Alternate Compliance Program provisions of 46 CFR part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G-MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202) 267–6925; or fax (202) 267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: August 1, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–26563 Filed 10–22–01; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115; CC Docket No. 96–149; FCC 01–247]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: This document is intended to clarify the status of the Commission's CPNI rules after the Tenth Circuit's opinion and explains how parties may obtain customer consent for use of their CPNI.

FOR FURTHER INFORMATION CONTACT: Marcy Greene, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–2410.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Clarification Order in CC Docket Nos. 96–115 and 96–149, FCC 01–247, adopted August 28, 2001, and released September 7, 2001. The complete text of this Clarification Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Clarification Order

1. In the *Customer Proprietary Network Information (CPNI) Order* (63 FR 20364, April 24, 1998), the Commission stated that section 222(c)(1) of the Act allows a carrier to use, without the customer's prior approval, the customer's CPNI derived from the complete service that the customer subscribes to from that carrier and its affiliates, for marketing purposes within the existing service relationship. This is known as the ''total service approach.'' The Commission also concluded that carriers must notify the customer of the customer's rights under section 222 and then obtain express written, oral or electronic customer approval—a ''notice and opt-in'' approach—before a carrier may use CPNI to market services outside the customer's existing service relationship with that carrier. US West appealed this order to the Tenth Circuit. On August 16, 1999, the Commission adopted the *CPNI Reconsideration Order* (64 FR 53242, October 1, 1999) in response to a number of petitions for reconsideration, forbearance, and clarification of the *CPNI Order.* The *CPNI Reconsideration Order,* among other things, further clarified the total service approach. It also retained the opt-in approach.

2. After the Commission adopted the *CPNI Reconsideration Order,* the Tenth Circuit issued its decision in *US WEST* v. *FCC,* vacating a portion of the *CPNI Order* ''and the regulations adopted therein.'' In *US WEST* v. *FCC,* US WEST contended that the opt-in approach for customer approval in the *CPNI Order* violated the First and Fifth Amendments of the Constitution. The Tenth Circuit first questioned whether the government had demonstrated that the interests it put forward in regulating CPNI—protecting customer privacy and fostering competition—are substantial. The court agreed that the government had asserted a substantial interest in protecting customers' privacy, but declined to find that promoting competition was a significant consideration in Congress' enactment of section 222. The court nonetheless concluded that the government did not demonstrate that the CPNI regulations requiring opt-in customer approval ''directly and materially advanc[ed] its interests in protecting privacy and promoting competition.'' The court concluded that the Commission's determination that an opt-in requirement would best protect a consumer's privacy interests was not narrowly tailored as required by the First Amendment because the Commission had failed to adequately consider an opt-out option.

Effect of the US WEST Decision on the CPNI Rules

3. The court's opinion in *US WEST* v. *FCC* analyzed only the constitutionality of the Commission's interpretation of the customer approval requirement of section 222(c)(1) of the Act by enacting the opt-in regime discussed above. As the Commission has found previously, the court's vacatur order related only to the discrete portions of the *CPNI Order* and rules requiring opt-in customer approval. Had the court intended to take the unusual step of vacating portions of the order and rules not before it, the Commission believes it would have said so explicitly. Accordingly, we conclude that the court sought to eliminate only the specific section of our rules that was before it, and that its vacatur order applied only to § 64.2007(c), the only provision inextricably tied to the opt-in mechanism. The remainder of the Commission's CPNI rules remain in effect.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26579 Filed 10–22–01; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852

