complete discussion of the proposed compliance deadline.

*B. What Is the New Information EPA Is Making Available for Review and Comment?*

• Comments provided by Aerospace Industry Association and an airline, indicating that changing solvents involves a rigorous approval process to meet requirements of the Federal Aviation Administration (FAA) and of the original equipment manufacturer (OEM). The commenter indicates that such an approval process takes considerable time and requires many steps.

• Comments provided by HSIA indicated that a compliance period of as much as 10 years would be required for industry to complete the multi-step process of upgrading degreasing operations. The commenter cites installations of new equipment at an existing facility may require the following: (1) Extended time to test performance of untried degreasing technologies for their particular application, (2) additional or redesigned floor space, (3) customer approval of new degreasing techniques and machines, (4) amending air permits; (5) amending government agency directives on cleaning protocols. HSIA did not submit data to support this comment.

• Comments and data provided by the American Safety Razor Company indicated that EPA should remain consistent with the proposed HON rule and provide affected facilities three (3) years after the effective date of the promulgated standard.

• Comments and data provided by Salem Tubing Company on the compliance period for sources of existing HSC machines and constructed or reconstructed HSC machines after August 17, 2006. The facility indicated that vacuum-to-vacuum cleaning is not a feasible option for the narrow tube manufacturing industry because of the large size of their degreasing machines and the fact that the vacuum-to-vacuum technology is not currently available in the machines sizes required. The commenter contends that in order to design, test and implement such a system would take much longer than the proposed compliance period.

• Comments provided by the HSIA indicated that the compliance schedule should be amended to (1) require new facilities constructed after the date of promulgation to be in compliance upon startup; (2) consider new facilities constructed prior to the date of promulgation to be existing facilities; (3) allow existing HSC facilities that installed new equipment after the date of proposal, but prior to the date of promulgation, 10 years to come into compliance with any new requirements consistent with CAA section 112(i)(7), and (4) allow the maximum amount of time possible for existing HSC facilities to come into compliance.

*C. What Additional Supporting Data or Documentation Do I Need To Provide With My Comments?*

EPA is soliciting comment on the new information provided described above that relates to the issues identified at the outset of this NODA. In addition, as for the narrow tubing manufacturing facilities, aerospace manufacturing and maintenance facilities, large military vehicle maintenance operations, facilities that use multiple degreaser machines, and facilities that use continuous web cleaners, EPA specifically seeks data and information from these facilities including, but not limited to, information on the time to design and install new HSC machines, the lifespan of the typical HSC machine used in the facilities of interest (listed above), the time required to seek additional permits from State and local air permitting agencies, the time required for FAA and OEM approvals to vary or change degreasing cleaning procedures, whether a 2-year or a 3-year compliance period is appropriate, or data on how much time it would take to comply with the proposed requirements.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 8, 2006.

**Stephen D. Page,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. E6–21296 Filed 12–13–06; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 32 and 52**

**[FAR Case 2005–016; Docket 2006–0020; Sequence 14]**

**RIN 9000–AK64**

## Federal Acquisition Regulation; FAR Case 2005–016, Performance-based Payments

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement recommendations to change the regulations related to performance-based payments (PBP).

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before February 12, 2007 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2005–016 by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button. Please include any personal and/or business information inside the document.You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions*: Please submit comments only and cite FAR case 2005–016 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 Mr. Jerry Olson at (202) 501–3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2005–016.

**SUPPLEMENTARY INFORMATION:**

## A. Background

The proposed changes to FAR 32.1000, 32.1003, 32.1004, 32.1005, and 32.1007 and the clause at 52.232–32 are intended to increase the use of performance-based payments as the method of contract financing on Federal Government contracts, and improve the efficiency of performance-based payments when used on these contracts. These proposed changes originated from recommendations submitted by the Department of Defense Performance-based Payments Working Group in their March 8, 2005 report. 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. Discussion

The Councils are proposing to revise the following FAR provisions:

1. The current FAR 32.1001(e) is renumbered to (d) and rephrased to require payments to be made in accordance with each agency's policy.

