

the plan sponsors determine that administering the plan in that manner would be too burdensome. Accordingly, in this example, the plan sponsors choose to cancel the election entirely. Both plan sponsors come into compliance with the requirements of this part with respect to all enrollees for the plan year for which the substantial failure has occurred.

(iv) *Example 4:* A non-Federal governmental employer has elected to exempt its collectively bargained self-funded plan from certain requirements of this part. The collective bargaining agreement applies to five plan years, 2001 through 2005. For the first three plan years, enrollees are notified annually and at the time of enrollment of the election under this section. The notice specifies that the election applies to the period January 1, 2001 through December 31, 2005. Prior to the dissemination of the annual notice for the 2004 plan year, the individual responsible for disseminating the notice terminates employment. His replacement, who is unaware of the requirement that plan enrollees be notified annually, continues to notify new enrollees at the time of enrollment but fails to disseminate the annual notice. CMS does not consider that failure to be a substantial failure because enrollees previously had actual notice that the election under this section applies for the period January 1, 2001 through December 31, 2005. Accordingly, CMS would not invalidate the election for the 2004 plan year.

(v) *Example 5:* A non-Federal governmental employer has elected to exempt its self-funded plan from certain requirements of this part. An individual terminates employment with the governmental employer, which fails to automatically provide a certificate of creditable coverage within the period specified in § 146.115(a)(2)(ii)(A). (The governmental employer generally provides certificates to terminated employees on an automatic basis, but neglected to do so in this case.) The oversight is brought to the employer's attention when the individual inquires as to why he has not received his certificate of creditable coverage. The governmental employer promptly (within 30 days) forwards a certificate to the individual. CMS would not view that situation as constituting a substantial failure and would not invalidate the election under this section.

(j) *Election invalidated.* If CMS finds cause to invalidate an election under this section, the following rules apply:

(1) CMS notifies the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) in writing that CMS has made a preliminary determination that an election is invalid, and states the basis for that determination.

(2) CMS's notice informs the plan sponsor that it has 45 days after the date of CMS's notice to explain in writing why it believes its election is valid. The plan sponsor should provide applicable statutory and regulatory citations to support its position.

(3) CMS verifies that the plan sponsor's response is timely filed as provided under paragraph (d)(3) of this section. CMS will not consider a response that is not timely filed.

(4) If CMS's preliminary determination that an election is invalid remains unchanged after CMS considers the plan sponsor's timely response (or in the event that the plan sponsor fails to respond timely), CMS provides written notice to the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) of CMS's final determination that the election is invalid. Also, CMS informs the plan sponsor that, within 45 days of the date of the notice of final determination, the plan, subject to paragraph (i)(1)(iii) of this section, must comply with all requirements of this part for the specified period for which CMS has determined the election to be invalid.

(k) *Enforcement.* To the extent that an election under this section has not been filed or a non-Federal governmental plan otherwise is subject to one or more requirements of this part, CMS enforces those requirements under part 150 of this subchapter. This may include imposing a civil money penalty against the plan or the plan sponsor, as determined under § 150.305.

(l) *Construction.* Nothing in this section should be construed to prevent a State from taking the following actions:

(1) Establishing, and enforcing compliance with, the requirements of State law (as defined in § 146.143(d)(1)), including requirements that parallel provisions of title XXVII of the PHS Act, that apply to non-Federal governmental plans or sponsors.

(2) Prohibiting a sponsor of a non-Federal governmental plan within the State from making an election under this section.

(Catalog of Federal Domestic Assistance Program No. 93.773), (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 20, 2002.

Tommy G. Thompson,

Secretary.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes the interim rule published in the **Federal Register** on July 12, 2001. The interim rule amended the NASA FAR Supplement (NFS) to clarify information technology (IT) security requirements for sensitive information contained in unclassified automated information resources

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Karl Beisel, NASA Headquarters, Code HC, Washington, DC 20546, (202) 358-0416, kbeisel@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

NASA published an interim rule in the **Federal Register** at 66 FR 36490 on July 12, 2001, revising NFS section 1804.470 and the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources. These sections address security requirements for unclassified IT resources. The action implemented The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A-130, Security of Federal Automated Information Resources, which require adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. NFS section 1804.470 contains the requirement for all NASA contractors and subcontractors to comply with Federal and NASA policies in safeguarding unclassified NASA data held via information technology (IT).

Public comments were received from one source. The comments were considered in developing this final rule.

Changes are made in this final rule to section 1804.470-1, Scope, to reference Federal policies that are implemented through NASA's Procedures and Guidelines (NPG) 2810.1, Security of Information Technology, and amend paragraph (d)(3)(i) of the clause at 1852.204-76 to remove the exemption of certain information contained in Standard Form 85P, Questionnaire for Public Trust Positions.

NASA understands that the FAR Council is working with the OMB

Committee on Executive Branch Information Systems Security under the President's Critical Infrastructure Protection Board on the development of a government-wide IT security clause. The purpose of this work is to ensure that IT security requirements are included in all applicable Federal government contracts. Upon completion of this government-wide effort, NASA will modify its rule, as may be necessary, to ensure consistency with the FAR coverage.

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. Regulatory Flexibility Act

NASA certifies that this 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 this rule only clarifies existing requirements and does not impose any new requirements.

C. Paperwork Reduction Act

This rule clarifies existing requirements that were previously approved by the Office of Management and Budget (OMB) under OMB Control No. 2700-0098.

List of Subjects in 48 CFR Parts 1804 and 1852

Government Procurement.

Tom Luedtke,
Assistant Administrator for Procurement.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR parts 1804 and 1852, published at 66 FR 36492 on July 12, 2001, is adopted as final with the following changes:

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

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

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.470-1 to read as follows:

1804.470-1 Scope.

This section implements NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources. Federal policies include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 *et seq.*), Public Law 106-398, section 1061, Government Information Security Reform, OMB Circular A-130, Management of Federal Information Resources, and the National Institute of Standards and Technology security guidance and standards.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204-76 [Amended]

3. Amend section 1852.204-76 in the clause heading by removing "(JULY 2001)" and adding "(July 2002)" in its place; and in paragraph (d)(3)(i) by removing "(Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable)".

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