

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 280C2 at Cheyenne.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 280C1 and adding Channel 239C3 at Gering.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-12254 Filed 5-15-00; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA No. 00-917; MM Docket No. 99-134; RM-9543 and RM-9572]

**Radio Broadcasting Services; Drummond and Victor, MT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 268C to Drummond, Montana, in response to a petition filed by the Battani Corporation and allots Channel 250C3 to Victor, Montana, in response to a petition filed by Mountain West Broadcasting. See 64 FR 24996, May 10, 1999. The coordinates for Channel 268C at Drummond are 46-16-47 and 113-31-05. The coordinates for Channel 250C3 at Victor are 46-25-06 and 114-08-54. Canadian concurrence has been obtained for Channel 268C at Drummond. Allotment of Channel 250C3 at Victor is conditioned on concurrence of the Canadian Government in accordance with the 1991 Canada-USA FM Broadcast Agreement. With this action, this proceeding is terminated.

**DATES:** Effective June 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99-134, adopted April 12, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's

Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Drummond, Channel 268C and Victor, Channel 250C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-12255 Filed 5-15-00; 8:45 am]

**BILLING CODE 6712-01-P**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1804, 1806, 1815, 1823, 1832, and 1845****Contract Financing**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) to: provide guidance on administering progress payments on indefinite-delivery contracts; delete outdated performance-based payments guidance; and provide guidance on using performance-based payments in competitive negotiated acquisitions. These revisions result from the final FAR rule (FAR Case 98-400) on contract financing that was published in the March 27, 2000, **Federal Register**. This final rule also makes changes to conform the NFS with changes made by FAC 97-15; and makes editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

**EFFECTIVE DATE:** May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358-0444, e-mail: [joseph.lecren@hq.nasa.gov](mailto:joseph.lecren@hq.nasa.gov).

**SUPPLEMENTARY INFORMATION:****A. Background**

A final FAR rule was published in the **Federal Register** that simplified and streamlined the administration of progress payments, and removed the prohibition against using performance-based payments in contracts for research and development and contracts awarded through competitive negotiation procedures.

The FAR revisions deleted previous language on the administration of progress payments under indefinite delivery contracts that allowed administration on an overall contract basis, or for the treatment of a group of orders as a single unit. However, the FAR rule also allows for agency procedures to specify other procedures. In order to provide contracting officers with the maximum flexibility for administering progress payments, NASA chooses to retain the deleted FAR language.

The FAR revisions incorporated language requiring that the amounts of performance-based payments not result in unreasonably low or negative level of contractor investment in the contract and provide guidance on how the contracting officer would assure this did not take place. As a result of this change, similar NFS language is unnecessary and is deleted. The FAR rule also deleted section 32.1006, Agency Approvals, and the NFS implementing guidance at 1832.1006 is no longer necessary and is likewise deleted.

FAR 32.1001(a) requires two conditions for the use of performance-based payments: "the contracting officer finds them practical, and the contractor agrees to their use." Although the FAR does not offer any guidance for determining practicality of use, the preamble to the final FAR rule indicates that, relative to the use of performance-based payments in competitive negotiations, contracting officers may consider the effect on the source selection process and the "potential impact on small business competitiveness" among the factors for determining practicality. In the last few years, NASA has adopted a number of source selection streamlining procedures (awarding without discussions and requiring no cost information on firm-fixed-price competitions) that could be

compromised by the use of performance-based payments, a financing option that would almost always require discussions and cost information. In addition, NASA has been a leader in encouraging small business participation in its competitions, and will not take any action that might deter continued high levels of small business competitiveness. Accordingly, NASA believes it important to specify in the NFS that contracting officers should consider the procedural and small business competitiveness factors when determining the practicality of the use of performance-based payments in competitive negotiations. As a management control to ensure that the source selection process and small business competitiveness are not adversely affected, HQ approval is required for use of performance-based payments in competitions under \$50M. NASA will use its Master Buy Plan process to obtain visibility into acquisitions over that amount.

When performance-based payments are used in competitive negotiated acquisitions, FAR 32.1004(e) indicates that the solicitation should include a price adjustment "if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer." However, the FAR also allows agencies to establish other evaluation procedures. NASA believes that the use of the price adjustment evaluation has the potential to lengthen the source selection process, require the submission of proposal information otherwise not required, and adversely impact small and small disadvantaged businesses. Accordingly, the NFS advises contracting officers to consider qualitative evaluation methods when performance-based payments are used in competitive negotiations under \$50M.

Finally, the NFS change also requires that when performance-based payments are planned to be used in competitive negotiated acquisitions, the draft RFP must request the potential offerors to suggest terms, including performance events or payment criteria. The information provided by the offerors will be used, when possible, to establish a common set of performance-based payment parameters in the formal solicitation.

FAC 97-15 changed the section heading at 4.804-5 and deleted subpart 23.1. This final rule conforms the NFS with these changes; makes other editorial changes to correct referenced FAR citations, office designations; and provides an example of "evidence of

endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States" at section 1845.405-70.

