A. Background

An interim rule was published on February 8, 2011 (76 FR 6696) implementing Federal Acquisition Circular (FAC) 2005–46 which significantly revised FAR Parts 16.305, 16.401, and 16.405–2 by incorporating new requirements relative to the use of award fee incentives. Specifically, the FAR rule implemented section 814 of the John Warner 2007 National Defense Authorization Act (NDAA) and section 867 of the Duncan Hunter 2009 NDAA and which required agencies to:

1. Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;
2. Clarify that the base fee may be included in a cost plus award fee type contract at the discretion of the contracting officer;
3. Prescribe narrative ratings when making a percentage of award fee available;
4. Prohibit the issuance of award fees for a rating period if the contractor’s performance is judged to be below satisfactory;
5. Conduct an analysis and consider the results of the analysis when determining whether to use an award fee type contract or not;
6. Include specific content in the award fee plans; and
7. Prohibit the rolling over of unearned award fees to subsequent rating periods.

NASA received no comments on the interim rule and has adopted the interim rule as a final rule without change.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, et seq.,
because it merely implements the FAR Award Fee revisions and does not impose an economic impact beyond that addressed in the FAC 2005–46 publication of the FAR final rule.

D. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq., in accordance with the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1816

Government procurement.

William P. McNally,
Assistant Administrator for Procurement.

PART 1816—TYPES OF CONTRACTS

Accordingly, the interim rule amending 48 CFR part 1816 which was published at 76 FR 6696 on February 8, 2011, is adopted as a final rule without change.

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