

approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive, and equity effects.

The Secretary has determined that this final rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801, and has determined that it does not meet the criteria for a significant regulatory action. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. The Secretary has reviewed this exemption in accordance with the provisions of the SBEA and certifies that this exemption will not have a significant impact on a substantial number of small entities. Specifically, as indicated above, while the reports of adverse actions to the NPDB will be known to the subjects of the records in the data bank, the access and use of such information by law enforcement agencies would not be known to the subjects of the records, because HRSA believes that disclosure of this information could compromise ongoing law enforcement activities.

Similarly, the final rule will not have effects on State, local, and Tribal governments, and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

The Secretary has reviewed this final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have "federalism implications." This rule would not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposals made in this final rule would not adversely affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

**Paperwork Reduction Act**

This final rule does not have any information collection requirements.

Dated: October 20, 2011.

**Mary Wakefield,**

*Administrator, Health Resources and Services Administration.*

Approved: November 16, 2011.

**Kathleen Sebelius,**

*Secretary.*

**List of Subjects in 45 CFR Part 5b**

Privacy.

**PART 5b—PRIVACY ACT REGULATIONS**

Accordingly, 45 CFR part 5b is amended as set forth below:

■ 1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Add § 5b.11(b)(2)(ii)(L) to read as follows:

**§ 5b.11 Exempt systems.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(L) Investigative materials compiled for law enforcement purposes in the National Practitioner Data Bank (NPDB). (See § 60.16 of this subtitle for access and correction rights under the NPDB by subjects of the Data Bank.)

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 1809**

**RIN 2700-AD54**

**NASA Federal Acquisition Regulation Supplement; Responsibility, Suspension and Debarment**

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

**ACTION:** Final rule.

**SUMMARY:** NASA has adopted as final, without change, a proposed rule amending the NASA FAR Supplement (NFS) to require contracting officers to notify prospective contractors if they are found to be nonresponsible.

**DATES:** *Effective Date:* November 23, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Leigh Pomponio, Procurement Analyst, at (202) 358-0592 or [leigh.pomponio@NASA.gov](mailto:leigh.pomponio@NASA.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

NASA published a proposed rule in the **Federal Register** at 76 FR 25656 on May 5, 2011, to implement a requirement for contracting officers to notify prospective contractors if they are found to be nonresponsible under FAR Subpart 9.1. Public comments were due on or before July 5, 2011. No comments were received.

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

**III. 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, 5 U.S.C. 601, *et seq.*, because it does not impose any new requirements on small entities. This rule only imposes requirements on Government personnel; the impact on the public, including small entities, is the receipt of additional information.

**IV. 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 the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 1809**

Government procurement.

**Sheryl Goddard,**

*Director, Program Operations Division.*

Accordingly, 48 CFR part 1809 is amended as follows:

**PART 1809—CONTRACTOR QUALIFICATIONS**

■ 1. The authority citation for 48 CFR Part 1809 continues to read as follows:

**Authority:** 42 U.S.C. 2455(a), 2473(c)(1).

## Subpart 1809.1—Responsible Prospective Contractors

■ 2. Section 1809.105–2 is added to subpart 1809.1 to read follows:

### 1809.105–2 Determinations and documentation.

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible, which includes the basis for the determination. Notification provides the prospective contractor with the opportunity to take corrective action prior to future solicitations.

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1850 and 1852

RIN 2700–AD36

#### Miscellaneous Administrative Changes

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

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends the NASA FAR Supplement (NFS) to make miscellaneous non-substantive administrative changes to be consistent with FAR numbering, FAR terminology, and to allow use of a URL Web site to identify the Agency and Center Ombudsman. These changes are necessary to ensure consistency with the FAR and terminology within NASA.

**DATES:** This direct final rule is effective January 23, 2012 unless Agency receives significant adverse comments by midnight Eastern Standard Time on December 23, 2011. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the **Federal Register**. If no adverse comments are received, NASA will not publish a confirmation document.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700–AD36, via the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Marilyn Seppi, NASA Headquarters, 300 E Street SW., Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by email to [Marilyn.Seppi-1@nasa.gov](mailto:Marilyn.Seppi-1@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Seppi, NASA, Office of Procurement, Contract Management

Division; (202) 358–0447; *email*: [Marilyn.Seppi-1@nasa.gov](mailto:Marilyn.Seppi-1@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with NASA's management of procurement regulations and procedures. NASA does not anticipate this direct final rule will result in any changes in the functions or authority of the NFS. NASA expects no opposition to the changes and no significant adverse comments. However, if NASA receives a significant adverse comment, the Agency will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

#### A. Background

This final rule makes several administrative changes to the NFS. The numbering in NASA FAR Supplement 1850 is revised to reflect the FAR numbering changes made by Federal Acquisition Circular 2005–21. This final rule deletes the information required to be filled-in by Contracting Officers in NASA FAR Supplement Clause 1852.215–84 when identifying the Ombudsman for the Agency and specific Center. The fill-in is deleted and replaced with a URL Web site where the Agency and Center Ombudsman contact information will be continually updated and maintained by NASA.

This rule also deletes the term “Commerce Business Daily (CBD)” and replaces it with the term “Governmentwide Point of Entry (GPE)” in NASA FAR Supplement Clauses 1852.217–71 and 1852.217–72 to be consistent with the terminology in FAR Subpart 2.101 Definitions.

#### 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 final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this final rule. This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS coverage in accordance with 5 U.S.C. 610. Interested parties should cite 5 U.S.C. 601, *et seq.*, in correspondence. This rule is not expected to 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 the changes are administrative and do not impose new requirements.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is not applicable because the NFS changes 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 1850 and 1852

Government procurement.

**Sheryl Goddard,**

*Director, Program Operations Division.*

Accordingly, 48 CFR Part 1850 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1850 and 1852 continues to read as follows:

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

■ 2. Part 1850 is revised to read as follows:

#### PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

##### Subpart 1850.1—Extraordinary Contractual Actions

Sec.

1850.102 Delegation of and limitations of exercise of authority.

1850.102–2 Contract adjustment boards.

1850.103 Contract adjustments.

1850.103–5 Processing cases.