Miscellaneous Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the NASA FAR Supplement with the FAR as a result of changes made by FAC's 97–20, 97–22 and 97–26, and make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–20 amended various FAR subparts and clauses to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999, which established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. FAC 97–22 amended FAR Subpart 32.4 to change certain terminology (e.g., change the word ''bank'' to ''financial institution''), and updated references in FAR Subpart 42.2 to the Defense Contract Management Agency. FAC 97–26 designated Federal Business Opportunities (''FedBizOpps'') as the Governmentwide Point of Entry (GPE) as the single point of universal electronic public access to Governmentwide procurement opportunities. This final rule makes changes to the NFS necessary to conform to the changes in FAC's 97–20, 97–22 and 97–26. Miscellaneous changes dealing with NASA internal and administrative matters included in this rule are: revisions to NASA's acquisition planning, award fee, letter contract, and undefinitized contract action (UCA) coverage to ensure that the use of letter contracts and UCAs is minimized and properly authorized; revised procedures for electronic submission of Master Buy Plans; clarification of authority to approve D&Fs under the Economy Act where the servicing agency is not subject to the FAR; update of terminology used in the clause addressing restrictions on printing and duplicating; update internal procedures under NASA research announcements; and update of award fee evaluation factors to include veteran-owned small business and service-disabled veteran-owned small business concerns. This rule also makes amendments to the NFS to update references and make editorial changes.

B. Regulatory Flexibility Act

NASA certifies that this rule 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.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or 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 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, 1845, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, 1845, and 1852 continues to read as follows:

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

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.402 to read as follows:

1804.402 General.

(b) NASA security policies and procedures are prescribed in NPD 1600.2A, NASA Security Policy; NPG 1600.6A, Communications Security Procedures and Guidelines; NPG 1620.1, Security Procedures and Guidelines; NPG 2810.1 and NPD 2810.1 Security of Information Technology.

3. Revise sections 1804.570–1 and 1804.570–2 to read as follows:

1804.570–1 General.

The NASA Acquisition Internet Service (NAIS) provides an electronic means for posting procurement synopses, solicitations, and associated information on the NAIS Internet site which in turn, automatically posts relevant information onto the Governmentwide point of entry (GPE).

1804.570–2 Electronic Posting System.

(a) The NAIS Electronic Posting System (EPS) enables the NASA procurement staff to—

(1) Electronically create and post synopses on the NAIS Internet site and the GPE; and

(2) Post solicitation documents, including solicitation amendments or cancellations, and other procurement information on the NAIS Internet site with linked references on the GPE.

(b) The EPS maintains an on-line index linking the posted synopses and solicitations for viewing and downloading.

(c) The EPS shall be used to—

(1) Create and post all synopses in accordance with FAR part 5 and NFS 1805; and

(2) Post all competitive solicitation files, excluding large construction and other drawings, for acquisitions exceeding $25,000.

(d) The NAIS is the official site for solicitation postings which in turn, automatically posts relevant information onto the Government-wide point of entry (GPE). In the event supporting materials, such as program libraries, cannot be reasonably accommodated by the NAIS, Internet sites external to NAIS may be established after coordination with the contracting officer. Such sites must be linked from the NAIS business opportunities index where the solicitation resides. External sites should not duplicate any of the files residing on the NAIS.

1804.7103 [Amended]

4. Amend section 1804.7103 in the first sentence of paragraph (b) by removing ''number'' and adding ''numbers'' in its place.

PART 1807—ACQUISITION PLANNING

5. Revise paragraph (b)(10) of section 1807.105 to read as follows:

1807.105 Contents of written acquisition plans.

* * * * *

(b) (10) Address contract management issues, including—

(A) Planned delegations of administrative functions; and

(B) When contract changes are anticipated, the plan to manage such changes and the specific measures that will be taken to minimize the issuance of undefinitized contract actions.

* * * * *

6. Revise section 1807.7103 to read as follows:

1807.7103 Format of Master Buy Plan.

In accordance with the requirements of 1807.7102–1 and 1807.7102–2, installations must prepare Master Buy Plans and amendments to Master Buy Plans in accordance with the Master Buy Plan Database (MBPD) instructions at http://www/hq.nasa.gov/office/procurement/regs/Table1807.doc and submit them in accordance with the MBPD User Manual Instructions listed at *http://ec.msfc.nasa.gov/hq/ library/ mbp.User Guide.html.*

7. Delete Table 1807–1.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8. Revise section 1808.802 to read as follows:

1808.802 Policy.

(b)(i) The Headquarters Chief Information Officer (Code AO) is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to Code AO. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000;

(B) The order is not of a continuing or repetitive nature; and,

(C) The Public Printer certifies it cannot be provided more economically through the GPO.