2. FAR 32.1001(e) is moved from 32.1000 to clarify when use of PBPs is appropriate.

3. FAR 32.1003 is revised to specifically address when PBP's may be used. This revised language clarifies use of PBPs on fixed-priced line items and orders and on Indefinite Delivery-Indefinite Quantity and non-Indefinite Delivery contracts.

4. FAR 32.1004(a)(1), to clarify that events not requiring meaningful effort or action must not be included as events or criteria for PBPs. FAR 32.1004(a)(2)(iii), to specifically state that all cumulative events be identified. FAR 32.1004(b)(2)(ii) requires that the contracting officer must document the rationale for establishing a performance-based payment rate that is below the applicable progress payment rate. FAR 32.1004(c) is added (and the existing (c) renumbered) to clarify that the contracting officer shall not limit the amount of a PBP payment to a percentage of actual incurred cost for the scheduled event or performance criteria. FAR 32.1004(e)(1)(ii) is renumbered to 32.1004(f)(1)(ii) and revised to clarify that solicitations related to competitive source selections should state that the evaluation of the proposed prices will include an adjustment to reflect the estimated cost to the Government of providing each offeror's proposed PBP terms.

5. FAR 32.1007(a) is revised to clarify that the contracting officer responsible for administering the performance-based payments should also be responsible for reviewing, approving, and transmitting the payment requests to the payment office. FAR 32.1007(c) is revised to prohibit actual cost verification unless the purpose is to assist in establishing revised or new PBP milestones or values.

## C. Regulatory Flexibility Act

The Councils do 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 this rule should reduce administrative costs for contractor and the Government, thus further encouraging the use of performance based payments. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 32 and 52 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.* (FAR case 2005–016), in correspondence.

## D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that 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 32 and 52

Government procurement.

Dated: December 7, 2006.

**Ralph De Stefano**

*Director, Contract Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 32—CONTRACT FINANCING

### 32.110 [Amended]

2. Amend section 32.110 by removing from paragraph (d) ''32.1004(d)'' and adding ''32.1004(e)'' in its place.

3. Revise section 32.1000 to read as follows:

### 32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under noncommercial purchases pursuant to Subpart 32.1.

4. Amend section 32.1001 by—

a. Removing from paragraph (c) ''32.1003(c)'' and adding ''32.1003(d))'' in its place;

b. Removing paragraph (d); redesignating paragraph (e) as (d); and adding a new paragraph (e); and

c. Revising newly designated paragraph (d).

The revised and added text reads as follows:

### 32.1001 Policy.

* * * * *

(d) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). These payments shall be made in accordance with agency policy.

(e) Performance-based payments shall not be used for—

(1) Payments under cost-reimbursement line items;

(2) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion; or

(3) Contracts awarded through sealed bid procedures.

### 32.1002 [Amended]

5. Amend section 32.1002 by—

a. Removing from the end of paragraph (a) the semi-colon and adding a period in its place; and

b. Removing from the end of paragraph (b) ''; or'' and adding a period in its place.

6. Revise section 32.1003 to read as follows:

### 32.1003 Criteria for use.

The contracting officer may use performance-based payments for individual orders and contracts provided—

(a) The contracting officer and offeror agree on the performance-based payment terms;

(b) The contract, individual order, or line item is a fixed-price type;

(c) For indefinite delivery contracts, the individual order does not provide for progress payments; and

(d) For other than an indefinite delivery contract, the contract does not provide for progress payments.

7. Amend section 32.1004 by—

a. Revising the 3rd sentence of paragraph (a)(1);

b. Revising paragraph (a)(2)(iii);

c. Revising the introductory text of paragraph (b)(2);

d. Adding a new sentence to the end of paragraph (b)(2)(ii);

e. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f) respectively, and adding a new paragraph (c);

f. Revising the 2nd sentence of the newly redesignated paragraph (f)(1)(ii); and

g. Removing from the newly redesignated paragraph (f)(2)(ii) ''(e)(1)(ii)'' and adding ''(f)(1)(ii)'' in its place.

