

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG-128841-07) that was published in the **Federal Register** on Tuesday, September 9, 2008 (73 FR 52220) relating to the public approval requirements under section 147(f) of the Internal Revenue Code applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations affect State and local governmental issuers of tax-exempt private activity bonds.

FOR FURTHER INFORMATION CONTACT:
David White, (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 147 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-128841-07) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-128841-07), which was the subject of FR Doc. E8-20771, is corrected as follows:

§ 1.147(f)-1 [Corrected]

On page 52225, column 1, § 1.147(f)-1(b)(6)(ii)(A), line 4, the language “and public approval stated would to be” is corrected to read “and public approval stated would be”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8-23651 Filed 10-6-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2007-0525; FRL-8726-3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets and Revised 2002 Emissions Inventory; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements of the Clean Air Act (CAA) for the Dallas/Fort Worth (DFW) moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the RFP motor vehicle emissions budgets (MVEBs) and a revised 2002 Base Year Emission Inventory associated with the revision. EPA is proposing to approve the SIP revision because it satisfies the RFP, RFP transportation conformity, and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before November 6, 2008.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Emad Shahin, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6717; fax number 214-665-7263; e-mail address shahin.emad@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the

Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: September 26, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8-23674 Filed 10-6-08; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[GSAR Case 2006-G515; Docket 2008-0007; Sequence 22]

RIN 3090-AI75

General Services Acquisition Regulation; GSAR Case 2006-G515; Rewrite of Part 532, Contract Financing

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise and update the agency's implementation of Federal Acquisition Regulation (FAR) contract financing policies. GSA has taken this opportunity to implement coverage for incremental funding of fixed-price, time-and-materials, and labor-hour contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 6, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006-G515 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2006-G515” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with GSAR Case 2006-G515. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “GSAR Case 2006-G515” on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006-G515 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy at (202) 208-6925, or by e-mail at meredith.murphy@gsa.gov. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite GSAR Case 2006-G515.

SUPPLEMENTARY INFORMATION:

A. Background

This is part of the GSAM Rewrite Project, which was initiated in 2006 to revise, update, and simplify the GSAM. An Advance Notice of Proposed Rulemaking (ANPR), with a request for comments, was published February 15, 2006. Three comments on Part 532 were received in response and are discussed below. Prior to publication of this proposed rule, the draft coverage was circulated within GSA to the Services and regions. A total of 114 comments were received from 17 commenters. This proposed rule incorporates those recommendations where appropriate. The current GSAM Part 532 implements nine of the FAR Part 32 subparts and includes three supplementary subparts and 17 clauses. The proposed rule contains seven FAR Part 32 implementing subparts and two supplementary subparts, retains four clauses, and creates two new clauses. Of the 13 clauses that are omitted from Part

532, eight were moved to other parts of the GSAM (five to Part 538, two to Part 570, and one to Part 512), one was converted to FAR coverage, and four were cancelled.

In Subpart 532.1, Non-Commercial Item Purchase Financing, two of the three clauses prescribed were cancelled as redundant to the FAR and/or Standard Form 26. The clause at 552.232-72 was renamed “Final Payment Under Building Services Contracts” and the prescription was relocated to 532.904, “Determining payment due dates.” There is no FAR clause covering final payment for service contracts. The GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, was made mandatory at the request of the Office of General Counsel and Office of Inspector General, and the form’s prescription was moved to Subpart 532.1. The certification language in the GSA form was modified to match the current required certification language in the clause at FAR 52.232-5(c).

The four clauses prescribed in Subpart 532.2 are for Schedules only, so Subpart 532.2 and clauses 552.232-8, 552.232-81, 552.232-82, and 552.232-83 were deleted in their entirety.

