

manufacturers of wireless message receiving devices.

In regard to rejecting future messages, we note that two alternatives are discussed. One involves a filtering mechanism. A filtering mechanism would burden senders in that they might need to obtain and retain a secret code from particular subscribers. This code would be required to get their commercial messages past the filter. We expect that obtaining and retaining a code from particular subscribers would be a minimal burden on the small business that chooses to filter its messages to keep out unwanted ones. Depending on how the system is set up, there might be a small burden on the carriers for enabling such a filtering mechanism. In order for the system to work, there might be a requirement that small businesses sending these messages mark or tag them as commercial. We anticipate that any burden of marking or tagging messages would be very small.

The other alternative we discuss is whether there should be an option to use a website interface for subscribers, including small businesses, to change their filtering options. The alternative might require businesses, including small businesses, to develop a website for collecting addresses of subscribers that want to reject future messages. We also discuss the possibility of using a webpage for subscribers to notify senders that they do not want such messages. As far as we can determine at this time, this alternative would be the most difficult for small businesses to implement in terms of staff resources, cost, software development and use, and Internet access and website development. We would appreciate hearing from small businesses if this is an accurate assessment.

## II. TCPA

The Commission is also considering modifications to the TCPA safe-harbor provision. This modification would require that telemarketers scrub their lists on a monthly, rather than quarterly, basis. An alternative to this proposed rule change is to leave the rule the way it currently stands. An advantage to not changing the rule is that there would be no increased burden on small businesses. Businesses would continue to scrub their own call lists every three months. The disadvantage to not changing the rule is that the FTC and Commission rules might be inconsistent with one another. Small businesses subject to the jurisdiction of both agencies would be faced with this inconsistency. Congress has directed us to maximize consistency with the FTC's

rules. In addition, we believe that it is easier and less burdensome for small businesses if the two agencies have consistent requirements.

The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message to any wireless telephone number. With the advent of intermodal number portability it became important for companies engaged in telemarketing to track recently ported numbers in order to ensure continued compliance with the TCPA. The Commission is now considering the adoption of a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were recently ported from a wireline service to a wireless service provider. It is our belief that such an alternative will not have a significant economic impact on any small businesses, only a benefit. The alternative would be to not adopt a safe harbor for calls to recently ported wireless numbers which, according to telemarketers, could make compliance with the TCPA's prohibition difficult for callers using autodialers and prerecorded messages. Small businesses, which disagree with the Commission's determination and believe the creation of a safe harbor would impact their business in a negative way, are requested to file comments and advise the Commission about such an impact.

### Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

No federal rules conflict with the rules discussed in this item; however, there are areas in which the CAN-SPAM Act and the TCPA may overlap as indicated in the primary item. In addition, the Commission is required to consult with the FTC on its rulemaking. The FTC is charged with implementing and enforcing most of the CAN-SPAM Act, including criteria that further defines items that the Commission rules will reference. The FTC is conducting its own rulemaking concurrently, although most of the FTC's deadlines occur after the Commission's rules must be promulgated. The TCPA and the Telemarketing Sales Rule (enforced by the FTC) are duplicative in part.

### Ordering Clauses

Accordingly, it is ordered that, pursuant to the authority contained in sections 1-4, 227 and 303(r) of the Communications Act of 1934, as amended; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108-187, 117 Statute 2699; and the Do-Not-Call Implementation Act, Public Law

108-10, 117 Statute 557; 47 U.S.C. 151-154, 227 and 303(r); the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking are Adopted.

It is further ordered that the commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-7226 Filed 3-30-04; 8:45 am]

**BILLING CODE 6712-01-P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841**

**RIN 2700-AC86**

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend 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:** Comments should be submitted on or before June 1, 2004, to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN

number 2700-AC86, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: [Celeste.M.Dalton@nasa.gov](mailto:Celeste.M.Dalton@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: [Celeste.M.Dalton@nasa.gov](mailto:Celeste.M.Dalton@nasa.gov).

**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 proposed rule will modify 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.

**B. Regulatory Flexibility Act**

This proposed 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 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 Parts 1834, 1835, 1836, 1837, 1839, and 1841**

Government Procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

Accordingly, 48 CFR parts 1834, 1835, 1836, 1837, 1839, and 1841 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1834, 1835, 1836, 1837, 1839, and 1841 continues to read as follows:

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

**PART 1834—MAJOR SYSTEM ACQUISITION**

2. Remove part 1834.

**PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING**

3. Amend part 1835 by —  
 (a) Removing sections 1835.003, 1835.010, 1835.011, 1835.015, 1835.016;  
 (b) In section 1835.016–70, removing paragraph (b);  
 (c) In section 1835.016–71, removing paragraphs (b), (c), (d), (e), and (f); and  
 (d) Removing section 1835.016–72.

**PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

4. Amend part 1836 by removing sections 1836.209, 1836.213, 1836.213–3, 1836.213–4, 1836.602–2, 1836.602–4, 1836.602–5, 1836.602–70, 1836.603, 1836.605, subpart 1836.7, 1836.7001, 1836.7002, 1836.7003, and in section 1836.7004 removing "in accordance with 1836.7003".

**PART 1837—SERVICE CONTRACTING**

5. Amend part 1837 by removing section 1837.204.

**PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY**

6. Amend part 1839 by removing section 1839.105.

**PART 1841—ACQUISITION OF UTILITY SERVICES**

7. Amend part 1841 by removing Subparts 1841.2, 1841.3, and 1841.4.

[FR Doc. 04–7239 Filed 3–30–04; 8:45 am]

BILLING CODE 7510–01–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

RIN 1018–AI95

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[Docket No. 021223326–4022–02]

RIN 0648–AQ69

**50 CFR Part 402**

**Joint Counterpart Endangered Species Act Section 7 Consultation Regulations**

**AGENCIES:** Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.