (NASA supplements paragraph (a))**

(a) The contracting officer shall be the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233-2.

### **Subpart 1833.2—Disputes and Appeals**

#### **1833.209 Suspected fraudulent claims.**

The contracting officer shall report suspected fraudulent claims to the

Headquarters Officers of Inspector General (Code W) and the General Counsel (Code G).

#### **1833.211 Contracting officer's decision. (NASA supplements paragraph (a))**

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing appeals of contracting officer final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208), and include a notification that the Board's operating procedures appear in Title 48, Code of Federal Regulations, Chapter 2, Appendix A.

#### **1833.215 Contract clause.**

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely procurement from other sources would be impracticable.

### **PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **1852.228-70 [Amended]**

8-9. Section 1852.228-70 is revised to read as follows:

#### **1852.228-70 Aircraft Ground and Flight Risk.**

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption

of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

Aircraft Ground and Flight Risk October 1996

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.



(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M.

on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from

an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first \$1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for the first \$1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all

aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

#### **1852.228-71 [Amended]**

10. In the introductory text to section 1852.228-71, the citation "1828.311-270" is revised to read "1828.311-2".

#### **1852.228-74, 1852.228-77 [Removed]**

11. Sections 1852.228-74 and 1852.228-77 are removed.

#### **1852.231-71 [Removed]**

12. Section 1852.231-71 is removed.

#### **1852.232-12, 1852.232-70, 1852.232-83, 1852.232-84 [Removed]**

13. Sections 1852.232-12, 1852.232-70, 1852.232-83, and 1852.232-84 are removed.

[FR Doc. 96-26338 Filed 10-28-96; 8:45 am]

BILLING CODE 7510-01-M

### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 961021289-6289-01; I.D. 100196C]

RIN 0648-AJ26

#### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 19**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 19 to the Northeast Multispecies Fishery Management Plan (FMP). This rule changes the time and area of the current multispecies Mid-coast Closure Area within the Gulf of Maine (GOM) and establishes an exemption to allow sink gillnet vessels to fish in the reopened area when utilizing acoustic devices (pingers) on their nets. The intent of this action is to reduce the overall economic impact of the area closure while achieving the objectives of the FMP.

**EFFECTIVE DATE:** October 24, 1996.

**ADDRESSES:** Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (RFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 19 documents are available upon request from Christopher B. Kellogg, Acting Executive Director, New England

Fishery Management Council (Council), 5 Broadway, Saugus, MA, 01906-1097.

#### **FOR FURTHER INFORMATION CONTACT:**

Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

#### **SUPPLEMENTARY INFORMATION:**

Amendment 7 to the FMP (61 FR 27710, May 31, 1996), effective on July 1, 1996, established comprehensive measures to rebuild the important multispecies stock complex primarily through effort reduction controls and area closures. In addition to the year-round closure areas on Georges Bank and Southern New England, several alternative GOM area closures were considered by the Council during the development of Amendment 7. However, due to the controversy and complication of developing additional area closures and because of the need to have measures in place as soon as possible, the Council adopted the existing GOM harbor porpoise protection closures as the default closures for multispecies until such time that these closures could be modified through the framework adjustment procedure.

At the July 17-18, 1996, meeting, the Council initiated action to replace the default GOM Mid-coast Area Closure with the intent to minimize the time period and the size of the area. The purpose of this action was to reduce the overall economic impact of the area closure while achieving equivalent conservation value and to address concerns about the distribution of economic impacts of the existing closure, which may disproportionately affect small inshore vessels.

Based on the Northeast Fisheries Science Center analysis, several alternatives to the current default closure were found to have equivalent conservation value but resulted in significantly improved revenues. At the final framework meeting on this action, held on September 9, 1996, the Council proposed to close an area referred to as Jeffreys Ledge (bounded by the following lines of coordinates: 43°30' N. lat., 70°00' W. long., 42°30' N. lat., and 70°30' W. long.) for the period May 1 through May 31, 1997, and, for 1998 and beyond, to close the existing Mid-coast Closure Area but with a change in time period to May 10 through May 30. Both of these alternatives improve revenues by well over \$2 million relative to the existing time/area closure, without changing the impact on GOM cod. By replacing the existing November through December Mid-coast Area Closure with a spring closure, small vessels that are more constrained by winter weather will be able to fish on their traditional grounds in November