Subpart 532.7, Contract Funding, has been substantially revised to authorize the use of incremental funding for fixed-price, time-and-materials, and labor-hour contracts and provide a contract clause, 552.232-7007, Limitation of Government’s Obligation. The FAR provides clauses for incremental funding of cost-type contracts, but not for the above contract types—although the use of incremental funding for such contracts is not prohibited by the FAR. The clause at 552.232-73, Availability of Funds, was cancelled because the use of such contingency-type clauses is inappropriate in circumstances other than those authorized by the FAR.

Subpart 532.8 included procedures for the contracting officer to follow when an assignment of claims was received under FAR 52.232-23, Assignment of Claims. It also included the prescription for GSAR 552.232-23, Assignment of Claims. The clause was used only for requirements or indefinite quantity contracts under which more than one agency could place orders. In such cases, the GSAR clause is required to be substituted for paragraph (a) of the FAR clause at 52.232-23, thus limiting the assignment of claims capability to an individual order, rather than to the contract as a whole. The GSAR prescription and clause at 552.232-23 provided an important protection for GSA, and one that should be available

to other Government agencies that award contracts used by more than one agency and for the various Government agencies that issue orders under such contracts. Therefore, the clause is removed from the GSAR and has been proposed for inclusion in the FAR as Alternate 1 to FAR 52.232-23.

In Subpart 532.9, the definition of “full cycle electronic commerce” was deleted because the term is not used in the GSAM text. It is used in paragraph (a)(2) of the GSAR clause at 552.232-25 where the associated requirements are fully described. GSA has an approved deviation to use GSAR 552.232-25, Prompt Payment, in lieu of FAR 52.232-25, Prompt Payment. The effect of this is to waive Prompt Payment Act requirements for certain situations and types of contracts to allow GSA to pay its contractors more quickly than would be the case under the Prompt Payment Act. A related clause, GSAM 552.232-74, Invoice Payments, is used only in accordance with the FAR deviation to reduce payment times for commercial items when EFT is used (per FAR 52.232-33 instructions). Because this is the only difference from normal payment terms, the team determined that it was not necessary to have a separate clause that repeated much of other clauses. For this reason, 552.232-74 was converted to Alternate II of GSAR 552.212.4, prescribed at 532.908(c)(2).

The FAR does not cover contracting for leasehold interests, while the GSAM has a separate part, Part 570, devoted to the subject. Two clauses, GSAM 552.232-75 and 552.232-76, and their associated clause prescriptions, have been transferred to the Part 570 Review Team because they apply only to contracts for leasehold interests.

GSAR clause 552.232-78, Payment Information, has no FAR equivalent. All this GSAM clause does is direct contractors to a GSA-unique site which they can use to monitor the status of their payments. It is not necessary to use a clause to inform contractors of this web site. The web site can be included in section G, Contract Administration Data, in the body of the contract itself. This is the appropriate location for information relating to contract financing payments. The GSAR clause is therefore deleted.

In Subpart 532.70, Authorizing Payment of Governmentwide Commercial Purchase Card, the definition of “Governmentwide commercial purchase card” was deleted because it merely refers to the FAR definition. Section 532.7002, which contains the solicitation requirements for use of the purchase card, and section

532.7003, which prescribes the use of the contract clause entitled Payment By Governmentwide Commercial Purchase Card, have been renumbered and edited, as has the clause at 552.232-77.

Personnel in the Office of the Chief Financial Officer (OCFO) provided counsel on updated terminology and recommended deletion of references to “the credit card clearing house.”

Subpart 532.71 defines “fixed-roll payments” and the circumstances in which they may be used. Since the implementation of Pegasys, GSA no longer uses the fixed-roll payment process; therefore, GSA has deleted Subpart 532.71 in its entirety, as well as the related clause, 552.232-71, Adjusting Payments.

Only minor edits were made to Subpart 532.72, Payments Under Contracts Subject to Audit.

Three public comments on Part 532 were received in response to the Advance Notice of Public Rulemaking.

Comment: Two commenters stated that mandatory acceptance of Governmentwide credit cards (see GSAR 532.7003, 552.232-79, and clause 552.232-77) below the micro purchase threshold was inconsistent with the commercial practices for some Schedule contractors and should be made voluntary.