The revised and added text reads as follows:

**32.1004 Procedures.**

* * * * *

(a) * * * (1) * * * The signing of contracts or modifications, the exercise of options, the passage of time, or other such occurrences do not represent meaningful efforts or actions and shall not be identified as events or criteria for performance-based payments. * * *

* * * * *

(2) * * *

(iii) The contract must specifically identify cumulative events or criteria and identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

* * * * *

(b) * * *

(2) Total performance-based payments shall—

* * * * *

(ii) * * * Unless otherwise provided in agency procedures, the contracting officer shall document the rationale for establishing the performance-based payment rate if the performance-based payment rate is less than the contractor's applicable progress payment rate.

* * * * *

(c) *Payment Amount.* The contracting officer shall not limit the amount of a performance-based payment to a percentage of actual incurred cost for the scheduled event or performance criteria.

* * * * *

(f) * * *

(1) * * *

(ii) * * * Unless agencies prescribe other evaluation procedures, if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer, the solicitation should state that the evaluation of the offeror's proposed prices will include an adjustment to reflect the estimated cost to the Government of providing each offeror's proposed performance-based payments (see Alternate I to the provision at 52.232–28).

* * * * *

8. Amend section 32.1005 by—

a. Revising the introductory text of paragraph (a); and

b. Removing from paragraph (b)(2) ''32.1004(e)'' and adding ''32.1004(f)'' in its place.

The revised text reads as follows:

**32.1005 Solicitation provision and contract clause.**

(a) Insert the clause at 52.232–32, Performance-Based Payments, in—

* * * * *

9. Amend section 32.1007 by—

a. Revising paragraph (a);

b. Removing from paragraph (b)(2) ''32.1004(c)'' and adding ''32.1004(d)'' in its place; and

c. Adding to the end of paragraph (c) a new sentence.

The revised and added text reads as follows:

**32.1007 Administration and payment of performance-based payments.**

(a) *Responsibility.* The contracting officer responsible for administering performance-based payments (see 42.302(a)(12)) for the contract shall review and approve all performance-based payments for that contract.

* * * * *

(c) * * * Reviews shall not include verification of actual cost unless the purpose is to assist in establishing revised or new performance-based payment milestones or values.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 52.232–32 by revising the date of the clause and the second sentence of paragraph (c)(2) to read as follows:

**52.232–32 Performance-Based Payments.**

* * * * *

PERFORMANCE-BASED PAYMENTS (DATE)

* * * * *

(c) * * *

(2) * * * The designated payment office will pay approved requests on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''*] day after receipt of the request for performance-based payment by the designated payment office. * * *

* * * * *

(End of clause)

[FR Doc. 06–9678 Filed 12–13–06; 8:45 am]

BILLING CODE 6820–EP–S

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 10

**RIN 1018–AB72**

## General Provisions; Revised List of Migratory Birds

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the Fish and Wildlife Service, are reopening the comment period for our proposed rule to revise the list of migratory birds protected by the Migratory Bird Treaty Act (MBTA) to allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before December 29, 2006.

**ADDRESSES:** Submit your comments on this proposal in one of the following ways:

1. By postal mail to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203;

2. By hand-delivery to U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Room 4000, Arlington, VA 22203. By prior arrangement, materials available for public inspection can also be examined at this location;

3. By fax to (703) 358–2272; or

4. By e-mail to *mbtabirdlist@fws.gov;* or

5. By the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** John L. Trapp, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:** On August 24, 2006, we published in the **Federal Register** (71 FR 50194–50221) a proposed rule to revise the List of Migratory Birds by adding numerous species and removing numerous species. The proposed rule is available for online viewing or downloading at *http://www.fws.gov/migratorybirds/.*

Our reasons for proposing changes to the list include correcting previous