

market value of the Y stock is \$120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of \$120 per share for \$85 per share.

(i) In this *Example*, at the time of exercise, X has received wages equal to the excess of the fair market value of the stock (\$120 per share) over the amount paid for the stock (\$85 per share). Thus, for purposes of section 3121, X has received wages equal to \$35 per share, for a total of \$1,750.

(2) *Rules of administrative convenience.* The Commissioner may prescribe rules of administrative convenience for employers and employees to satisfy obligations under sections 3101 and 3111 that arise with respect to wages received pursuant to the exercise of a statutory stock option. Such rules may include, but are not limited to, permitting employers to deem the payment of wages due to the exercise of the statutory stock option as occurring at a specific date or dates, including over a period of dates.

(3) *Effective date.* This paragraph (k) is applicable to the exercise of a statutory option that occurs on or after January 1, 2003.

Par. 5. In § 31.3306(b)–1, paragraph (l) is added to read as follows:

§ 31.3306(b)–1 Wages.

* * * * *

(l) *Statutory stock options—(1) When an individual receives wages—(i) Statutory stock option defined.* For purposes of this section, a statutory stock option is an option that either satisfies the requirements of section 422(b) or is granted under a plan that satisfies the requirements of section 423(b).

(ii) *Wages at exercise.* If an individual is granted a statutory stock option, the individual receives wages when stock is transferred to the individual pursuant to the exercise of the option. The amount of the wages received by the individual is equal to the excess of the fair market value of the stock, determined at the time of exercise, over the amount paid for the stock by the individual. The provisions of this paragraph (l) are illustrated by the following example:

Example. (i) Individual X is granted an option under a plan that satisfies the requirements of section 423(b). The option allows X to acquire 50 shares of stock of X's employer, Y, at an exercise price equal to 85% of the fair market value of the stock at the time the option is granted. The fair market value of the Y stock at the time the option is granted is \$100 per share. X exercises the option later when the fair market value of the Y stock is \$120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of \$120 per share for \$85 per share.

(ii) In this *Example*, at the time of exercise, X has received wages equal to the excess of

the fair market value of the stock (\$120 per share) over the amount paid for the stock (\$85 per share). Thus, for purposes of section 3306, X has received wages equal to \$35 per share, for a total of \$1,750.

(2) *Rules of administrative convenience.* The Commissioner may prescribe rules of administrative convenience for employers to satisfy obligations under section 3301 that arise with respect to wages received pursuant to the exercise of a statutory stock option. Such rules may include, but are not limited to, permitting employers to deem the payment of wages due to the exercise of the statutory stock option as occurring at a specific date or dates, including over a period of dates.

(3) *Effective date.* This paragraph (l) is applicable to the exercise of a statutory option that occurs on or after January 1, 2003.

Par. 6. In § 31.3401(a)–1, paragraph (b)(15) is added to read as follows:

§ 31.3401(a)–1 Wages.

* * * * *

(b) * * *

(15) *Statutory stock options—(i) When stock is transferred pursuant to an exercise—(A) Statutory stock option defined.* For purposes of this section, a statutory stock option is an option that either satisfies the requirements of section 422(b) or is granted under a plan that satisfies the requirements of section 423(b).

(B) *Withholding at exercise.* If an individual is granted a statutory stock option, withholding is not required when stock is transferred to the individual pursuant to the exercise of the option to the extent that the individual does not recognize income by reason of section 421(a)(1). The provisions of this paragraph (b)(15) are illustrated by the following example:

Example. (i) Individual X is granted an option under a plan that satisfies the requirements of section 423(b). The option allows X to acquire 50 shares of stock of X's employer, Y, at an exercise price equal to 85% of the fair market value of the stock at the time the option is granted. The fair market value of the Y stock at the time the option is granted is \$100 per share. X exercises the option later when the fair market value of the Y stock is \$120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of \$120 per share for \$85 per share. X continues to hold the Y stock after exercise. Under section 421(a), no income is recognized at the time of exercise.

(ii) In this *Example*, for purposes of section 3401, X has not received wages at the time of exercise.

(ii) *Effective date.* This paragraph (b)(15) is applicable to the exercise of a

statutory stock option that occurs on or after January 1, 2003.

* * * * *

Robert E. Wenzel.