Response: The Governmentwide charge card is a critical element in the Government’s electronic funds transfer system. FAR Part 13 directs Government agencies to use the Governmentwide credit card for purchases under the micropurchase threshold. Over the micropurchase threshold, contractors may, or may not, accept the card. Although GSA has changed portions of these clauses, the commenter’s suggestion was not accepted.

Comment: One commenter requested that advanced payments be permitted for commercial items in the schedule program, stating “(t)here is no statutory or regulatory prohibition from application of advanced payments to the MAS schedules.” The Federal Acquisition Streamlining Act (FASA), Section 41.255(f), permitted advanced payment for commercial items at the discretion of the contracting officer when a series of conditions have been met. These conditions are delineated in FAR 32.202-1(b).

Response: The advance payments permitted by FAR 32.202 are a maximum of 15 percent of the contract price. The GSAR does not prohibit the types of advance payments authorized by FAR Subpart 32.2. Advance payments for services remain a violation of GAO guidelines. No change was made.

Comment: One commenter recommended that the GSAR be revised to clarify that subcontractor labor hours under a T&M contract are paid at the rates established in the prime contract or task order.

Response: This is not a GSA issue, but rather an issue for the FAR. There is no reason for GSA to have separate or different coverage than other Government agencies for this subject. No change was made to the GSAM as a result of this comment.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because a number of contract clauses and requirements are being eliminated from the current regulation. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 532 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2006-G515), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0102.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Dated: September 25, 2008.

Al Matera,

Director, Office of Acquisition Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 532 and 552 as set forth below:

PART 532—CONTRACT FINANCING

1. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

For contracts that include the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, the contracting officer shall provide the contractor with GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, to be used to make the certification required by FAR 52.232-5(c).

Subpart 532.2—[Removed]

3. Remove Subpart 532.2.

4. Revise section 532.705-1 to read as follows:

532.705-1 Clauses for contracting in advance of funds.

(a) In most circumstances, contracting officers should be able to use either—

(1) FAR 52.232-18, Availability of Funds (i.e., for any contract type when the funds will not be appropriated until the next fiscal year); or

(2) FAR 52.232-19, Availability of Funds for the Next Fiscal Year (i.e., for a one-year ID/IQ or requirements contract for services).

(b) Contracting officers may only use 552.232-73, Availability of Funds, when all of the following conditions apply:

(1) The acquisition is for severable services.

(2) The contract, or a portion of the contract, will be chargeable to funds of the new fiscal year.

(3) The circumstances described in the prescriptions for FAR 52.232-18 or 52.232-19 do not apply.

(c) Contracting officers may use the clause at 552.232-7007, Limitation of Government’s Obligation, or its Alternate I, in clauses that are incrementally funded.

Subpart 532.8—[Removed]

5. Remove subpart 532.8.

532.902 [Removed]

6. Remove section 532.902.

7. Add section 532.904 to read as follows:

532.904 Determining payment due dates.

Payment due dates for construction contracts are addressed at FAR 32.904(d). The following procedures apply to construction and building service contracts:

(a) The final payment on construction or building service contracts shall not be processed until the contractor submits a properly executed GSA Form 1142,

Release of Claims. If, after repeated attempts, a release of claims cannot be obtained from the contractor, the contracting officer may process the final payment with the approval of assigned legal counsel.

(b) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

(5) The agreed-upon dollar amount in a Deficiency Report, which is included in all applicable Operation and Maintenance (O&M) service contracts.

(c) When the contract is for the performance of building services, the contracting officer shall include the clause at 552.232-72, Final Payment Under Building Services Contracts.

8. Revise section 532.905 to read as follows:

532.905 Payment documentation and process.

For contracts of the type shown in 532.7201(a)(1) through (4)—

(a) Contractors are to submit invoices or vouchers concurrently to the Office of the Chief Financial Officer and to the contracting officer for approval. Invoices must be annotated with the date of receipt, as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The contracting officer or designee must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer must make the required deduction, except as provided in 532.7203. Subject to 532.7201, the contracting officer must note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor and forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

(b) See GSAM 532.7203 for the handling of audit findings.

