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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850 and 1851

RIN 2700-AC87

### Re-Issuance of NASA FAR Supplement Subchapter G

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final without change, the proposed rule published in the **Federal Register** on April 22, 2004. This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

**DATES:** *Effective Date:* July 27, 2004.

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#### SUPPLEMENTARY INFORMATION:

##### A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also

contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule modifies the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as chapter 18 of title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

NASA published a proposed rule in the **Federal Register** on April 22, 2004 (69 FR 21804). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

##### B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements 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 1842 through 1851

Government procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

■ Accordingly, 48 CFR parts 1842 through 1851 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1842 through 1851 continues to read as follows:

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

##### PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Amend part 1842 by—

■ (a) Removing subpart 1842.1, sections 1842.202, 1842.202-70, 1842.270, subparts 1842.3, 1842.5, 1842.7, 1842.8, 1842.12, 1842.13, 1842.14, and 1842.15;

■ (b) In section 1842.7201 removing and reserving paragraph (a) and removing paragraphs (b)(3) through (b)(5) and paragraph (c); and

■ (c) Removing subpart 1842.73 and section 1842.7401.

##### PART 1843—CONTRACT ADMINISTRATION

■ 3. Amend part 1843 by removing subpart 1843.70.

## PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

- 4. Amend part 1844 by removing sections 1844.201, 1844.201–1, 1844.202, 1844.202–1, and subpart 1844.3.

## PART 1845—GOVERNMENT PROPERTY

- 5. Amend part 1845 by—
  - (a) Removing sections 1845.102, 1845.102–70, 1845.102–71, 1845.104, and 1845.106;
  - (b) In section 1845.106–70(e), removing “Office of the Headquarters Office of Management Systems and Facilities (Code JLG)” and adding “Division of the Headquarters Office of Infrastructure and Management (Code OJG)” in its place;
  - (c) Removing section 1845.106–71, subpart 1845.3, and sections 1845.402, and 1845.403;
  - (d) In section 1845.405–70, removing and reserving paragraphs (b), (c), and (d);
  - (e) Removing sections 1845.406, and 1845.406–70;
  - (f) In section 1845.407, removing paragraph (a);
  - (g) Removing sections 1845.606 and 1845.606–1;
  - (h) In section 1845.607–170, removing and reserving paragraphs (b) and (c);
  - (i) Removing sections 1845.608, 1845.608–1, 1845.608–6, and 1845.610–3;
  - (j) In section 1845.610–4, removing “NPG 4300.1” and adding “NPR 4300.1, NASA Personal Property Disposal Procedures and Guidelines” in its place;
  - (k) Removing sections 1845.613, 1845.615, and subpart 1845.70;
  - (l) Removing and reserving sections 1845.7201, 1845.7202, 1845.7203, 1845.7204, 1845.7205, 1845.7206, 1845.7206–1, 1845.7206–2, 1845.7207, 1845.7208, 1845.7208–1, 1845.7208–2, 1845.7209–1, and 1845.7209–2;
  - (m) In section 1845.7210–1, removing and reserving paragraphs (a), (b), and (d); and
  - (n) Removing section 1845.7210–2.

## PART 1846—QUALITY ASSURANCE

- 6. Amend part 1846 by—
  - (a) Removing sections 1846.000, and 1846.401;
  - (b) In section 1846.670–1,
  - (i) Deleting “assurance (CQA)” at the end of paragraph (a); and
  - (ii) In the introductory text of paragraph (b), removing “CQA” and adding “contract quality assurance (CQA)” in its place;
  - (c) In the first sentence of the introductory text of section 1846.672–4, removing “or” and adding “of” in its place; and

- (d) Removing subpart 1846.7.

## PART 1847—TRANSPORTATION

- 7. Amend part 1847 by removing subpart 1847.2, sections 1847.304, 1847.304–3, 1847.304–370, 1847.305–10, 1847.305–13, and subpart 1847.5.

## PART 1848—VALUE ENGINEERING

- 8. Remove part 1848.

## PART 1849—TERMINATION OF CONTRACTS

- 9. Amend Part 1849 by removing Subpart 1849.1.

## PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

- 10. Amend part 1850 by—
  - (a) Removing subparts 1850.2 and 1850.3;
  - (b) In section 1850.403–1, redesignating paragraph (a) as paragraph (b) and adding a new paragraph (a); and
  - (c) Removing sections 1850.403–2 and 1850.470.

The new paragraph (a) to section 1850.403–1 reads as follows:

### 1850.403–1 Indemnification requests.

(a) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

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## PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

- 11. Amend part 1851 by removing section 1851.102, paragraph (c) of section 1851.102–70, and section 1851.202.

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1852

RIN 2700–AC97

### Representations and Certifications—Other Than Commercial Items

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final with change the interim rule published in the

**Federal Register** on March 22, 2004 (69 FR 13260). The interim rule revised the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) by amending the Offeror Representations and Certifications—Other Than Commercial Items provision used in solicitations for non-commercial simplified acquisitions to conform with changes made to the FAR by Federal Acquisition Circulars (FAC) 2001–14 and 2001–19. This final rule adopts the interim rule with a change to conform to changes made to the FAR by FAC 2001–23.

**DATES:** *Effective Date:* July 27, 2004.

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### SUPPLEMENTARY INFORMATION:

#### A. Background

NASA FAR Supplement (NFS) provision 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, provides a consolidated set of representations and certifications for use under non-commercial simplified acquisitions. The interim rule published in the **Federal Register** on March 22, 2004 (69 FR 13260) amended NFS section 1852.213–70 to conform to changes made to FAR provisions 52.225–4 and 52.225–6 by FACs 01–14 and 01–19, and changes made to 52.225–2 by FAC 01–14. These FAR provisions are included as paragraphs (e) and (f) of 1852.213–70. Specifically, FAC 01–14 clarified the use of the term “United States,” when used in a geographic sense and provided a definition of “outlying areas” of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands. In addition to changes required in paragraphs (e) and (f) of 1852.213–70, a change is required in the introductory text of paragraph (c) as a result of the definition of “outlying areas”. FAC 01–19 made changes to implement the new Free Trade Agreements with Chile and Singapore, as approved by Congress (Pub. L. 108–77 and 108–78). These changes included removing references to “North American Free Trade Agreement” and incorporating the new concept of “Free Trade Agreements” in FAR provisions 52.225–4 and 52.225–6. In addition to the changes resulting from FACs 01–14 and 01–19, the interim rule revised 1852.213–70 to incorporate the definition of “service-disabled veteran” into the definition of “service-disabled veteran-owned small business concern” consistent with FAR 2.101(b). The interim rule also updated