

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.

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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