532.905-70 and 532.905-71 [Removed]

9. Remove sections 532.905-70 and 532.905-71.

10. Revise section 532.908 to read as follows:

532.908 Contract clauses.

(a) *General and architect-engineer contracts.* Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in the clauses listed below, the contracting officer must prepare a written justification explaining why a longer period is necessary. An official one level above the contracting officer must approve the justification. The time needed should be determined on a case-by-case basis.

(1) In paragraph (a)(6)(i) of the clause at FAR 52.232-25, Prompt Payment, the specified constructive acceptance period shall not exceed 30 days.

(2) In paragraph (a)(4)(i)(A) of the clause at FAR 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the specified constructive acceptance period shall not exceed 30 days.

(3) In paragraph (a)(4)(i)(B) of the clause at FAR 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the specified period for constructive approval of progress payments shall not exceed seven days.

(b) *Construction contracts.* (1) The contracting officer shall determine on a case-by-case basis the time specified for payment of progress payments as described in paragraph (a)(1)(i)(A) of the clause at FAR 52.232-27, Prompt Payment for Construction Contracts. The contracting officer shall justify in writing periods longer than 14 days. An official one level above the contracting officer must approve the justification. Under no circumstances may more than 30 days be specified for payment of progress payments.

(2) The contracting officer shall determine the time to be specified in paragraph (a)(4)(i) of FAR clause 52.232-27, for constructive acceptance or approval, on a case-by-case basis. This time may not exceed seven days unless the contracting officer justifies in writing a longer period and obtains the approval of an official one level above the contracting officer. Under no circumstances may more than 30 days be specified for constructive acceptance or approval.

(c) *Stock, Special Order, and Schedules Programs.* (1) GSA has obtained a FAR Deviation to authorize payment within 10 days of receipt of a proper invoice. The authority applies only to—

(i) Orders placed by GSA under the referenced programs;

(ii) That include FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, and;

(iii) For which the order is placed, and the contractor submits invoices, using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is for commercial items and will include FAR 52.212-4, use the clause with its Alternate II. If the contract is not for commercial items, use the clause at 552.232-25, Prompt Payment, instead of FAR 52.232-25.

532.7001 [Removed]

11. Remove section 532.7001.

12. Revise section 532.7003 to read as follows:

532.7003 Contract clause.

For indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Schedules, insert the clause at 552.232-77, Payment By Government Charge Card, if the contract will provide for payment by Government charge card as an alternative method of payment for orders. For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at Part 538.

Subpart 532.71—[Removed]

13. Remove Subpart 532.71.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

15. Add section 552.212-4 to read as follows:

552.212-4 Contract Terms and Conditions—Commercial Items.

Alternate II (FAR Deviation) (DATE). When a commercial item contract is contemplated and the contract will include the clause at FAR 52.212-4, insert this Alternate II instead of paragraph (g)(2) of the FAR clause.

(g)(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over

quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

16. Amend section 552.232-1 by revising the date of the clause and paragraph (c) to read as follows:

552.232-1 Payments.

* * * * *

PAYMENTS (DATE) (DEVIATION FAR 52.232-1)

* * * * *

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the PDN assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 2007). The PDN appears on the contract award document.

(End of clause)

552.232-8 and 552.232-23 [Removed]

17. Remove sections 552.232-8 and 552.232-23.

552.232-25 Prompt Payment.

18. Amend section 552.232-25 by removing from the introductory text of the prescription "532.908(a)(2)" and adding "532.908(c)(2)" in its place; revising the date of the clause to read "(Date)"; and removing from paragraph (a)(1)(i) "Supply Service (FSS)" and adding "Acquisition Service (FAS)" in its place.