#### **B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

#### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### **List of Subjects in 48 CFR Parts 1804, 1806, 1815, 1823, 1832, and 1845**

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR parts 1804, 1806, 1815, 1823, 1832 and 1845 are amended as follows:

1. The authority citation for 48 CFR parts 1804, 1806, 1815, 1823, 1832, and 1845 continues to read as follows:

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

#### **PART 1804—ADMINISTRATIVE MATTERS**

2. In section 1804.804-5, revise the section heading and amend paragraphs (a) and (b) by removing the word "shall" and inserting the word "must" in its place. The revised section heading reads as follows:

#### **1804.804-5 Procedures for closing out contract files.**

\* \* \* \* \*

#### **PART 1806—COMPETITION REQUIREMENTS**

##### **1806.303-1 [Amended]**

3. Amend paragraph (d) of section 1806.303-1 by removing the reference "FAR 25.403" and adding "FAR 25.401" in its place.

#### **PART 1815—CONTRACTING BY NEGOTIATION**

4. Amend section 1815.201 by redesignating paragraph (c)(6)(E) as

1815.201(c)(6)(F) and adding a new paragraph (c)(6)(E) to read as follows:

#### **1815.201 Exchanges with industry before receipt of proposals.**

\* \* \* \* \*

(c)(6) \* \* \*

(E) If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting officers shall use that information to establish a common set of performance-based payments parameters in the formal RFP when practicable.

\* \* \* \* \*

#### **PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

##### **Subpart 1823.1 [Removed]**

5. Remove subpart 1823.1

#### **PART 1832—CONTRACT FINANCING**

6. Add sections 1832.503 and 1832.503-5 to read as follows:

##### **1832.503 Postaward matters.**

##### **1832.503-5 Administration of progress payments. (NASA supplements paragraph (c).)**

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a uniform liquidation rate and under the jurisdiction of the same payment office.

7. Add section 1832.1001 to read as follows:

##### **1832.1001 Policy.**

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (*e.g.*, proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement Contract Management Division (Code HK) to use performance-based payments in competitive negotiated solicitations under \$50M. The request for approval must include an assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

8. Revise section 1832.1004 to read as follows:

**1832.1004 Procedures.**

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403-3). When using performance-based payments in competitive negotiated acquisitions under \$50 million, contracting officers should consider the use of alternative evaluation methods, *e.g.*, qualitative evaluation under Mission Suitability or another appropriate factor.

9. In section 1832.1005, add paragraph (b)(2) to read as follows:

**1832.1005 Contract clauses.**

\* \* \* \* \*

(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under \$50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

**1832.1006 [Removed]**

10. Remove section 1832.1006.

**PART 1845—GOVERNMENT PROPERTY**

11. In section 1845.405-70, revise paragraphs (b) and (c)(9) to read as follows:

**1845.405-70 NASA procedures.**

\* \* \* \* \*

(b) The prior written approval of the Associate Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. The Logistics Management Office of the Headquarters Office of Management Systems (Code JG), the Office of General Counsel (Code G), and the Headquarters Office of External Relations (Code I) are required concurrences.

(c) \* \* \*

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States (*e.g.*, an approved license or agreement from the Department of State or Department of Commerce).

\* \* \* \* \*

[FR Doc. 00-12141 Filed 5-15-00; 8:45 am]

BILLING CODE 7510-01-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 00424110-0110-01; I.D. 040600A]

RIN 0648-AO01

**Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend the regulations implementing the License Limitation Program (LLP) to include provisions inadvertently omitted that would have made area endorsements and area/species endorsements specified on a license non-severable from the license and that would have made a groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person non-severable from each other. Thus, the endorsements in the first case must be transferred with the license and in the second case both licenses must be transferred together. This regulatory amendment is necessary to include in the regulations non-severability provisions proposed by the North Pacific Fishery Management Council (Council) and NMFS in the original proposed rule to implement the LLP. This action is necessary to promote the objectives of the Federal fishery management plans for the affected fisheries by further preventing increased harvesting capacity.

**DATES:** Effective May 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska

pursuant to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Federal regulations implementing the FMPs appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

The proposed rule to implement Amendment 39 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 41 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (62 FR 43866, August 15, 1997) contained provisions which would have made (1) area endorsements or area/species endorsements specified on a license non-severable from the license and (2) a groundfish license and a crab license issued based on the legal landings of the same vessel and initially issued to the same qualified person non-severable. No comments were received on these provisions. These provisions were intended to prevent increased capacity in the groundfish and crab fisheries managed under the FMPs.

In the final rule implementing the LLP, the application provisions (§ 679.4(i)(6)) and the transfer provisions (§ 679.4(i)(7)), including the non-severability provisions, were removed and the appropriate paragraphs reserved to allow for further refinement of the application and transfer processes (63 FR 52642, October 1, 1998). The final rule gave notice that a proposed rulemaking regarding those processes was under development.

Subsequently, NMFS initiated a proposed rulemaking to implement the application and transfer provisions (64 FR 19113, April 19, 1999). On August 6, 1999, NMFS issued a final rule implementing the application and transfer processes (64 FR 42826). While NMFS intended that the regulatory text include the non-severability provisions, that language was inadvertently omitted.

This final rule amends the LLP regulations by restoring the omitted non-severability provisions without change from those published in the original proposed rule (62 FR 43866, August 15, 1997) and approved by