Deputy Commissioner of the Internal Revenue.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827, 1835, and 1852

RIN 2700–AC33

Scientific and Technical Reports

AGENCY: National Aeronautics and Space Administration (NASA)

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NFS to clarify the review requirements for data produced under Research and Development (R&D) contracts including data contained in final reports and the review requirements for final reports prior to inclusion in NASA's Center for AeroSpace Information (CASI).

DATES: Comments should be submitted on or before January 14, 2002.

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

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, (202) 358–1645, e-mail: cdalton@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

NFS clause 1852.235–70, Center for Aerospace Information—Final Scientific and Technical Reports, is required in all R&D contracts. Paragraph (e) of the current NFS clause 1852.235–70 requires that contractors not release the final report required under the contract, outside of NASA, until a document availability authorization (DAA) review has been completed by NASA and availability of the report has been determined. The DAA review completed by NASA is intended to insure that NASA disseminates NASA scientific and technical information (STI) in a manner consistent with U.S. laws and regulations, Federal information policy, intellectual property rights, technology transfer protection requirements, and budgetary and technological limitations.

The DAA review process applies only to the publication and dissemination of NASA STI by NASA or under the direction of NASA.

This final report review requirement has been incorrectly interpreted by some university contractors as restricting their right to publish any of the data produced under the contract which may be included in the Final Report until NASA has completed its DAA review. The intent of paragraph (e) is to restrict only the release of the "The Final Report" as delivered under the contract until NASA completes its DAA review and availability of the report has been determined. This clause does not restrict the contractor's ability to publish, or otherwise disseminate, data produced during the performance of the contract, including data contained in the Final Report, as provided under FAR clause 52.227-14, Rights in Data—General. However, in certain limited situations, contract requirements may include research activity that will result in data subject to export control, national security restrictions, or other restrictions designated by NASA, or may require that the contractor receives or is given access to data that includes restrictive markings, e.g., proprietary information of others. In these circumstances, NASA requires a review of data produced under the contract, before the contractor may publish, release, or otherwise disseminate the data.

This proposed rule clarifies the above by—

(a) Revising the existing clause, 1852.235-70, to delete reference to the submission of the final report. This revised clause is titled "Center for Aerospace Information," and will advise contractors of the services provided by CASI;

(b) Establishing a new clause 1852.235-73, Final Scientific and Technical Reports, that requires submission of a final report; states that the contractor may publish, or otherwise disseminate, data produced during the performance of the contract, including data contained in the final report, without prior review by NASA; and retains restriction on release of the final report as delivered under the contract until NASA has completed its DAA review;

(c) Establishing an Alternate I to the new 1852.235-73 clause, that may be used in contracts for fundamental research in which the contractor may publish, or otherwise disseminate, data produced during performance of the contract, including the final report, without prior review by NASA;

(d) Establishing an Alternate II to the new 1852.235-73 clause, for use in contracts in which data resulting from the research activity may be subject to export control, national security restrictions or other restrictions designated by NASA, may include information disclosing an invention in which the government may have rights, or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others, and will require the contractor to comply with NASA review requirements contained in the new clause, 1852.235-75, Review of Final Scientific and Technical Reports and Other Data;

(e) Establishing a new clause 1852.235-74, Additional Reports of Work—Research and Development, for use in contracts in which monthly, quarterly and other reports in addition to the Final Report may be considered necessary for monitoring contract performance;

(f) Establishing a new clause 1852.235-75, Review of Final Scientific and Technical Reports and Other Data, for use in contracts in which data resulting from the research activity may be subject to export control, national security restrictions or other restrictions designated by NASA, may include information disclosing an invention in which the government may have rights, or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others, and thus will require NASA review of data produced under the contract before the contractor may publish, release, or otherwise disseminate data produced during the performance of the contract; and

(g) Moving the coverage for Reports of Work from Part 1827, Patents, Data, and Copyrights, to 1835, Research and Development Contracting, by deleting section 1827.406-70, Reports of Work, and adding sections 1835.010, Scientific and technical reports, and 1835.011, Data.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), because these changes only clarify existing rights and responsibilities relating to release of data produced in performance of a contract.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any recordkeeping or information collection requirements, or collection 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 1827, 1835, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827, 1835, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1827, 1835, and 1852 continues to read as follows:

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

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. Delete section 1827.406-70.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

3. Add sections 1835.010 and 1835.011 to read as follows:

1835.010 Scientific and technical reports.

(a)(i) *Final reports.* Final reports must be furnished by contractors for all R&D contracts. The final report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract. The final report should comply with formatting and stylistic guidelines contained in NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. The contracting officer must specify in the contract whether the use of electronic formats for submission of reports is acceptable. Information regarding appropriate electronic formats is available from Center STI Managers or the NASA Center for AeroSpace Information (CASI).