PART 1815—CONTRACTING BY NEGOTIATIONS

1815.404–2 [Amended]

9. Amend section 1815.404–2 in the last sentence of paragraph (C) by removing ''DCMC'' and adding ''DCMA'' in its place.

1815.604 [Amended]

10. In section 1815.604, amend paragraph (a) by removing the URL ''*http://ec.msfc.nasa.gov/msfc/nasahdbk.html*'' and adding ''*http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html*'' in its place.

PART 1816—TYPES OF CONTRACTS

1816.104–70 [Amended]

11. Amend section 1816.104–70 in the first sentence of paragraph (a) by removing ''FAR 37.101'' and adding ''FAR 2.101'' in its place.

12. Amend section 1816.405–274 by revising paragraphs (g)(1) and (g)(4); redesignating paragraphs (h) and (i) as (i) and (j) respectively; and adding new paragraph (h) to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns.

* * * * *

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns, and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

* * * * *

13. Add section 1816.603–2 to read as follows:

1816.603–2 Application.

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

PART 1817—SPECIAL CONTRACTING METHODS

14. Add paragraph (c) to the end of section 1817.503 to read as follows:

1817.503 Determinations and findings requirements.

* * * * *

(c) The Associate Administrator for Procurement as the agency senior procurement executive will approve all D&F's for a servicing agency not covered by the Federal Acquisition Regulations. This approval may not be delegated below the senior procurement executive level.

PART 1819—SMALL BUSINESS PROGRAMS

1819.201 [Amended]

15. Amend section 1819.201 in the first sentence of paragraph (a)(i) by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''; and in paragraph (a)(ii) by adding ''service-disabled veteran-owned small business,'' before the word ''HUBZone''.

1819.20 [Removed]

16. Delete section 1819.202.

17. Amend Subpart 1819.3 by revising the subpart heading to read as follows:

Subpart 1819.3—Determination of Small Business Status for Small Business Programs

1819.705–470 [Amended]

18. Amend section 1819.705–470 in the last sentence by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Part 1822 [Amended]

19. Amend Part 1822 by removing ''(Code JLR)'' and adding ''(Code JR)'', and removing ''Code JLR'' and adding ''Code JR'' in each occurrence.

PART 1832—CONTRACT FINANCING

20. Amend section 1832.006–2 by revising the section heading to read as follows:

1832.006–2 Definition.

1832.410 [Amended]

21. Amend section 1832.410 in paragraph (b)(ii) by removing ''bank'' each time it appears, and adding ''financial institution'' in its place.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

22. Amend section 1835.016–71 by revising paragraph (b)(1); redesignating paragraphs (c)(2)(i)(B) through (c)(2)(i)(G) as paragraphs (c)(2)(i)(C) through (c)(2)(i)(H); adding new paragraph (c)(2)(i)(B) and in paragraph (d)(4) by removing ''best and final offers'' and adding ''final proposal revisions'' in its place. The revisions read as follows:

1835.016–71 NASA Research Announcements.

* * * * *

(b) *Issuance.* (1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). In addition, the issuing office shall obtain input from the cognizant offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Input shall also be obtained from the appropriate systems safety organization

for NRA's that may involve potentially hazardous operations such as those related to flight and/or mission critical ground systems. The NRA approval authority shall designate the selection official.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The following statement concerning safety:

''Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including employees working under NASA instruments), and (4) high-value equipment and property.

* * * * *

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEEER CONTRACTS

1836.602–1 [Amended]

23. Amend section 1836.602–1 by removing the paragraph designation ''(a)(7)'' and adding ''(a)(6)'' in its place.

PART 1837—SERVICE CONTRACTING

1837.104 [Amended]

24. Amend section 1837.104 in the last sentence of paragraph (b) by removing ''NPD 3000.1, Management of Human Resources'' and adding ''NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants'' in its place.

