

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1827, 1835, and 1852

RIN 2700-AC33

Scientific and Technical Reports

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes the proposed rule published in the **Federal Register** on November 14, 2001. This final rule amends 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) scientific and technical information (STI) database.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT:

Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), (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 ensure 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 that 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 normally 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 final 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 advises 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, for use 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, 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 before the contractor may publish, release, or otherwise disseminate data produced during the performance of the contract;

(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; and

(f) 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 §§ 1835.010, Scientific and technical reports, and 1835.011, Data.

NASA published a proposed rule in the **Federal Register** on November 14, 2001 (66 FR 57028). Public comments were received from one association. The comments suggested a change to the prescription for use of Alternate I to 1852.235-73 and objected to the inclusion of “information disclosing an invention in which the government may have rights” as an example of when it would be appropriate to use the proposed clause 1852.235-75, Review of Final Scientific and Technical Reports and Other Data. The comments were considered in formulation of this final rule. NASA is adopting the proposed rule as final with changes. The changes: (a) Modify, for consistency, the clause proscription for use of Alternate I to 1852.235-73; (b) delete the previously proposed clause 1852.235-75; (c) revise Alternate II of the new clause 1852.235-73 to include language from the deleted clause, and modifies that language to delete reference to “information disclosing an invention in which the government may have rights” since the FAR Patent Rights clause (52.227-11) requires the contractor to disclose inventions to the government, but does not restrict the publication of information disclosing an invention; (d) encourage electronic submission of reports; and (e) align the submission of documents with existing internal review procedures. Finally, this final rule amends an address in section 1804.202.

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 final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final 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 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 1804, 1827, 1835, and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1827, 1835, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1827, 1835, and 1852 continues to read as follows:

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

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.202 to read as follows:

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace Information (CASI), Attention: Acquisitions Collections Development Specialist, 7121 Standard Drive, Hanover, MD 21076-1320.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

1827.406-70 [Removed]

3. Remove section 1827.406-70.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

4. 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. Electronic formats for submission of reports should be used to the maximum extent practical. When reports are submitted electronically, the contracting officer should also request the submission of a paper copy of the report that could be used to validate items such as math and symbols that can be transposed due to font substitution or other electronic transmission problems. Information regarding appropriate electronic formats for final reports is available from center STI/Publications Managers or the NASA Center for AeroSpace Information (CASI) at <http://www.sti.nasa.gov> under "Publish STI—Electronic File Formats."

(ii) In addition to the final report submitted to the contracting officer, the contractor shall concurrently provide CASI and the center STI/Publications Manager 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 ensure that NASA disseminates NASA 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 by NASA.

(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 shall forward the reports to the contracting officer's technical representative (COTR) for review and acceptance. The COTR shall ensure that the DAA review is initiated upon acceptance of the final report or any additional reports that NASA elects to publish or release outside of NASA or present at internal meetings at which foreign nationals may be present. Upon completion of the DAA review, the COTR shall ensure that the DAA-approved STI and the original approved DAA form are sent to the center STI/Publication Manager. The contractor should be advised of the final availability determination. These responsibilities should be included in the COTR Delegation, NASA Form 1634.

(b) The final report shall 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 shall 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.)

5. Revise Section 1835.070 to read as follows:

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall 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 shall 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 shall 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) The contracting officer shall 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.

(1) The contracting officer, after consultation with and concurrence of the program or project manager and the center Export Control Administrator, shall 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.

(2) The contracting officer, after consultation with and concurrence by the program or project manager and where necessary the center Export Control Administrator, shall insert the clause with its Alternate II, 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; or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others.

(e) The contracting officer shall 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.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. 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 (Feb, 2003.)

(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 and database 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, E-mail: help@sti.nasa.gov, Phone: 301-621-0390, Fax: 301-621-0134. (End of clause)

7. Add sections 1852.235-73 and 1852.235-74 to read as follows:

1852.235-73 Final Scientific and Technical Reports.

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

Final Scientific and Technical Reports (Feb, 2003.)

(a) The Contractor shall submit to the Contracting Officer a final report that 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. Electronic formats for submission of reports should be used to the maximum extent practical. Before electronically submitting reports containing scientific and technical information (STI) that is export-controlled or limited or restricted, contact the Contracting Officer to determine the requirements to electronically transmit these forms of STI. If appropriate electronic safeguards are not available at the time of submission, a paper copy or a CD-ROM of the report shall be required. Information regarding appropriate electronic formats for final reports is available at <http://www.sti.nasa.gov>

under "Publish STI—Electronic File Formats."

(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 the Center STI/Publication Manager and the NASA Center for AeroSpace Information (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: Acquisitions Collections Development Specialist, 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 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 (FEB 2003)

As prescribed by 1835.070(d)(1), 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 (FEB 2003)

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

(e) Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; 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 shall not publish, release, or otherwise disseminate, except to NASA, 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. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined. (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 (FEB 2003)

In addition to the final report required under this contract, the Contractor shall 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)

[FR Doc. 03-2435 Filed 1-31-03; 8:45 am]

BILLING CODE 7510-01-P