(ii) In addition to the final report submitted to the contracting officer, the contractor must concurrently provide the NASA Center for AeroSpace Information (CASI) with a copy of the letter transmitting the final report to the contracting officer.

(iii) It is NASA policy to provide the widest practicable and appropriate dissemination of scientific and technical information (STI) derived from NASA activities, including that generated under NASA research and development contracts. One mechanism for disseminating NASA STI is through CASI. Before approving a final report delivered under a contract for inclusion in the CASI repository, NASA must complete a Document Availability Authorization (DAA) review. The DAA review is intended to insure that NASA disseminates NASA scientific and technical information (STI) in a manner consistent with U.S. laws and regulations, federal information policy and publication standards, intellectual property rights, technology transfer protection requirements, and budgetary and technological limitations. NASA Form 1676, NASA Scientific and Technical Document Availability Authorization (DAA), or a Center-specific version of this form, is used to complete this review. The DAA review process applies to the publication and dissemination of NASA STI by NASA or under the direction of NASA. The final report, as delivered under the contract, must not be released outside of NASA until NASA's DAA review has been completed and the availability of the document has been determined.

(iv) *Additional reports of work.* In addition to the final report required by paragraph (a)(i) of this section, the contracting officer, in consultation with the program or project manager, should consider the desirability of requiring periodic reports and reports on the completion of significant units or phases of work for monitoring contract performance. Any additional reports must be included in the clause at 1852.235-74 as a contract deliverable. (See FAR 27.403.)

(v) Upon receipt of the Final Report, or any additional reports required by 1852.235-74 if included in the contract, the contracting officer must forward the reports to the contracting officer's technical representative (COTR) for review and acceptance. The COTR must ensure that the DAA review is initiated upon receipt of the final report. With respect to any additional reports required by 1852.235-74, if NASA wishes to disseminate such additional reports outside of NASA, the COTR must ensure that the DAA review is initiated upon receipt of such additional reports. Upon completion of the DAA review, the COTR must advise the contracting officer and contractor of the final availability determination and submit the final report along with the final availability determination to CASI.

A copy of the letter transmitting the final report to CASI must be submitted to the contracting officer. These responsibilities should be included in the COTR Delegation, NASA Form 1634.

(b) The final report must include a completed Report Documentation Page, Standard Form (SF) 298, as the final page of the report.

1835.011 Data.

(a) In addition to any reports required by 1835.010, the contracting officer must specify what additional data, (type, quantity, and quality) is required under the contract, for example, presentations, journal articles, and seminar notes. (See FAR 27.403.)

4. Revise section 1835.070 to read as follows:

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer must insert the clause at 1852.235-70, Center for AeroSpace Information, in all research and development contracts, and interagency agreements and cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer must insert the clause at 1852.235-71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offeror of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer must ensure that the provision at 1852.235-72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions may be supplemented, but only to the minimum extent necessary.

(d)(1) The contracting officer must insert the clause at 1852.235-73, Final Scientific and Technical Reports, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work.

(2) The contracting officer, after consultation with and concurrence of the program or project manager and the Center Export Control Administrator, may insert the clause with its Alternate I when the contract includes "fundamental research" as defined at 22 CFR 120.11(8) and no prior review of data, including the final report, produced during the performance of the contract is required for export control or national security purposes before the contractor may publish, release, or otherwise disseminate the data.

(3) The contracting officer must insert the clause with its Alternate II when the

clause at 1852.235-75, Review of Final Scientific and Technical Reports and Other Data, as prescribed by paragraph (f) of this section, is included in the contract.

(e) The contracting officer must insert a clause substantially the same as the clause at 1852.235-74, Additional Reports of Work—Research and Development, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work, when periodic reports, such as monthly or quarterly reports, or reports on the completion of significant units or phases of work are required for monitoring contract performance. The clause should be modified to reflect the reporting requirements of the contract and to indicate the timeframe for submission of the final report.