1837.203 [Amended]

25.–26. Amend section 1837.203(c) by deleting ''NPD 3000.1, Management of Human Resources'' and adding ''NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants'' in its place.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1842.302 [Amended]

27. Amend section 1842.302 by removing ''DCMC'' and adding ''DCMA'' in its place.

28. Amend section 1842.7301 by revising paragraphs (e)(1) introductory text and (e)(1)(ii) to read as follows:

1842.7301 NASA external audit follow-up system.

* * * * *

(e)(1) The terms ''resolution'' and ''corrective action/disposition'' are defined as follows:

* * *

(ii) Corrective action/disposition—Management action responsive to an agreed upon audit recommendation.

* * * * *

PART 1843—CONTRACT MODIFICATIONS

1843.205–70 [Amended]

29. Amend section 1843.205–70 by deleting the last sentence of paragraph (a)(1).

30. Revise section 1843.7002 to read as follows:

1843.7002 Policy.

(a) Undefinitized contract actions may be issued only on an exception basis, and centers must ensure that NASA liabilities and commitments are minimized. When an undefinitized contract action is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the undefinitized contract action must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the undefinitized contract action and must be acquired through a separate fully priced and definitized contract action.

(b) The contract file for each UCA shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

31. Amend section 1843.7003 by revising paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

1843.7003 Procedures.

(a)(1) Issuance of undefinitized contract actions with a Government estimated cost or price over $100,000 must be approved in writing by the Center Director.

(2) All other undefinitized contract actions must be approved in writing by the procurement officer.

(3) In emergency situations, approval may be given orally and subsequently confirmed in writing.

(4) The approval authorities in paragraphs (a)(1) and (2) of this section are not delegable.

(b)(1) Undefinitized contract actions exceeding $100,000 must be issued as bilateral agreements setting forth a ceiling price or ''not to exceed'' estimated cost figure for the changed contractual requirements.* * *

* * * * *

32. Revise the introductory text of paragraph (a) of section 1843.7004 to read as follows:

1843.7004 Exceptions.

(a) Exceptions to the requirement for Center Director or procurement officer approval of undefinitized contract actions are—

* * * * *

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.302–70 [Amended]

33. Amend section 1844.302–70 by removing ''DCMC'' in the heading and adding ''DCMA'' in its place; removing ''Command (DCMC)'' in the introductory text and adding ''Agency (DCMA)'' in its place; and removing ''DCMC'' each time it appears in paragraphs (c) and (e) and adding ''DCMA'' in its place.

1844.302–71 [Amended]

34.–35. Amend section 1844.302–71 in the introductory text to by removing ''DCMC'' each time it appears and adding ''DCMA'' in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–74 [Amended]

36. Amend the clause at section 1852.204–74 by revising the date of the clause to read October 2001 and removing ''Government and'' from the introductory text of paragraph (a)(4) and adding ''and Government'' in its place.

37. Revise section 1852.208–81 to read as follows:

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1808.870, insert the following clause:

Restrictions on Printing and Duplicating October 2001

(a) The Contractor may duplicate or copy any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) The Contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10–¾ by 14–¼ inches. A ''production

unit'' is one sheet, size 8–½ x 11 inches (215 x 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (c) of this clause are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations, NFS 1808.802, and NPG 1490.5, NASA Procedures and Guidelines for Printing, Duplicating, and Copying Management.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).
(End of clause)

38. Amend Alternate I to the provision at section 1852.223–73 by revising the date to read October 2001 and removing ''Contractor'' in the second sentence and adding ''Contracting'' in its place.

39. Amend section 1852.243–70 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

1852.243–70 Engineering Change Proposals.

* * * * *

Engineering Change Proposals October 2001

(a) Definitions.

''ECP'' means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

(b) Either party to the contract may originate ECPs. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

* * * * *

[FR Doc. 01–26624 Filed 10–22–01; 8:45 am]

BILLING CODE 7510–01–P