

private carriers); Provide 24 hours-per-day telephonic response to emergency calls from carriers in case of a spill or incident involving a package containing a special infectious agent; and, Notify the addressee by telephone or other electronic means of the date of shipment on the date of shipment, or provide a written schedule of shipment in advance, and request confirmation of receipt of each shipment. Records of such notifications shall be retained by the shipper until notified of receipt.

(c) *Confirmation of receipt.* Upon receipt, the addressee shall provide confirmation to the shipper by telephone or other electronic means.

(d) *Failure to receive.* When confirmation of receipt of material designated in paragraph (a) of this section is not received by the shipper within 3 days following anticipated delivery of the package, the shipper shall notify the carrier which shall immediately seek to ascertain the disposition of the package. In addition, the shipper shall notify the Centers for Disease Control and Prevention within 24 hours by telephone at 1-800-232-0214 to enable the agency to determine whether a public health response is necessary.

§ 72.6 Requirements; variations.

The Director, Centers for Disease Control and Prevention, may approve variations from the requirements of this subpart if, upon written application, review and evaluation, it is found that such variations provide protection at least equivalent to that provided by compliance with the requirements specified in this subpart, and such findings are made a matter of official written record.

§ 72.7 [Redesignated as § 72.21]

Subpart B—Handling of Select Agents

§ 72.11 Additional requirements for facilities transferring or receiving select agents.

(a) * * *

(5) The requirements for BSL-2, 3, and 4 operations pertaining to this section are contained in the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories," Fourth Edition, May 1999 which is hereby incorporated by reference. The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR part 51 the incorporation by reference of the above publication. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Centers for Disease

Control and Prevention, 1600 Clifton Road, Atlanta, Georgia, or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC. The manual is also available on the CDC web site at www.cdc.gov/od/ohs/biosfty/bmb14/bmb14toc.htm.

* * * * *

(c) * * *. (1) The Secretary may authorize a state agency or private entity to register facilities under paragraph (a) of this section, if the Secretary determines that the registering entity's criteria for determining the biosafety standards for facilities handling select agents are consistent with the requirements contained in the CDC/NIH publication "Biosafety in Microbiological and Biomedical Laboratories," Fourth Edition.

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Subpart C—Penalties

§ 72.21 [Redesignated from § 72.7]

Appendix A to Part 72 [Transferred to Subpart B and heading revised]

Appendix to Subpart B

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[FR Doc. 99-27640 Filed 10-27-99; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1825 and 1852

Standard Clause for Export Controlled Technology

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a proposed rule amending the NASA FAR Supplement (NFS) to add a contract clause the purpose of which is to assure contractors (and offerors) understand that they are responsible for controlling export compliance in accordance with law and regulation, and that they should not rely on NASA to obtain necessary licenses in execution of the contracted work. This clause complies with performance based contracting principles. It notifies the contractor of its responsibilities under the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) during contract performance. Additional, tailored clauses may be required when specific exemptions or licenses are applicable, as, for example, with the International Space Station.

These clauses would be developed on a case-by-case basis.

DATES: Comments should be submitted on or before December 27, 1999.

ADDRESSES: Interested parties should submit written comments to Patrick Flynn, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to patrick.flynn@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358-0460.

SUPPLEMENTARY INFORMATION:

A. Background

The potential for disclosure of military or dual-use technology to foreign powers is a serious concern throughout the Government. The acquisition community should take steps to control exports of sensitive data, and hardware, and services at all levels of contract management, including subcontracts and technical interchanges. In response to field center requests, NASA proposes an "Export Licenses" clause and guidance for the NFS. The clause notifies contractors they are responsible for obtaining all required licenses when exporting.

B. Regulatory Flexibility Act

NASA certifies that this regulation 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 record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public 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 1825 and, 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part Parts 1825 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1825 and 1852 continues to read as follows:

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

PART 1825—FOREIGN ACQUISITION

2. Sections 1825.970, 1825.970-1, and 1825.970-2 are added to read as follows:

1825.970 Export control.**1825.970-1 Background.**

(a) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.165 and 15 CFR 734.2(b)(2)(ii).)

(b) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225-70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written

authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

1825.970-2 Contract clause.

Insert the clause at 1852.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.225-70 is added to read as follows:

1852.225-70 Export Licenses.

As prescribed in 1825.970-2, insert the following clause:

Export Licenses

(Date)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130,

and the Export Administration Regulations (EAR), 15 CFR Parts 730-799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

Alternate I

(Date)

As prescribed in 1825.970-2, add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

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