(f) The contracting officer, after consultation with and concurrence by the program or project manager and where necessary the Center Export Control Administrator, must insert a clause substantially the same as the clause at 1852.235-75, Review of Final Scientific and Technical Reports and Other Data, when prior review of all data produced during the performance of the contract is required before the contractor may publish, release, or otherwise disseminate the data. For example, when data produced during performance of the contract may be subject to export control, national security restrictions, or other restrictions designated by NASA; may include information disclosing an invention in which the government may have rights; or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Revise section 1852.235-70 to read as follows:

1852.235-70 Center for AeroSpace Information.

As prescribed in 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION
(XXX/XXX)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (<http://www.sti.nasa.gov>) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a NASA repository of research

information, which may enhance contract performance.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) Information regarding CASI and the services available can be obtained at the Internet address contained in paragraph (a) of this clause or at the following address. Center for AeroSpace Information (CASI), 7121 Standard Drive, Hanover, Maryland 21076-1320, Email: help@sti.nasa.gov, Phone: 301-621-0390, FAX: 301-621-0134.

(End of clause)

6. Add sections 1852.235-73, 1852.235-74 and 1852.235-75 to read as follows:

1852.235-73 Final Scientific and Technical Reports.

As prescribed in 1835.070(d)(1) insert the following clause:

FINAL SCIENTIFIC AND TECHNICAL REPORTS

(XXX/XXX)

(A) The Contractor shall submit to the Contracting Officer a final report which summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information.

(c) The last page of the final report shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) In addition to the final report submitted to the Contracting Officer, the Contractor shall concurrently provide to CASI a copy of the letter transmitting the final report to the Contracting Officer. The copy of the letter shall be submitted to CASI at the following address: Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, Maryland 21076-1320.

(e) In accordance with paragraph (d) of the Rights in Data — General clause (52.227-14) of this contract, the Contractor may publish, or otherwise disseminate, data produced during the performance of this contract, including data contained in the final report, and any additional reports required by 1852.235-74 when included in the contract, without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including

intellectual property rights, export control, national security and other requirements, and to the extent the contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. Should the Contractor seek to publish or otherwise disseminate the final report, or any additional reports required by 1852.235-74 if applicable, as delivered to NASA under this contract, the Contractor may do so once NASA has completed its document availability authorization review, and availability of the report has been determined.

ALTERNATE I

(XXX/XXX)

As prescribed by 1835.070(d)(2), insert the following as paragraph (e) of the basic clause:

(e) The data resulting from this research activity is "fundamental research" which will be broadly shared within the scientific community. No foreign national access or dissemination restrictions apply to this research activity. The Contractor may publish, release, or otherwise disseminate data produced during the performance of this contract, including the final report, without prior review by NASA for export control or national security purposes. However, NASA retains the right to review the final report to ensure that proprietary information, which may have been provided to the Contractor, is not released without authorization and for consistency with NASA publication standards. Additionally, the Contractor is responsible for reviewing any publication, release, or dissemination of the data for conformance with other restrictions expressly set forth in this contract, and to the extent it receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for compliance with such restrictive markings.

ALTERNATE II

(XXX/XXX)

As prescribed by 1835.070(d)(3), when the clause at 1852.235-75 is included in the contract, insert the following as paragraph (e) of the basic clause:

(e) The Contractor shall comply with the requirements of 1852.235-75, Review of Final Scientific and Technical Reports and Other Data, before it publishes, releases, or otherwise disseminates any data or reports produced under this contract.

(End of clause)

1852.235-74 Additional Reports of Work—Research and Development.

As prescribed in 1835.070(e), insert a clause substantially the same as the following:

ADDITIONAL REPORTS OF WORK—RESEARCH AND DEVELOPMENT

(XXX/XXX)

In addition to the final report required under this contract, the Contractor must submit the following report(s) to the Contracting Officer:

(a) *Monthly progress reports.* The Contractor shall submit separate monthly

reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(c) *Submission dates.* Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within _____ days after the completion of the effort under the contract.

(End of clause)

1852.235-75 Review of Final Scientific and Technical Reports and Other Data.

As prescribed in 1835.070(f) insert the following clause:

REVIEW OF FINAL SCIENTIFIC AND TECHNICAL REPORTS AND OTHER DATA

(XXX/XXX)

Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA, may include information disclosing an invention in which the government may have rights, or, to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor may not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report required by 1852.235-73 and any additional reports required by 1852.235-74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once the review has been completed by NASA and the availability of the data has been determined.

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