552.232-70 and 552.232-71 [Removed]

19. Remove sections 552.232-70 and 552.232-71.

20. Amend section 552.232-72 by revising the section heading, the introductory text of the prescription, and the heading and date of the clause to read as follows:

552.232-72 Final Payment Under Building Services Contracts.

As prescribed in 532.904(c), insert the following clause:

FINAL PAYMENT UNDER BUILDING SERVICES CONTRACTS (DATE)

* * * * *

552.232-74 through 552.232-76 [Removed]

21. Remove sections 552.232-74 through 552.232-76.

22. Revise section 552.232-77 to read as follows:

552.232-77 Payment By Government Charge Card.

As prescribed in 532.7003, insert the following clause:

PAYMENT BY GOVERNMENT CHARGE CARD (DATE)

(a) *Definitions.*

Governmentwide commercial purchase card means a uniquely numbered charge card issued by a contractor under the GSA SmartPay® program contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

Oral order means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of _____ or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment using the charge card until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

(End of clause)

* Enter amount not to exceed \$100,000.

552.232-78 through 552.232-83 [Removed]

23. Remove sections 552.232-78 through 552.232-83.

24. Add section 552.232-7007 to read as follows:

552.232-7007 Limitation of Government's Obligation.

As prescribed in 532.705-1(c), use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (DATE)

(a) Contract line item(s) _____ through _____ are incrementally funded. For these item(s), the sum of \$ _____ of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates, but does not exceed, the total amount currently allotted to the contract. The Contractor

is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government" or paragraph (l) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions-Commercial Items." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least 90 days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state: (1) the estimated date when that point will be reached; and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government" or paragraph (l) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions-Commercial Items."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties

will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default" or "Termination for Cause." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government" or paragraph (l) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions-Commercial Items."

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract \$ ____
 (month) (day), (year) \$ ____
 (month) (day), (year) \$ ____
 (month) (day), (year) \$ ____

(End of clause)

ALTERNATE I (DATE). If only a certain line item(s) will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Contract line item(s) ____ is incrementally funded. The sum of \$ ____ * ____ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.

* To be inserted after negotiation.

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(Structures), Office of Aviation Safety, (202) 314-6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 27, 2004, the NTSB published a notice of proposed rulemaking (NPRM) titled, "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records," in the **Federal Register** (69 FR 77150). The December 2004 NPRM proposed various changes to 49 CFR Part 830, all of which affected the types of accidents and incidents that individuals and entities must report under 49 CFR Part 830. The NTSB received numerous comments on the NPRM and carefully considered each comment. In light of some commenters' suggestions and concerns, and to ensure that the NTSB engages in all requisite statutory and regulatory analyses, the NTSB elected to revise the proposed regulations and issue a new NPRM. The NTSB has declined to implement some commenters' suggestions in some proposed sections, and the preamble for each proposed section explains the NTSB's reasoning. Each proposed revision and addition, as well as summaries of and responses to some comments from the prior NPRM, is discussed in detail below. The NTSB does not plan to issue a final notice or proceed in any way with the NPRM that was published on December 27, 2004. The NTSB intends to finalize and proceed with the NPRM herein.

Statutory and Regulatory Evaluation

This proposed rule would amend the requirements for providing immediate notification to the NTSB of certain aviation events, to include certain events that were not previously reportable. These amendments will enhance aviation safety by providing the NTSB with direct notification of events that involve safety concerns, thereby enabling the NTSB to conduct investigations, identify necessary corrective actions in a timely manner, and work to prevent transportation accidents.

DATES: Submit comments on or before December 8, 2008.

ADDRESSES: You may send comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

2. *Mail:* Mail comments concerning this proposed rule to Deepak Joshi, AS-40, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594-2000.

3. *Fax:* (202) 314-6308, Attention: Deepak Joshi

4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deepak Joshi, Lead Aerospace Engineer

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget (OMB) has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501-1571, or the National Environmental Policy Act, 42 U.S.C. 4321-4347.