

*Executive Order 12612*

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12630*

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The final rule will allow BLM to establish new sustained-yield forest units, and will remove several obsolete provisions in the part 5040 regulations, but there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 12866*

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

*Executive Order 12988*

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Author**

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**List of Subjects for 43 CFR Part 5040**

Forests and forest products, Public lands.

Dated: February 18, 1998.

**Sylvia V. Baca,**

*Deputy Assistant Secretary, Land and Minerals Management.*

For the reasons stated above, and under the authority of 43 U.S.C. 1740, subchapter B, BLM is revising Part 5040, Group 5000, Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

**PART 5040—SUSTAINED-YIELD FOREST UNITS****Sec.**

- 5040.1 Under what authority does BLM establish sustained-yield forest units?  
 5040.2 What will BLM do before it establishes sustained-yield forest units?  
 5040.3 How does BLM establish sustained-yield forest units?  
 5040.4 What is the effect of designating sustained-yield forest units?  
 5040.5 How does BLM determine and declare the annual productive capacity?

**Authority:** 43 U.S.C. 1181e; 43 U.S.C. 1740.

**§ 5040.1 Under what authority does BLM establish sustained-yield forest units?**

BLM is authorized, under the O. and C. Lands Act (43 U.S.C. 1181a *et seq.*) and the Federal Land Policy and Management Act, to divide the lands it manages in western Oregon into sustained-yield forest units. These lands are hereafter referred to as "the O. and C. lands." BLM establishes units that contain enough forest land to provide, insofar as practicable, a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations.

**§ 5040.2 What will BLM do before it establishes sustained-yield forest units?**

Before BLM designates sustained-yield forest units, it will:

- (a) Hold a public hearing in the area where it proposes to designate the units. BLM will provide notice, approved by the BLM Director, to the public of any hearing concerning sustained-yield forest units. This notice must be published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the forest units are situated. BLM may also publish the notice in a trade publication; and  
 (b) Forward the minutes or meeting records to the BLM Director, along with an appropriate recommendation concerning the establishment of the units.

**§ 5040.3 How does BLM establish sustained-yield forest units?**

After a public hearing, BLM will publish a notice in a newspaper of general circulation in the county or counties affected by the proposed units, stating whether or not the BLM Director has decided to establish the units. If the BLM Director determines that the units should be established, BLM will include in its notice information on the geographical description of the sustained-yield forest units, how the public may review the BLM document that will establish the units, and the date the units will become effective.

BLM will publish the notice before the units are established.

**§ 5040.4 What is the effect of designating sustained-yield units?**

Designating new sustained-yield forest units abolishes previous O. and C. master unit or sustained-yield forest unit designations. Until new sustained-yield forest units are designated for the first time in accordance with 43 CFR part 5040, the current master unit designations will continue to be in effect.

**§ 5040.5 How does BLM determine and declare the annual productive capacity?**

(a) If BLM has not established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to the O. and C. lands, treating them as a single unit.

(b) If BLM has established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to each separate forest unit.

(c) If it occurs that BLM has established sustained-yield forest units for less than all of the O. and C. lands, then BLM will determine and declare the annual productive capacity as follows:

- (1) BLM will treat sustained-yield forest units as in paragraph (b) of this section; and  
 (2) BLM will treat any O. and C. lands not located within sustained-yield forest units as a single unit.

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 61**

[CC Docket No. 96-187; FCC 97-23]

**Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers)***CFR Correction*

In title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of October 1, 1997, on pages 131 and 132, paragraphs (e), (1), and (2) should be redesignated to paragraphs (f), (1), and (2), and paragraph (e) redesignated from paragraph (d) at 62 FR 5778, Feb. 7, 1997, should be reinstated to read as follows:

**§ 61.58 [Corrected]**

\* \* \* \* \*

(e) *Other carriers.* (1) Tariff filings in the instances specified in paragraphs (d)(1) (i), (ii), and (iii) of this section must be made on at least 15 days' notice.

(i) Tariffs filed in the first instance by new carriers.

(ii) Tariffs filings involving new rates and regulations not previously filed at, from, to or via points on new lines; at, from to or via new radio facilities; or for new points of radio communication.

(iii) Tariff filings involving a change in the name of a carrier, a change in Vertical and Horizontal coordinates (or other means used to determine airline mileages), a change in the lists of mileages, a change in the lists of connecting, concurring or other participating carriers, text changes, or the imposition of termination charges calculated from effective tariff provisions. The imposition of termination charges does not include the initial filing of termination liability provisions.

(2) Tariff filings involving a change in rate structure, a new service offering, or a rate increase must be made on at least 45 days' notice.

(3) All tariff filings not specifically assigned a different period of public notice in this part must be made on at least 35 days' notice.

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1816 and 1852****FAR Supplement Coverage of Award Fee Evaluations**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule amending the NASA FAR Supplement (NFS) coverage on award fee evaluations to correct inaccurate references and improve clarity.

**EFFECTIVE DATE:** March 18, 1998.

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

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

NASA has different award fee evaluation procedures for service and end item contracts. For service

contracts, all award fee evaluations during the contract term are final. For end item contracts, evaluations during the contract term are "interim" evaluations that are superseded by a single final evaluation at contract completion. The NFS has inaccurate references associating interim evaluations with service contracts, and these are deleted by this rule. In addition, NASA allow for provisional payment of award fee, i.e., payments made during award fee periods in anticipation of the Government evaluation at the end of the period. References to provisional payments in the NFS are inconsistent, and this rule conforms these references. Finally, to improve its clarity, the NFS coverage is restructured and miscellaneous editorial changes are made. None of the NFS revisions in this rule change NASA policy.

**Impact**

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

**List of Subjects in 48 CFR Parts 1816 and 1852**

Government procurement.

**Deidre Lee,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1816 and 1852 continues to read as follows:

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

**PART 1816—TYPES OF CONTRACTS**

2. In section 1816.405-271, paragraph (a) is revised to read as follows:

**1816.405-271 Base fee.**

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in

conjunction with another contract type (e.g., CPIF/AF).

\* \* \* \* \*

3. In paragraph (a) of section 1816.405-272, the first sentence is revised to read as follows:

**1816.405-272 Award fee evaluation periods.**

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length.

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4. Section 1816.405-273 is revised to read as follows:

**1816.405-273 Award fee evaluations.**

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405-276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information—See FAR 3.104".